

ARTICLE 9 – ZONING ADMINISTRATION AND ENFORCEMENT

SECTION 80 – PLANNING AND DEVELOPMENT DEPARTMENT

80.1 STAFF

In accordance with the provisions of Chapter XIV Land Use of the City Charter the Mayor shall appoint a Commissioner of Planning and Development (hereafter *Commissioner*) who shall also serve as Chief *Zoning Enforcement Officer* of the City of West Haven. The staff of the Planning and Development Department shall be appointed as approved and budgeted by the City Council and in accord with the provisions of the City Charter.

80.2 COMMISSIONER OF PLANNING & DEVELOPMENT

In addition to those duties which may be prescribed herein or assigned by the Charter, the *Commissioner* shall be responsible for overseeing the enforcement and interpretation of the Regulations. The *Commissioner* shall act as liaison between the *Commission* and all other boards, commissions, agencies, or departments of the City with respect to the Comprehensive Plan of Conservation and Development and the interpretation of these Regulations.

80.2.1 **Counsel, Advice and Assistance.** However, nothing herein shall prevent the *Commission, Board, or Commissioner* from requesting counsel, advice or assistance in interpretation of these Regulations.

80.3 ZONING ENFORCEMENT OFFICER(S)

There shall be *Zoning Enforcement Officer(s)* whose duties shall include the enforcement of these Regulations, subject to appropriate supervision and direction by the *Commissioner*. A *Zoning Enforcement Officer (ZEO)* is authorized to cause any building, structure, place, premises or use to be inspected or examined and to order, in writing, the remedying of any condition found to exist therein or thereon in violation of any provision of these regulations.

80.3.1 **ZEO Administrative Regulations.** The *Zoning Enforcement Officer (ZEO)* shall have the power to adopt such administrative regulations as deemed necessary to carry out the enforcement responsibilities, which regulations shall have general applicability to cases of similar character.

80.4 STAFF RESPONSIBILITIES

80.4.1 Staff Acceptance and Review of Plans

Staff of the Planning and Development Department shall be responsible for staff **acceptance and review of applications** for site plans, special permits, coastal site plan reviews and applications to the Zoning Board of Appeals and shall determine if plans are complete and meet the requirements of these regulations. Staff shall also provide for review of plans by other city departments. The acceptance of plans for review shall not constitute formal acceptance of the plans by the West Haven Planning and Zoning Commission.

80.4.2 **Preparation of Public Hearing Notices and Mailings.** Staff shall prepare legal advertisements and public hearing notices as required by Articles 8-10 and in accordance with the provisions of the Connecticut General Statutes.

80.4.3 **Certificates of Decision.** Whenever an application for a *Variance*, *Special Use Exception*, *Special Exception*, Zoning Map or Zoning Text change, or *Special Permit* is decided staff shall issue a Certificate of Decision which shall set forth with specificity the property owner, location, nature and decision, and any conditions or restrictions of any approval granted. Such Certificate of Decision shall be certified U.S. Mail to the applicant.

The applicant shall immediately record an approval, together with any restrictions or conditions, on the Land Records of the City of West Haven. Failure to record such Certificate within ninety (90) days of its issuance shall automatically void the grant thereof.

SECTION 81 – NONCONFORMING USES, LOTS OR STRUCTURES

81.1 STATEMENT OF LEGISLATIVE INTENT AND PURPOSE

The Zoning Districts established in these regulations are designed to guide the future use of the City's land by encouraging the development of desirable residential, commercial and manufacturing areas with appropriate groupings of compatible and related uses and thus, to promote and protect the public health, safety and general welfare through the establishment of minimal area and bulk standards which are determined in conformity with the intended, permitted use of the property and surrounding properties.

As a necessary corollary, in order to carry out such purposes, non-conforming or non-complying uses which adversely affect the development of such areas must be subject to certain limitations. The regulations governing *non-conforming* and *non-complying uses* set forth in this Article are therefore adopted in order to provide a gradual remedying of existing undesirable conditions resulting from such incompatible use of property which is detrimental to the achievement of the purposes of these regulations. When such *uses* are generally permitted to continue, these regulations are designed to restrict further investment in such uses which would make them more permanent establishments in inappropriate locations.

In the case of *buildings, structures* and/or lots not complying with the applicable area and bulk requirements of the regulations, the regulations governing same set forth in this Article are adopted to permit the appropriate use of such buildings, but prevent the creation of additional non-compliances, increases in the degree of existing noncompliance or expansions which would be detrimental to the safety and welfare of the surrounding neighborhood.

These regulations are thus designed to preserve the character of the Districts established in these regulations in the light of their particular suitability to specified uses, and thus to promote and protect public health, safety and general welfare.

81.2 DEFINITIONS

Each of the following definitions shall apply to situations which will arise from time to time in the interpretations of these regulations with respect to *non-conforming uses* and *non-complying lots* or *structures*. Each definition is intended to define a specific situation and is therefore mutually exclusive.

ABANDONMENT: The voluntary discontinuance of the use of the property in a non-conforming manner for a period of three (3) months.

