

ARTICLE IX
Nonconformities

§ 310-9.1. Policy.

A. It is the policy of the Town of Fallsburg to provide for the limited continuation of nonconformities where, of themselves, such nonconformities do not endanger the public health, safety and welfare or do not conflict with the Town's Comprehensive Plan, but it is not the policy nor the intent to allow for additional non-conforming buildings or units to be built on a specific property. To that end, the Town of Fallsburg encourages nonconforming uses to become more compliant with both the current version of this zoning law and the New York State Fire Prevention and Building Code and the New York State Energy Code. The following nonconformities are viewed as a detriment to the public interest, and are as follows:

1. Nonconformity to the performance standards of § 310-5.19.
2. Nonconforming junkyards, garbage dumps, open storage yards, mobile homes and unimproved parking areas.
Nonconforming signs in all districts.
3. Nonconforming uses in all districts.
4. Buildings that are not in compliance with bulk regulations in all districts.
5. Uses or buildings that are not in compliance with supplementary regulations, other than performance standards.
6. Residential uses which are nonconforming uses for the district where located.
7. Nonconforming vacant lots of record.

B. Each of the classifications shall be subject to the nonconforming use regulations herein. Where the circumstances exist that multiple nonconforming classes exist for a single lot, development, use or building, each of the classes shall be treated individually as set forth in these regulations, but their deterrent as a nonconforming use shall be considered. Example: The nonconforming use of a junkyard, in violation of performance standards and with a nonconforming sign in a residential district, shall be subject to the regulation as follows: regulation of performance standard nonconformities; for violation of performance standards; regulation of junkyards for the junkyard use; and regulation of nonconforming signs, for the subject sign.

§ 310-9.2. Nonconforming to performance standards for uses.

- A. It is the intent of the Town Board and it is hereby declared that failure to comply with the performance standards represents an imminent hazard to the public health, welfare and safety and the Comprehensive Plan (adopted by the Town Board August 8, 2018) of the Town. Notwithstanding any other provision of this chapter, operations or uses which violate the provisions of § 310-5.19 shall be terminated or brought into compliance with those regulations within two weeks of notice of such nonconformity.
- B. In hearing any appeal from the provisions of this article, the Board of Appeals may grant relief from these provisions only upon a showing by the applicant that the violation will not present an imminent hazard to human life, the public health, and safety, in addition to those requirements set forth in Article XI, Enforcement. Any variance in the time for correction of the violation shall be the minimum, consistent with the intent of these regulations.

§ 310-9.3. Nonconforming uses.

- A. For the definition of "nonconforming use" see § 310-2.2. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. IV)]**
- B. Applicability. The following provisions shall apply to all uses existing on the effective date of the amendment of this chapter which do not conform to the use regulations set forth herein and to all uses that become nonconforming by reason of any subsequent amendment.
- C. Any residential, **single residential structure**, use of property containing one residential-use structure which is located in a district in which the use is nonconforming shall be exempt from the provisions of § 310-9.3B. A building containing a nonconforming residential use may be altered in any way to improve **habitability**; however, no structural alterations shall be made which would increase the number of dwelling units. Residential properties containing more than one nonconforming use or structure that (or where owners of residential properties) wish to alter or improve **habitability** of the dwelling as described above, shall be required to request a variance from the Zoning Board of Appeals and approvals of site plan through the Planning Board, if granted the required variance.
- D. Nonconforming uses (multi-family/residential-use with more than one residential unit, nonresidential and commercial). Nonconforming uses, other than single-family residences, of buildings or open land may be continued indefinitely but:
 1. Shall not be enlarged, altered, extended, reconstructed, restored or placed on a different portion of the lot or parcel of land occupied by such uses on the effective date of this chapter, nor shall any external evidence of such uses be increased by any means whatsoever, except as allowed under section 310-9.3(E)

2. Normal maintenance repair or incidental alteration of a structure possessing nonconforming use is permitted, provided that it does not increase the degree of nonconforming use.
3. Shall not be moved to another location where such use would be nonconforming.
4. Shall not be extended to displace a conforming use.
5. Shall not be changed to another nonconforming use without approval of a use variance by the Zoning Board of Appeals, subject to a public hearing.
6. If a building that contains a nonconforming use is damaged for any reason to an extent of 50% or less of the replacement cost of the building or structure, exclusive of land and foundation, it may be repaired, restored, reconstructed or used as before but not enlarged. The floor area of such use, building or structure shall not exceed the floor area which existed prior to such damage, except as allowed under Section 310-9.3(E). All repairs shall be completed within two years after damages occur, or such use shall not be rebuilt except as a conforming use.
7. Any building that contains a nonconforming use that is damaged to an extent greater than 50% shall be used and constructed in compliance with the regulations contained in this chapter in accordance with the use and bulk requirements applicable to the district in which it is located, except as allowed under Section 310-9.3(E).

