**SECTION 5.0 NONCONFORMING USES AND STRUCTURES**

**5.1 APPLICABILITY.**

Except as herein after provided, this Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building permit or special permit issued before the first publication of notice of the public hearing on this Bylaw or any amendments thereto, but shall apply to any change or substantial extension of such use, to a building permit or special permit issued after the first notice or said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use in a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or a structural change to a single or two family residential structure does not increase the nonconforming nature of said structure.

**5.1.1 Commencement of Construction or Operation.** Construction or operations under a building permit or special permit shall conform to any subsequent amendments to this Bylaw, unless the use or construction is commenced within a period of not more than twelve months after the issuance of the permit and in any case involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

**5.2 NONCONFORMING USES.**

The Zoning Board of Appeals may award a special permit to change a nonconforming use in accordance with this Section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

**5.2.1 Permissible Changes.** The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals:

1. Change or substantial extension of the use;

2. Change from one nonconforming use to another, not substantially more detrimental nonconforming use. When a special permit is granted under this subsection, no use variance shall be required with regard to use or dimensional aspects of the application.

**5.3 NONCONFORMING STRUCTURES.**

The Zoning Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this Section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

**5.3.1 Permissible Changes.** The following types of changes to nonconforming structures may be considered by the Zoning Board of Appeals:

1. Reconstructed, extended or structurally changed;

2. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

**5.4 VARIANCE REQUIRED.**

Except as provided in Section 5.5, below, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, shall require the issuance of a variance; the extension of an exterior wall at or along the same nonconforming distance within a required yard shall also require the issuance of a variance from the Zoning Board of Appeals.

**5.5 NONCONFORMING SINGLE AND TWO FAMILY RESIDENTIAL STRUCTURES.**

Nonconforming single and two family residential structures may be extended, altered, or structurally changed upon a determination by the Inspector of Buildings that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure, and that such reconstruction, extension, alteration or change does not increase the gross floor area of the structure by more than 100%.

**5.5.1 Permissible Changes.** The following circumstances shall not be deemed to increase the nonconforming nature of said structure and a building permit may be issued:

1. *Insufficient Area*. Alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements.

2. *Insufficient Frontage*. Alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements.

3. *Encroachment*. Alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and not result in any increase in building height in the area of encroachment.

If the Inspector of Buildings determines that proposed alteration, extension or change exceeds one or more of the criteria set forth above, the Zoning Board of Appeals may, by special permit, allow such alteration, extension or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. In the case of voluntary demolition of a single or two family structure, reconstruction thereafter shall be governed by Section 5.7.

**5.6 ABANDONMENT OR NON-USE.**

A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this Bylaw; provided, however, that by special permit the Zoning Board of Appeals may reestablish a nonconforming use or structure otherwise abandoned or not used upon a finding that such reestablishment shall not result in substantial detriment to the neighborhood.

**5.7 RECONSTRUCTION AFTER CATASTROPHE OR VOLUNTARY DEMOLITION.**

Any nonconforming structure, other than a nonconforming single or two-family dwelling governed by Section 5.5, may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions.

**5.7.1 Procedures.**

1. Reconstruction of said premises shall commence within three years after such catastrophe or demolition.

2. Building(s) reconstructed as of right shall be located on the same footprint as the original nonconforming structure and shall be only as great in gross floor area as the original nonconforming structure.

3. In the event that the proposed reconstruction would (a) cause the structure to exceed the gross floor area of the original nonconforming structure or (b) cause the structure to be located other than on the original footprint, a special permit from the Board of Appeals shall be required. Such special permit shall be obtained prior to demolition.

**5.8 REVERSION TO NONCONFORMITY.**

No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

**5.9 SUBSTANDARD LOTS.**

When a prior lawful nonconforming structure is located on a lot which does not meet current dimensional requirements, such lot shall not be changed, unless the change does not result in an increase of an existing nonconformity or a new nonconformity.

**5.10 EMINENT DOMAIN.**

When a lot is changed by eminent domain so as to become deficient in area, frontage, building setback, or lot coverage, any structure located thereupon shall be considered a nonconforming structure subject to the rules of this Section 5.0.

**~~§ 167-8. Nonconforming uses.~~**

~~A. Continuation. The lawful use of any structure or land existing at the time of the enactment or subsequent amendment of this chapter may continue although such structure or use does not conform to the provisions of the chapter as adopted or amended.~~

~~B. Alteration. A nonconforming structure may not be altered if the cost of such alteration exceeds fifty percent (50%) of the real market valuation of the structure at the time of the change.~~

~~C. Extension. No other increase in the extent of the non-conforming use of land may be made.~~

~~D. Restoration. A nonconforming building or structure which has been damaged or destroyed may be repaired or rebuilt, provided that such restoration shall not exceed the original area by more than fifty percent (50%), shall not exceed the original height and shall be placed no nearer the street line than the building or structure which the restoration replaces.~~

~~E. Abandonment. No nonconforming use which has been abandoned or discontinued for more than two (2) years shall be re-established. Any future use shall be in conformity with the provisions of this chapter.~~

~~F. Changes. Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use.~~

~~G. Exemption. A vertical extension of a nonconforming building, which would increase the pitch of the roofline but does not expand the building horizontally and does not increase or create any additional floor area, shall be deemed not to increase the nonconforming nature of the building and shall not require a special permit under § 167-8.~~ **~~[Added 5-8-2006 ATM, Art. 38]~~**