

ARTICLE V

Nonconforming Buildings, Uses and Activities**§ 5.1. Continuation of existing uses.**

The lawful use or bulk of any building, land use or activity in existence on the effective date of this law may continue, although not in conformity with this law, except as otherwise provided in this Article.

§ 5.2. Maintenance and repair.

Normal maintenance and repair of a nonconforming building, including the restoration of a building declared unsafe by proper authority to a safe condition and the repair of a building damaged by fire or other cause, shall not require the approval of the Enforcement Officer as long as the degree or extent of nonconformity is not increased or exceeded, nor no new nonconformity is created.

§ 5.3. Reconstruction and restoration.

If a nonconforming building or land use activity or part thereof has been destroyed or damaged by any means, it may be rebuilt or restored within five (5) years as a nonconforming building or use only if reconstructed or restored with the same or less floor area, height and cubic content and with the same or an improved general site layout as that of the original structure. Zoning Board of Appeals approval of reconstruction or restoration plans shall be required only when the degree or extent of nonconformity is increased, and the Board may impose conditions on such approval if such conditions would improve an otherwise bad situation and bring the nonconforming use or activity more in conformity with the regulations for the district in which it is located.

§ 5.4. Changes to nonconforming uses.

A nonconforming use may be changed to another nonconforming use only by special permit granted by the Zoning Board of Appeals. A nonconforming use may be changed to a conforming use but shall not thereafter revert to a nonconforming use.

§ 5.5. Abandonment or discontinuance.

Abandonment or discontinuance of any nonconforming use for a period of twelve (12) consecutive months shall terminate such nonconforming use of the building and premises. No existing nonconforming use shall be considered in conformance with the provisions of this law for the area in which such building or premises is located. The date of abandonment or discontinuance of a nonconforming use shall be determined by the Enforcement Officer, and notification of such action shall be made, in writing, to the property owner not less than six (6) months prior to the termination date, with a copy to the Town Clerk. Extension of the termination date of such nonconforming use for an additional six (6) months may be granted by the Zoning Board of Appeals after a public hearing.

§ 5.6. Commercial, industrial and related uses.

Although no special districts or regulations are specified for such uses, commercial, industrial and related activities/uses shall continue to be permitted uses where they are now in existence. However, any new construction to or expansion of an existing commercial, industrial or related activity/use, except home occupations, requires a special permit issued by the Zoning Board of Appeals and shall comply with Article VI of this law.

§ 5.7. Expansion of nonconforming uses.

- A. The expansion of any nonconforming use shall be prohibited, except in the case of a special permit being issued by the Zoning Board of Appeals.
- B. In the case of additions or expansions to a nonconforming structure which are in compliance with both area and use requirements of any zoning district, this section shall not apply.

ARTICLE VI**Administration and Enforcement; Appeals****§ 6.1. Enforcement officer.**

This law shall be enforced by the Enforcement Officer, who shall be appointed annually by the Town Board. No building permit or certificate of occupancy shall be issued by him except where all the provisions of this law have been complied with.

§ 6.11. Entry and inspection.

After requesting permission of the owner, the Enforcement Officer shall have the right to enter upon, examine and inspect or cause to be entered, examined and inspected any building or property at any reasonable time for the purpose of carrying out duties and to determine compliance with the provisions of this law. Request for permission to inspect will normally be made verbally, but in case such a request is refused, the request will then be granted within one week of date of delivery or date of mailing of the request, at a time of owner's convenience, or the matter will be handled in accordance with due process of law. Inspection of the interior of a building will normally be required only when the owner has indicated a change of use or where there is good cause to believe a change of use is being accomplished. A written report of each such examination and inspection shall be prepared on any appropriate form and kept on file by the Enforcement Officer.

§ 6.12. Service of notice of violation.

Whenever in the opinion of the Enforcement Officer after proper examination and inspection there appears to exist a violation of any provision of this law or of any rule or regulation adopted pursuant thereto, he shall serve a written notice of violation upon the appropriate form. Fourteen days after notification, this shall be considered a violation and subject to appropriate penalties.

§ 6.13. Contents of notice of violation.

Such notice of violation shall inform the recipient of:

- A. The nature and details of such violation.
- B. The recommended remedial action which, if taken, will effect compliance with the provisions of this law and with rules and regulations adopted pursuant thereto.
- C. The date of compliance by which the violation must be remedied or removed.

§ 6.14. Extension of date of compliance.