CHANGE OF USE: The change or modification of a use type as determined by the discretion of the Planning and Zoning Commission (e.g.: retail store to wholesale warehouse, two family to three family dwelling, assembly to fabrication, etc., but not to include shoe store to book store, tool and die shop to grinding shop, etc.).

DAMAGE OR DESTRUCTION: The removal, destruction or demolition, whether intentional or unintentional, of existing floor space such that such floor space whether or not continuous, is unusable. For the purpose of this Article, any such damage or destruction which occurs over an extended period of time (but within two years from first occurrence) shall be deemed to be a single event.

DISCONTINUANCE: The intentional or unintentional cessation of a nonconforming use of the property on a daily basis.

ENLARGEMENTS OR EXTENSIONS: An increase in the building or structure size or the increase in lot coverage.

EXPANSION OF USE: 1) The change of a non-conforming use to a use determined to be less-conforming, 2) The addition of another non-conforming use to an existing non-conforming use, or 3) The increase in the intensity of an existing nonconforming use (including additional dwellings).

INCIDENTAL REPAIRS OR ALTERATIONS: The replacement, upgrading or renovation of existing building characteristics or systems, provided that such work does not create any additional units, rooms, or a greater degree of lot coverage.

MERGER OF LOTS: The combined use, including use by accessory uses, of one or more recognized lots.

81.3 NON-CONFORMING USES

81.3.1 **Intent.** It is the intent of these Regulations to develop cohesive zoning districts which have compatible *uses*. It is therefore recognized that any use which pre-exists these Regulations that does not conform to its requirements shall be encouraged to phase itself out and be replaced by *conforming*, or at least more conforming *uses* that would be more compatible with the *uses* in the district in which the property lies.

81.3.2 **Non-Conforming Residential Uses.** Except as otherwise provided herein, no property which presently being utilized for residential purposes shall be required to terminate because of its non-conforming status, provided said *use* was *conforming* at the time of its origination.

81.3.3 **Discontinuance of Dangerous Uses in Residential Districts.** In all Residence Districts, any *non-conforming use* providing objectionable to public health, safety, or general welfare by creating danger of fire, explosion, toxic and noxious matter, radiation or other hazards of offensive noise, vibration, smoke dust or other particulate matter, odorous matter, heat, humidity, glare or other objectionable influences, shall be discontinued upon order of the Commissioner of Planning and Development. Such order may be appealed to the Zoning Board of Appeals under Section 88.3.

81.3.4 **Abandonment.** In all districts, if over a period of six (6) months, either the *non-conforming use* of land with minor improvements is abandoned, or the active operation of substantially all the *non-conforming uses* in any *building* or other *structure* is abandoned, such land or *building* or other *structure* shall thereafter be used only for a *conforming use*. Intent shall establish the act of *abandonment*.

81.3.5 **Change of Non-Conforming Use** for the purpose of this section is a change to another *use* not of the same *use* type, as determined by the Planning and Zoning Commission. A change in ownership or occupancy shall not by itself constitute a *change of use*.

A *non-conforming use* may be changed to a *conforming use* and the applicable district bulk regulations and accessory *off-street parking* and *loading* requirements shall apply to such change of use or to alterations made to accommodate such *conforming use* wherever possible, but shall apply to an enlargement or expansion. A formerly *nonconforming use* shall not again be changed to a *non-conforming use*. However, no *change of use* shall be permitted without application to the Planning and Zoning Commission, who shall review such application as is it were a Special Permit application and follow relevant procedures.

In addition the Commission shall determine whether the proposed *use* is either *conforming* or less *nonconforming* than the use that is being replaced.

81.4 DAMAGE OR DESTRUCTION

- 81.4.1 **Residential Uses.** No residential use of property in any district which is legally *nonconforming* shall be required to be terminated. However, no such *use* may be extended to provide additional *dwelling units*, and any residential *use* which is *nonconforming* because it contains too many *dwelling units* which is damaged or destroyed by more than 50 percent of its total *floor area* shall be required, as a condition of rebuilding, to either comply with the units per area standard existing at the time of reconstruction or rebuild no more than 90 percent of the *units* previously existing, whichever may be greater unless damage or destruction was caused by a natural disaster.
- 81.4.2 **Non-Residential Uses.** Any *building* or other *structure*, in any district which is substantially occupied by a non-residential, non-conforming *use* is damaged or destroyed by any means to the extent of 50 percent or more of its total floor area, such *building* or other *structure* shall not be repaired or reconstructed except for a conforming *use*, and shall comply with all applicable district bulk regulations.
- 81.4.3 **Minor Damage.** When such damage is less than 50 percent of its total floor area, the *building* or other *structure* may be restored and the *nonconforming* use of the *building* or other *structure* or tract or land may be continued, provided that such restoration shall not create a new *non-conforming use*, or increase the degree of non-compliance if any, with all applicable district bulk regulations.
- 81.4.4 **Notice of Intent to Rebuild.** In all districts if any *nonconforming use* is interrupted as a result of damage or destruction due to a natural disaster such *nonconforming use* shall not be permitted to be reinstated, notwithstanding any other provision of this Article, unless within six (6) months of such damage or destruction, such *nonconforming use* is reinstated or a Notice of Intent to resume operations is filed with the Planning and Development Department.

