

## SECTION V

### SUPPLEMENTARY REGULATIONS

#### 5.1 NON-CONFORMING USES

The following provisions shall apply to non-conforming uses:

**5.1.1 Expansion of Non-conforming Uses outside and within Structures:** Except for agriculture, horticulture or floriculture, no non-conforming use on a conforming lot occurring outside of a structure in whole or in part, or on a lot without a structure, shall be expanded in area, density or intensity of use more than five (5%) percent from the area, density or intensity of use on the lot at the date of non-conformity. The expansion may be done at one time or in successive stages, but shall not exceed five (5%) in the aggregate when compared to the extent of use at the time the use first became nonconforming. The expansion of a nonconforming use beyond five (5%) percent in the area, density or intensity of use shall require a variance from the Board of Adjustment. If granted, the terms of the variance shall specifically define and limit the scope of the expansion to the least amount of expansion required to provide the necessary relief. If the variance is granted, the proposed expansion shall also be subject to site plan review if the underlying use would, but for its non-conforming use status, be subject to site plan review. This section shall not prohibit the expansion of a nonconforming use within an existing conforming structure, provided the expansion otherwise complies with this Ordinance and has no adverse effect on the abutters or the zoning district. If the proposed expansion is deemed by the Building Inspector/Zoning Administrator to be a change in the type of nonconforming use, or to have an adverse effect on the abutters or the zoning district, the applicant shall be required to apply for a variance. Other than as allowed in Section 5.1.2.a., a non-conforming use shall not be permitted to expand on a nonconforming lot without a variance.

#### **5.1.2 Expansion of Non-conforming Use:**

- a. Non-conforming residences may be expanded by up to fifty (50%) in square footage from the square footage existing at the date of nonconformity, provided the addition does not further encroach upon non-conforming setbacks. The expansion shall meet all other applicable sections of this Ordinance and may be done at one time or in successive stages, provided the expansion does not exceed fifty (50%) in the aggregate when compared with the square footage existing at the first date of nonconformity.
- b. All other non-conforming, non-residential structures on a conforming lot may be expanded up to five (5%) percent in square footage beyond the square footage existing at the first date of nonconformity, provided the owner obtains a special exception from the Zoning Board of Adjustment, does not further encroach on any current setbacks for a conforming lot and meets all other applicable provisions of this Ordinance.
- c. Any expansion of nonconforming, nonresidential structure beyond five (5%) in square footage (as compared to the square footage existing at the first date of nonconformity) shall require a variance from the Board of Adjustment.
- d. Nothing in this section shall be deemed to prevent normal maintenance and repair of a non-conforming structure, provided that such repair or maintenance does not increase the degree of nonconformity.

#### **5.2 NON-CONFORMING DIMENSIONS OR LOTS**

The following provisions shall apply to non-conforming dimensions or lots:

**5.2.1 Use of a Non-conforming Lot:** A non-conforming lot may be built upon, if, at the time of the enactment of this Ordinance (or any subsequent amendment thereto, if the amendment renders the lot non-conforming) the:

- (a) lot conformed to the then existing dimensional requirements (if any),
- (b) owner(s) of the lot owned no additional contiguous land, and a
- (c) lot has frontage of at least 50 feet.

All three conditions must be met to make the lot buildable. Should the owner(s) own contiguous land, that land shall be annexed to the non-conforming lot to the extent necessary to bring it into conformance with the present zoning standards. However, such annexation may not permit the formation of a second non-conforming lot. In such instance, the two lots must be joined as one.

**5.2.2 Reduction/Increase of Non-conforming Dimensions:** Any non-conforming lot or open space on the lot (yards, setbacks, courts or coverage on lot) if already smaller or greater, as the case may be, than that required, shall not be further reduced or increased so as to be in greater non-conformity.

**5.2.3 Reduction of Parking:** Any off-street parking or loading spaces, if already equal to or less than the number required to serve their intended use, shall not be further reduced in number, except in the VB-1 zoning district where Section 6.4.6 takes precedence.