The Enforcement Officer may extend the date of compliance specified in a notice of violation after written application, if, in his opinion, there is reasonable evidence of intent to comply and that reasonable conditions exist which prevent compliance by the specified date.

§ 6.15. Emergency action to abate violations.

If, in the opinion of the Enforcement Officer, a violation exists which requires immediate action to avoid a direct hazard or imminent danger to the health, safety or welfare of occupants of a building or to other persons, he may order such violation immediately remedied or may take direct action on his own initiative to abate the hazard or danger. Any costs incurred by such action shall be paid for by the owner, occupant or person responsible for the violation. The Enforcement Officer shall keep on file an affidavit stating with fairness and accuracy the items of expense and date of execution of action taken, and he is furthermore authorized to institute a lawsuit, if necessary, against the person liable for such expense or place a lien against his property, in order to recover the costs.

§ 6.16. Certificate of compliance.

On reinspection following the expiration of the date of compliance as specified in the notice of violation, if the violation has been remedied or removed in accordance with the specified remedial action and there is no longer a violation of any provision of the law, then a certificate of zoning compliance shall be issued by the Enforcement Officer.

§ 6.17. Penalties for offenses. [Amended 9-14-1981 by L.L. No. 2-1981; 10-11-1982 by L.L. No. 1-1982; 6-10-1985 by L.L. No. 1-1985]

- A. If, after notice of a violation of this law, any person who shall continue to willfully violate or cause to be violated or assist in the violation of an provisions of this law, shall be subject to conviction of a violation as defined in the Penal Law of the State of New York and shall be subject to a fine of not less than \$50 nor more than \$250 or by a sentence of imprisonment not exceeding 15 days, or by both such fine and imprisonment. Each week that such violation continues shall constitute a separate offense.
- B. The term "person," as used in this section shall include any owner, occupant, mortgagee, tenant, vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agents or

any other person, firm or corporation directly or indirectly in control of a building, property or part thereof.

§ 6.18. Building permits.

- A. No building or structure on site shall be erected or altered until a permit therefor has been issued by the Enforcement Officer. No dredging, commercial excavating or drilling (except water wells) shall take place until a permit therefor has been issued by the Enforcement Officer.
- B. No modifications to any existing building or structure shall be made that will infringe on the requirements of the District Regulations Schedule³ pertaining to maximum percentage of lot occupied, minimum floor area, maximum height of principal buildings and structures already nonconforming in this regard until a permit has been issued by the Enforcement Officer. No certificate of occupancy shall be granted for a building or structure modified as above without a written order of the Zoning Board of Appeals.
- C. Ordinary maintenance to a conforming or existing nonconforming building or structure or improvements to the same which do not result in infringement under the category of Subsection B above shall not require the approval of the Enforcement Officer.
- D. There shall be submitted with all applications for new building permits two copies of a layout or plot plan drawn to approximate scale showing the actual dimensions of the lot to be built upon, the exact size and location of the lot and building and accessory buildings to be erected and such other information as may be necessary to determine and provide for the enforcement of this law.
- E. Modifications to existing buildings and structures which would result in infringement to this law as noted in Subsection B above must be handled as a variance and shall be accompanied by two copies of a layout or hand-drawn sketch approximately to scale showing clearly the degree to which the modifications will violate the terms of this law.
- F. All applicants must conform to regulations in Schedule A.⁴
- G. All applications for a building permit to the Enforcement Officer shall be acted upon by the Enforcement Officer within 30 days from the date of written request. [Amended 6-13-1989 by L.L. No. 3-1989]
- H. A building permit shall expire two years after the date issued by the Enforcement Officer, unless substantial construction has begun. [Added 9-14-1981 by L.L. No. 2-1981; amended 10-11-1982 by L.L. No. 1-1982; 6-13-1989 by L.L. No. 3-1989]
- I. No more than one building or structure will be allowed on each separate building permit. [Added 9-14-1981 by L.L. No. 2-1981; amended 10-11-1982 by L.L. No. 1-1982]

³ Editor's Note: Said Schedule is located at the end of this law.

⁴ Editor's Note: Said Schedule is located at the end of this law.

§ 6.19. Certificate of occupancy.

- A. No dwelling shall be used or occupied until a certificate of occupancy has been issued by the Enforcement Officer stating that applicable provisions of this law have been met.
- B. No dwelling, structure or use permitted by reason of special permit or variance issued by the Zoning Board of Appeals shall be used or occupied until a certificate of occupancy has been issued by the Enforcement Officer stating that all requirements of the special permit or variance have been met.
- C. Failure to require a certificate of occupancy in all other cases shall not be construed as certification that all requirements of this law have been met.
- D. Where a certificate of occupancy is not required, the Enforcement Officer may issue one upon request stating that all applicable requirements of this law have been met.
- E. An application for a building permit, special permit or variance shall also be considered as an application for a certificate of occupancy with no additional fee.