E. Nonconforming commercial and multi-family/residential use with more than one unit uses:

- a. May be extended up to but shall not exceed an increase of 50% in floor area with no height increase, nor increase in amount of units, of the square footage that existed as of December 31, 2007. Such expansion is subject to site plan approval by the Planning Board, which shall be conditioned on the owner of the nonconforming commercial or multi-family/residential use demonstrating that the structure meets, or will meet in the permitted construction process, all New York State Building and Fire Code provisions and bringing the entire building to modern construction standards and demonstrating that proper sewer and water capacity exist, if applicable, for the increase in floor area. The 50% addition shall be wholly in the Planning Board's discretion, based on the health, safety and welfare of the neighborhood and Town as a whole. The expanded nonconforming commercial or multi-family use shall comply with the area, yard, height and other bulk and density regulations of the district in which the use is located. The Planning Board, in carrying out the provisions of this article, may impose reasonable conditions set forth in writing, to gradually bring preexisting nonconforming development for which expansion is proposed into closer conformance with the community character and with the use standards of the district in which the use is located as is necessary to protect the public health, safety and general welfare and, more specifically, the safety of access, the location of refuse containers, appearance and

size of signs, lights, number and arrangement of parking spaces, and dissemination of noxious odors, dust or other hazardous pollutants; and

- b. Nonconforming commercial and multi-family uses may be replaced in kind with a new unit on the same building footprint in terms of square footage/building size, provided all building separation requirements contained in the bulk table of the Zoning Chapter of the zoning district may be applied or those provided under section 310-4.3(G), whichever is more strict. **In no event shall the multi-family use have less front, side, or rear yard setbacks than the existing structure.. In no event shall the commercial use have less front, side, or rear yard setbacks less than the existing structure.** Any questions of which use is most similar to the nonconforming use shall be determined by the Zoning Enforcement Officer. Should **Zoning** building **separation** requirements not be met, then the required fire separation of a two hour fire assembly shall be constructed for the exterior walls that do not meet this requirement.
- c. The lot coverage for these nonconforming uses shall not exceed the **least restrictive** lot coverage of the permitted use in the zoning district **most closely analogous to the nonconforming use, or where no analogous uses are allowed in the district, the most analogous use in the nearest adjoining zoning district shall be applied, as determined by the Planning Board** **and the lot coverage for these nonconforming multi family/residential uses shall not exceed the least restrictive lot coverage in the zoning district.** No additional units are allowed.
- d. None of the provisions in Section 310-9.3(E) shall apply to nonconforming junkyards, garbage dumps, open storage yards, mobile homes and unimproved parking areas.

§ 310-9.4. Nonconforming buildings. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. IV)]

For the definition of "nonconforming building" see § 310-2.2. Nonconforming buildings may be continued, repaired, structurally altered, moved, reconstructed or enlarged, provided that such action does not increase the degree of or create any new nonconformity to district bulk regulations. The following rules shall apply to repairs of nonconforming structures:

- A. Normal maintenance repair or incidental alteration of a structure possessing nonconforming bulk is permitted, provided that it does not increase the degree of nonconforming bulk.
- B. If a building possessing nonconforming bulk is damaged for any reason it may be repaired, restored, reconstructed or used as before but not enlarged. The floor area of such use, building or structure shall not exceed the floor area which existed prior to such damage. All repairs shall be completed within two years after damages occur, or such use shall not

be rebuilt except as a conforming use. Any building possessing nonconforming bulk that is damaged to an extent greater than 50% shall be constructed in compliance with the regulations contained in this chapter in accordance with the use and bulk requirements applicable to the district in which it is located.

C. Nonconforming buildings may be relocated to comply with any state or local code requirements including but not limited to building setbacks, fire separations, or safety, but may not be expanded except for any construction that is in compliance with the regulations contained in this chapter, in accordance with the use and bulk requirements applicable to the district in which it is located, and in compliance with New York State Fire Prevention and Building Code and New York State Energy Code.

§ 310-9.5. Nonconforming lots of records.

A. Notwithstanding the limitations imposed by any other provisions of this chapter, the Code Enforcement Officer may issue a building permit for the construction of a residential building or **residential** structure on a lot, which does not meet the minimum area, width or yard requirements of this chapter, provided such substandard lot was on record in the office of the County Clerk prior to the enactment or subsequent amendment of this chapter and met the minimum area width or yard requirements of this chapter at the time it was recorded, prior to the enactment or amendment of this chapter.

B. Any such substandard lot must conform to and comply with all New York State Health Department requirements, and certification of such compliance by a licensed engineer is mandatory. Adjacent substandard lots in the same ownership must be combined by the making and recording of a single **tax lot** in order to meet the minimum lot size to the greatest possible extent. An exception to the minimum lot size shall be made in cases where self-contained sewage systems which meet New York State Health Department standards are installed, permitted and operating, prior to the enactment or amendment causing the lot to become substandard, and provided there is no improperly treated sewage flow into the ground or water.

§ 310-9.6. Conversion of one-family seasonal dwellings and bungalow colonies.

Conversion of a one-family seasonal unit on its own lot shall be allowed, provided the entire dwelling is fully compliant with all New York State building codes, New York State energy codes and all local municipal requirements of the Department of Public Works. **Conversion of a bungalow colony to year-round use shall be permitted as may be allowed as per § 310-9.3, provided the entire dwelling is fully complaint with all New York State building codes, New York State energy codes, and all local municipal requirements of the Department of Public Works.**

§ 310-9.7. Preexisting uses made special permit uses.

Any use lawfully existing at the time of adoption of these regulations or of any amendment thereto, in the district in which such use is classified herein as a special use, shall, without further action,

be deemed a conforming use in such district. An extension of or addition to such use shall require special use permit approval and shall meet all the requirements for special uses contained in Article VI of this chapter.

§ 310-9.8. Termination.

The discontinuance of a nonconforming use for a period of two years and/or the change of use to a more restricted or conforming use for any period of time shall be considered an abandonment thereof, and such nonconforming use shall not thereafter be revived. Reducing the level of non-compliance is desirable for health, safety and welfare, and encourages repair or replacement of blight. Intent to resume a nonconforming use shall not confer the right to do so as it is the Town of Fallsburg intention to encourage nonconforming uses to become more compliant with both the current version of this zoning law and the New York State Fire Prevention and Building Code and the New York State Energy Code.