### **5.3 CHANGES IN NON-CONFORMITIES**

**5.3.1 Changes to Another Non-conformity:** Any non-conforming use may be changed to another non-conforming use provided that the new use is not substantially different from the previous use and approval for the change is granted as a special exception by the Board of Adjustment. For purposes of this Section, a substantially different use shall include use which by reason of its normal operation, would cause readily observable difference in patronage, service, sight, noise, employment or similar characteristics, from the existing non-conforming use or from any permitted use in the district under question.

**5.3.2 Changes in a Non-conforming Use:** Any non-conforming use which has been once changed to a permitted use shall not again be changed to a non-conforming use.

**5.3.3 Changes in a Non-conforming Lot:** Any non-conforming lot which has come into conformity shall not again be changed to a non-conforming lot.

**5.3.4 Restoration after Fire:** Any non-conforming structure, totally destroyed by fire or other cause, may be rebuilt if restored within two years. Restoration shall not place the structure in greater non-conformity. The original foundation may be reused.

**5.3.5 Discontinuance:** Any non-conforming use discontinued for a period of one year shall not be re-established. Any future use shall be in conformity with this Ordinance. For the purposes of this Section, "discontinued" shall mean ceased, without any regard for the intent to cease or the intent to re-establish a non-conforming use. For agricultural, horticultural, or floricultural use, the discontinuance period shall be for a five year period of non-use.

**5.3.6 Moving:** Any non-conforming structure shall not be moved to any other location on the lot or any other lot unless every portion of such structure, including the use thereof, and the lot shall be conforming.

**5.3.7 Unsafe Structures:** Any non-conforming structure determined to be unsafe may be restored to a safe condition. Such work on any non-conforming structure shall not place it in greater non-conformity. If the cost to restore any structure shall exceed 50 percent of its physical

replacement value, it shall be reconstructed only as a conforming structure and used only for a conforming use.

#### **5.4 CERTAIN PROHIBITIONS**

The following prohibitions shall be observed in the Town of Hopkinton:

**5.4.1 Fire Ruins:** No owner or occupant of land in any district shall permit fire or other ruins to be left on a site. Within six months he shall remove such ruins and fill or cap any excavation. Replacement of the structure shall occur within two years of the fire.

**5.4.2 Environmental Performance Standards:** Any use permitted by right or special exception in any district shall not be conducted in a manner as to emit any dangerous, noxious, injurious or other objectionable fire, explosion, radioactivity or other hazard; noise or vibration; smoke, dust, odor or other form of environmental pollution; electrical or other disturbance; glare; liquid or solid refuse or wastes; conditions conducive to the breeding of insects, rodents or other substance, conditions or elements in an amount as to affect adversely the surrounding environment. A violation of the State of New Hampshire standards shall constitute a violation of this Ordinance but shall not be used to reduce the environmental standards set forth in this Ordinance. If in the opinion of the Building Inspector there appears to be a reasonable proof that a violation exists, then the cost for making tests to determine violation shall be paid for by the alleged violator.

**5.4.3 Sanitary Protection:** No privy, cesspool, septic tank, lagoon or other sewage disposal area shall be constructed or replaced unless designed in accordance with the most recent manual published by the New Hampshire Water Supply and Pollution Control Commission (WSPCC) and plans of such system are approved by the Town of Hopkinton's Building Inspector and/or Town Engineer, and if necessary by the WSPCC.

No leaching field or sewage drain facility shall be located closer than 75 feet from a well or a water body. Unless the owner can prove the site acceptable, no septic or other sanitary systems requiring leach fields shall be built on slopes exceeding fifteen (15) percent average grade.

**5.4.4 Waste Pollution of the Contoocook River:** No new building or conversion of an existing building shall be allowed which will further pollute the Contoocook River with waste. No building permit will be granted unless an acceptable, non-polluting waste disposal system can be provided.

#### **5.4.5 Dumping or Disposal of Garbage and Other Refuse:**

No land in any district shall be used for a dumping place for garbage, construction and/or demolition debris or refuse from either private or commercial or industrial source except the public landfill and/or transfer station, as provided by the Town. The Town hereby finds that the incineration of certain types of construction and/or demolition debris presents a hazard to the public health, safety, convenience and general welfare of the inhabitants of the Town of Hopkinton by virtue of the hazardous emissions and discharges emanating from such incineration. No land in any district shall be used for the incineration of construction and/or demolition debris. The Town hereby finds that such construction and/or demolition debris contains treated and coated woods and other materials (including but not limited to woods and other materials containing lead-based paints, lead based stains, and mercury and formaldehyde treatments), and that these items, when incinerated, pose a hazard to the public health, safety, convenience and general welfare. Further, no prior variance granted by the town for the incineration of wood or wood products shall be construed so as to allow for the incineration of construction and/or demolition debris, as any such use poses a hazard to the public health, safety, convenience and general welfare.