§ 6.2. Fees. [Amended 9-14-1981 by L.L. No. 2-1981; 10-11-1982 by L.L. No. 1-1982; 6-10-1985 by L.L. No. 1-1985; 5-10-2000 by L.L. No. 1-2000]

A schedule of fees for all building permits and approval applications as required in this law shall be set from time to time by resolution of the Town Board.

§ 6.3. Health department requirements.

No building permit or certificate of occupancy issued under the provisions of this Article shall become or remain valid unless the holder thereof has complied with the applicable rules and regulations of the Watershed Inspector.

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§ 6.4. Zoning Board of Appeals.

- A. Appointment and organization. The Chairman and four (4) additional members shall be appointed by the Town Board. The Zoning Board of Appeals shall choose its Vice Chairman who shall preside in the absence of the Chairman. The Zoning Board of Appeals shall appoint a Secretary and shall prescribe rules for the conduct of its affairs.
- B. Terms. After the initial appointments for terms as specified in § 267 of Town Law, all terms shall be for five (5) years, with the term of one (1) Board member expiring each year. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment by the Town Board for the unexpired term.
- C. Rules of procedure. The Zoning Board of Appeals shall have the power to make, adopt and promulgate such written rules of procedure, bylaws and forms as it may deem necessary for the proper execution of its duties and to secure the intent of this law. Such rules, bylaws and forms shall not be in conflict with, nor have the effect of waiving any provisions of this law or any other laws of the Town of Barrington.
- D. Staff. The Zoning Board of Appeals may employ such clerical or other staff assistants as may be necessary and prescribe their duties, provided that it shall not at any time incur expense beyond the amount of the appropriation made and then available for that purpose.
- E. Meetings. All meetings of the Zoning Board of Appeals shall be held at the call of the Chairman. All meetings shall be open to the public. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member on every question, and shall keep records of all official actions. Every order, requirement, decision or determination of the Zoning Board of Appeals shall immediately be filed in the office of the Town Clerk and shall be a public record.
- F. Authority.
- (1) The Zoning Board of Appeals is governed by and shall act in strict accordance with procedures specified by the Town Law, this law and its own duly adopted rules, bylaws and forms and shall perform the following functions:
 - (a) Decide any questions properly brought before it involving the interpretation of any provision of this law. [Amended 6-10-1985 by L.L. No. 1-1985]
 - (b) Hear and decide appeals from any decision, determination, act or failure to act of the Enforcement Officer and all matters properly referred to it by the Enforcement Officer.
 - (c) Grant variances to provisions of this law in accordance with §§ 6.43 and 6.45.
 - (d) Issue permits for special uses in accordance with § 6.6 and other applicable provisions of this law.
 - (2) The Chairman of the Zoning Board of Appeals, and in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses at meetings and hearings.

§ 6.41. ⁹ Appeals.

- A. Any person allegedly aggrieved by a decision, determination, act or refusal to act of the Enforcement Officer may file an appeal with the Zoning Board of Appeals.
- B. The Zoning Board of Appeals may reverse, affirm, wholly or partly, or may modify any order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in any case referred to it, and to that end shall have all the powers of the Enforcement Officer from whom the appeal is taken.
- C. The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or to decide in favor of the applicant any matter upon which it is required to pass under the Town of Barrington Zoning Law or to effect any variation in such Zoning Laws, [Amended 6-10-1985 by L.L. No. 1-1985]

§ 6.42. Interpretation.

The Zoning Board of Appeals, upon request, shall interpret any provision of this law about which there is uncertainty, lack of understanding or misunderstanding, ambiguity or disagreement and shall determine the exact location of any zoning district boundary about which there may be uncertainty or disagreement.

§ 6.43. Use variances.

