

ARTICLE VI. General Application of Regulations
and Nonconforming Situations

1. General Application of Regulations

1.1 Compliance With Regulations

Within the Town of Empire the use of any land, the size and placement of lots, the use, the location and type of structure thereon and the provision of open spaces shall be in compliance with the regulations established herein and made applicable to the district or districts in which such land or structure is located.

1.2 Use Categories

Uses of property are categorized and allowed in each of the zoning districts in the following manner:

1.2.1 Use-by-Right

1.2.1(a) Use-by-right includes the use of land, structures or both which are authorized by the district zoning classification. These uses do not require prior review and approval by the Planning Commission or the Board of Trustees unless otherwise contained herein.

1.2.1(b) A use-by-right is the principal use(s) permitted in any given zone district. The design standards of any given zone district comprise the essential site plan requirements for the placement of a use on a parcel or in a structure. To construct a use-by-right on a parcel, a building permit is needed. The building permit will require that the use is properly served by access and utilities and that a plot plan be submitted which is used to check the setbacks and other design standards of the district. Plot plan reviews and approvals are a function of Town Zoning Officer.

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1.3. Structures Other Than Buildings

- 1.3.1 Structures less than six (6) inches in height from the average surface of the ground shall not be subject to the setback, offset, building size or open space requirements of this Ordinance, except as may be specifically otherwise provided.
- 1.3.2 Structures not classified as buildings and six (6) inches or more in height from the lowest elevation of the structure foot print shall be subject to the setback, offset, height limitations and open space requirements of the Ordinance, except as may be specifically otherwise provided.

1.4 Accessory Uses and Structures

These uses are incidental to a use-by-right and comply with all the following conditions:

- 1.4.1 Is clearly subordinate, incidental and customary to and commonly associated with the operation of the use-by-right;
- 1.4.2 Is operated and maintained under the same ownership as the use-by-right on the same zone lot;
- 1.4.3 Includes only those structures or structural features consistent with the use-by-right;
- 1.4.4 May include home occupations in a primary structure, as defined by the zoning regulations and/or by zone district.
- 1.4.5 Accessory uses must meet setback, offset and other design standard requirements in each zone district. Any structure with a footprint of 120 sq. feet and over requires a permit. If a permit is required, a plot plan showing the location of the accessory use on the zone lot will be required.
- 1.4.6 Any accessory use or structure shall conform to the applicable regulations of the district in which it is located, except as specifically otherwise provided.

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1.4.7 Permanent Structures

1.4.7(a) Outdoor lighting installations shall not be permitted closer than three (3) feet to an abutting property line, and where not specifically otherwise regulated, shall not exceed fifteen (15) feet in height and shall be adequately shielded or hooded so that no excessive glare or illumination is cast upon the adjoining property.

1.4.7(b) Fences, walls and other architectural screening devices not in excess of six (6) feet in height may be permitted anywhere on the lot. No fence, wall or other architectural screening device in excess of six (6) feet in height is permitted; provided, however, that in the event a variance is granted to permit such a structure in excess of six (6) feet in height, the Board of Adjustment shall, as a condition of the granting of a variance, require at a minimum that the structure conform to the setback and offset requirements of the district in which it is located.

1.5 Temporary Structures

1.5.1 Intent

To provide for the regulation of temporary structures and uses. This Ordinance shall apply to temporary residences, temporary construction offices and temporary signs. For the purposes of this section, the term "temporary" shall mean a period of up to six (6) months.

1.5.2 General Requirements and Procedures

Prior to the establishment and use of a temporary structure, the applicant shall be required to provide the following:

1.5.2 (a) Submit a plot plan showing location of the use, setbacks and any other pertinent information to the Town Zoning Officer for review. The plan

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must conform with all applicable zoning requirements of the district in which the use is to be located.

1.5.2 (b) Upon favorable review by the Town Zoning Officer, the applicant may obtain a building permit for the requested use.

1.5.2 (c) The permit granted by the Town Zoning Officer shall expire six (6) months from the date of issuance. A maximum of three (3) permits may be granted per use. All temporary structures shall be removed and uses discontinued at the expiration of the third permit.

1.5.2 (d) All written requests for renewal shall be submitted to the Town Zoning Officer a minimum of ten (10) working days prior to expiration date.

1.6. Basic Location Regulations

1.6.1 Buildings must be on a lot;
Every building hereafter erected, structurally altered or relocated shall be placed on a lot as herein defined in the applicable district.