**5.4.6 Timber Cutting:** No person shall cut timber, except as provided for in New Hampshire Revised Statutes.

**5.4.7 Uninspected Vehicles:** No more than one uninspected motor vehicle may remain within any residential district unless the vehicle and its parts are enclosed within a building.

**5.4.8 Boats:** A boat with a beam of greater than eight feet shall conform to the setbacks of the zone in which it is located.

## **5.5 NOISE CONTROL**

This section defines when noise produced may be considered objectionable and prohibited so as to protect and preserve the environment within residential areas of Hopkinton. This Section prohibits dangerous, noxious, injurious, or other objectionable noise.

**5.5.1 When Objectionable:** Noise may be considered objectionable and therefore excessive adjacent to residences in Hopkinton when at the property line of the noise source:

- (a) The low frequency noise level in the 31.5 hertz octave produced by a noise source exceeds 65 db;
- (b) The a-weighted noise level produced by a noise source exceeds by 10 db or more the a-weighted residual ambient sound level that exists without the noise source operating; or
- (c) The noise produced by a noise source contains one or more audible tonal components not masked by the residual ambient sound.

**5.5.2 Residual Ambient Sound Level:** The residual ambient sound level is the background sound level (without the noise source operating) that is exceeded ninety percent of the time during the period in question. The period would usually be the quiet later evening or night time hours for continuously operating facilities. For intermittently operating facilities, the period would usually be the hour or hours that the noise source typically operates. For noise sources that operated only during the day time, less frequently than one day per week, the above noise limits may be increased by 5 db.

**5.5.3 Exemptions:** This restriction shall not apply to sounds associated with:

- (a) Emergency vehicles and signals;
- (b) Domestic equipment such as mowers and saws.
- (c) Farm equipment such as tractors and other farm implements;
- (d) Church bells;
- (e) Aircraft, trains, and motor vehicles on public ways;
- (f) Brief and intermittent operation of emergency devices; and
- (g) Construction sites.

**5.5.4 Acoustical Engineer Required:** Prior to construction or continued operation of any building or facility within Hopkinton that might reasonably be expected to produce objectionable noise, the developer or owner shall retain the services of an experienced acoustical engineer approved by the Town. The acoustical engineer shall provide to the Town for review and approval by Town officials the information and noise data requested in Table 1 available at the Selectmen's Office plus whatever additional information is requested by the Town to ensure compliance with the noise requirements. The developer or owner shall provide to the Town written notification confirming their intent to take all necessary steps to avoid producing objectionable noise. Buildings or facilities that produce objectionable noise are subject to the enforcement provisions of the Zoning Ordinance.

## **5.6 OPEN STORAGE IN THE INDUSTRIAL (M-1) ZONE**

The open storage of raw materials, finished goods or construction equipment requires a special exception in the Industrial (M-1) zone. The following conditions shall be imposed as minimum conditions on the grant of any special exception for the open storage of raw materials. All manufacturing materials,

stockpiles, raw materials, and finished goods shall be screened from the view of abutting parcels and public roads. The Planning Board, for good cause shown, may waive or reduce the screening requirement in the context of site plan or subdivision review. In order to allow for fire suppression, stockpiles and raw materials shall not exceed a height of twenty-five (25) feet and shall be fully accessible to fire and emergency equipment. Flammable stockpiles, including mulch piles, compost piles and wood piles shall be arranged in windrows in order to permit access by fire equipment and prevent the spread of fire. Any stockpiles with the capacity to leach chemicals or metals into the ground shall be stored on an impervious surface and shall be subject to all necessary State approvals. The Planning Board shall have the authority to review open storage as part of its site plan review process, to impose supplemental conditions beyond the conditions imposed by the Zoning Board of Adjustment on any special exception and to adopt regulations pertaining to open storage including the authority to require that monitoring wells be installed on the perimeter of stockpiles.