- A. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this law, the Zoning Board of Appeals shall have the power to grant a variance in the application of any of the use regulations or provisions of this law in such a way that the spirit of the law shall be observed and maintained, public health, safety and welfare secured and substantial justice done.
- B. A variance of the use provisions of this law shall be granted by the Zoning Board of Appeals only if or whenever it finds:
 - (1) That there are unique circumstances or conditions, described in the findings of the Zoning Board of Appeals, applying to such land or buildings and not applying generally to land or buildings in the neighborhood, that said circumstances or conditions are such that strict application of the provision of this law would deprive the applicant of the reasonable use of such land or buildings and that the land in question cannot yield a reasonable return if used only for an activity which is permitted on said land;
 - (2) That, for reasons set forth in the findings of the Zoning Board of Appeals, the granting of the variance as granted by said Board is the minimum variance that will accomplish this purpose; and

⁹ Editor's Note: Sections 6.41 through 6.45 were originally numbered 6.47 through 6.492. They were editorially redesignated to fit in the reprinted organizational scheme.

- (3) That the granting of the variance will be in harmony with the general purpose and intent of this law and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- C. In passing upon variances in special flood hazard areas, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors and standards and the provisions of § 4.2519D. [Amended 5-11-1987 by L.L. No. 2-1987]

§ 6.44. Referral of use variances.

All appeals for use variances shall be referred to the Planning Board. No decision shall be made by the Zoning Board of Appeals until such Planning Board review has been completed and a report issued. If the Planning Board fails to issue a report within thirty (30) days, the Zoning Board of Appeals shall assume that a favorable report has been issued.

§ 6.45. Area variance criteria.

Where there are practical difficulties or special conditions which make regulations governing lot size, yard size, building height and all other regulations not specifically related to use of land or building unreasonable or impossible to comply with, the Zoning Board of Appeals shall have the power to vary or modify these regulations as long as the spirit of the regulation to be altered is observed. In granting an area variance the Zoning Board of Appeals shall find all of the following:

- A. There is no practical way for the applicant to accomplish his intended objective by serving the area regulations specified in this law.
- B. The variance requested will not be unduly detrimental to adjoining properties.

§ 6.5. Area variance conditions, fees.

- A. Financial gain. A use or area variance shall not be granted solely for the reasons of additional financial gain on the part of the owner or occupant of the land or building involved.
- B. Conditions. In granting any variance, the Zoning Board of Appeals may prescribe any conditions that it deems to be necessary or desirable.
- C. Compliance required. The granting of a variance to any provisions of this law shall not prevent the necessity of complying in every other respect with the other provisions of this law.
- D. Fees. Each application to the Zoning Board of Appeals for a variance shall be accompanied by a fee of twenty-five dollars (\$25.).

§ 6.6. Special permits.

On referral by the Enforcement Officer after application has been made to him for a building permit, or on direct application, the Zoning Board of Appeals is hereby authorized to issue a special permit for any use for which this law required the obtaining of such permits from the Zoning Board of Appeals, subject to applicable regulations of this law.

A. Standards applicable to all special permits.

- (1) The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to the proposed use and the location of the site with respect to existing or future public highways giving access to it shall be such that it will be in harmony with the orderly development of the district, and the location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.
- (2) Operations in connection with any special use shall not be more objectionable to nearby properties by reason of noise, fumes, vibrations or flashing lights than would be the operations of any permitted use.

B. Referral to Planning Board. At least thirty (30) days before the date of public hearing held in connection with any application for a special permit submitted to the Zoning Board of Appeals, said Board shall transmit to the Planning Board a copy of said application and shall request that the Planning Board submit to the Zoning Board of Appeals its advisory opinion on said application. The Planning Board shall submit a report of such advisory opinion prior to the date of said public hearing. The failure of the Planning Board to submit such report shall be interpreted as a favorable opinion for the granting of the special permit applied for.

C. Renewal; extension. The Zoning Board of Appeals may require, as a condition to the issuance of any special permit, that it be periodically renewed or may issue any special permit for a specific time period, subject to adequate guarantees that the use covered will be terminated at the end of the period specified or such extension thereof as may be granted by said Board. Any such renewal or extension shall be subject to the same procedure and requirements as specified herein for the original issuance of the special permit involved.

D. Submission of plans. Each application for a special permit shall be accompanied by a proposed plan at an appropriate scale showing the size and placement of the lot, the design and location of the proposed facilities (including driveways, parking spaces, screens and fences) and existing and proposed contour lines. The location of the subject lot and all streets within a radius of one thousand (1,000) feet shall also be shown.

E. Fees. Each original application to the Zoning Board of Appeals for a special permit shall be accompanied by a fee of five dollars (\$5.).

§ 6.7. Appeal procedure.

All appeals and applications made to the Zoning Board of Appeals shall be in writing on forms prescribed by said Board and shall clearly set forth the interpretation that is claimed, the use for