1.6.2 One residential structure per platted lot;
Except as otherwise provided for multiple Family Dwellings and Planned Unit Developments and situations provided for in Article VI, Section 2, only one (1) principal residential structure shall be permitted.

1.6.3 Street access;
No lot shall hereafter be created nor any building placed on a lot which does not abut on a public street or approved way, except as hereinafter provided for Planned Unit Developments.

2. Nonconforming Development

2.1 Purpose

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The purpose of this section is to establish requirements for the reasonable continuation of legally established uses, which no longer meet current land use regulations as to land, structures, or buildings.

2.1.1 It is also intended to prevent the expansion of nonconforming uses, and control the expansion of nonconforming structures. There are many existing properties and structures in town that are non-conforming for reasons of lot size, setbacks, offset distances, open space, etc.

2.1.1(a) Conditions NOT requiring a variance

1. Permits for nonconforming structures that are not expanded.
2. Expansion of nonconforming structures when the expansion does not further encroach on required setbacks, offsets, density and open space requirements.
3. Accessory buildings that do not encroach on required setbacks, offsets, density and open space requirements.

2.1.1 (b) Conditions requiring a variance.

1. Expansion of nonconforming structures and buildings that encroach on required setbacks, offsets, density and open space requirements.
2. Any other situation not specified in 2.1.1(a).

2.1.2 Any decision made by the Town with regards to a building permit or a variance for the individual existing non-conforming property or for the individual existing non-conforming structure will not be considered or held to be a precedent setting decision.

2.2 Legal Nonconformity

The existing lawful use of a building or premises at the time of the enactment of this Ordinance or any amendment applicable thereto which is not in conformity with the provisions established by this Ordinance may be continued in the manner and for the purposes then existent, subject to the conditions hereinafter stated. For the purpose of administration, such non-conformity shall be classified and regulated as follows:

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2.2.1 Nonconforming Use of Structures.

2.2.1(a) Limitation

No such use shall be expanded or enlarged.

2.2.1(b) Change in Use

A change from a nonconforming use to another nonconforming use will not be permitted.

2.2.1(c) Continuation of Nonconforming Use

Any legal nonconforming use in existence prior to the adoption of this Ordinance will be allowed to continue.

2.2.1(d) Damage

Where the structure in which such use is carried on is damaged to the extent of more than seventy-five percent (75%) of its then current assessed market value, it shall not be repaired or restored for use except in conformity with the regulations of the district in which it is located.

2.2.2 Nonconforming Buildings and Structures.

2.2.2(a) Expansion of Nonconforming Buildings and Structures

Structures may only be expanded or enlarged if the expanded portion does not encroach on required setbacks, offsets, density and open space requirements. Any other expansion will require a variance.

2.2.2(b) Damage

When such structure is damaged to the extent of more than seventy-five (75%) of its then current market assessed value; it shall not be repaired or restored except in conformity with the regulations of the District in which it is located. Exception will be made on commercial buildings with adjoining walls as provided for in Article VII, Section 2.5.2 (a).

2.2.2(c) Repair

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A nonconforming building or structure may be repaired or altered, and any building, structure, or portion thereof, declared unsafe by the Building Inspector, may be strengthened or restored to a safe condition.

2.2.3 Nonconforming Lots.

2.2.3(a) No building permit or certificate of zoning compliance shall be issued except with approval by the Town Board.

2.2.3(b) The size and shape of such lot shall not be altered in any way so as to increase the degree of nonconformity, except with the approval of the Board of Trustees after recommendation from the Planning Commission.

2.2.4 Nonconforming Use of Land

2.2.4(a) No such use shall be expanded or enlarged.

2.2.4(b) A change from a nonconforming use of land to another nonconforming use of land will not be permitted.

2.2.4(c) Where any such use is discontinued for a period of six (6) consecutive or twelve (12) accumulative months during any three year period, any future use of the land shall conform to the regulations of the district in which it is located.

2.3 For the purposes of this section, all of the buildings, structures, activities, and operations maintained on a lot are generally considered as a whole. For example, failing to rent one apartment in a nonconforming apartment building for the six (6) consecutive months shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building as a whole is continuously maintained.

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2.4 If a use or operation made nonconforming by this Ordinance is vacant or discontinued at the effective date of this Ordinance, the six- (6) consecutive month period for purposes of this section begins to run on the effective date of this Ordinance.

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