81.5 DISCONTINUANCE

In all districts, if over a period of six (6) months, either the *nonconforming use* of land with minor improvements is discontinued or the active operation of substantially all the *nonconforming uses* in any *building* or other *structure* is discontinued, such land or *building* or other *structure* shall thereafter be used only for a *conforming use*. Intent to resume active operations, shall not affect the foregoing.

The provisions of this Section shall not apply where such discontinuance of active operations is directly caused by damage of destruction, strike or labor difficulties or construction of a public improvement or public utility project.

81.6 ENLARGEMENTS OR EXTENSIONS

Any residential *nonconforming use* may be enlarged or extended provided such enlargement or extension does not create any additional dwelling units, does not create a new non-compliance or increase the degree of any existing non-compliance. Non-residential *nonconforming uses* shall not be extended or enlarged.

81.7 EXPANSIONS

Expansion of a *nonconforming use* is not permitted.

81.8 INCIDENTAL REPAIRS OR ALTERATIONS

Repairs and incidental alterations may be made in a building or other structure substantially occupied by a non-conforming use if such repair or alteration:

1. is made in order to comply with requirements of law;
2. is made in order to accommodate a *conforming use*;
3. does not diminish the extent of the *conforming use*;

4. is made in order to made a *non-conforming use* more compatible and less objectionable to the surrounding area;
5. does not create a non-compliance or increase the degree of non-compliance with applicable district bulk regulations except in change of a *non-conforming use* to a *conforming use*.

SECTION 82 – NON-COMPLYING LOTS OR STRUCTURES

82. NON-COMPLYING LOTS OR STRUCTURES

82.1 **Intent.** It is the intent of the Regulations to regulate the use of property in lots having minimum sizes, dimensions and characteristics. It is also the intent of these Regulations that the structures located on said lots shall similarly comply with certain dimensional requirements. However, it is also recognized that the City of West Haven is a community which is, at the time of adoption of these Regulations, primarily developed or with undeveloped lots which have received prior approvals. These Regulations, therefore, permit under specified circumstances with appropriate controls, the continued use of new development of lots or structures which do not conform to current area and bulk requirements, on a limited and specifically restricted basis.

82.2 SPECIAL PROVISIONS FOR PRIOR COMPLYING LOTS AND BUILDINGS

82.2.1 **General Provisions.** The continued use of a *non-complying building* or other *structure* shall be permitted, except as otherwise provided by this article. A *non-complying building* is defined as one in which its *use* complies with that as permitted by these regulations either as of right, by Special Permit, by Special Use Exception or as a valid *nonconforming use*, but does not comply with the area and bulk requirement of the Regulations for each district. A non-complying *structure*, therefore, does not refer to the *use* to which the property is being put, but rather the location, size or similar characteristic of the *structure*. No new *building* or *structure* shall be erected except as provided herein. In interpreting this Section, each subsection shall be deemed mutually exclusive such that only one subsection shall apply to any particular situation.

82.2.2 **Repairs and Alterations.** *Incidental repairs* and *alterations* may be made in a *non-complying building* or other *structure*, provided they do not create a new *non-compliance* or increase the degree of *non-compliance* of the *building* or other *structure* or any portion thereof.

82.2.3 **Enlargements or Conversions.** A *non-complying building* or other *structure* may be enlarged or converted provided that no enlargement or conversion may be made which would either create a new *non-compliance* or increase the degree of *non-compliance* of the *building* or other *structure* or any portion thereof. An enlargement is defined as creating additional units, rooms, or a greater degree of *lot coverage*.

If an existing *lot* and *building* are *noncomplying* because the *lot area per dwelling unit* is less than required then such *building* may be enlarged, converted only provided that the deficiency in the required *lot area per dwelling unit* is not increased.

82.2.4 **Damage or Destruction.** If a *noncomplying building* or other *structure* is damaged or destroyed by any means including its voluntary removal or renovation, to the extent 75 percent or more of its *ground floor area*, such building may be constructed only in conformity with applicable district bulk requirements.

If the extent or such damage is less than 75% a *noncomplying building* may be reconstructed, provided that such reconstruction shall not create a new *noncompliance* or increase the pre-existing degree of *noncompliance* with the bulk regulations.

Should the *building* or *structure* be destroyed or damaged by a *natural disaster* to the extent of 75 percent or more of its *ground floor area*, such *building* may be reconstructed as it existed prior to the *natural disaster*, if a building permit for reconstruction is requested within six (6) months of the damage or destruction.

Any *accessory use, structure or building* which is damaged or destroyed by 50 percent of its usable ground/floor space shall not be permitted to be reconstructed without complying with current zoning standards.

82.3 DEGREE OF NONCOMPLIANCE

82.3.1 **Residential.** For the purposes of this section, it shall not be considered an increase in the degree of *noncompliance* if construction is requested, hereinabove, within required setbacks or yards, provided that each of the following is met:

1. New construction is no closer to the property line than the existing building line;
2. The existing yard is at least 50% of the required set-back;
3. Length of that part of the *building* which is within the *yard* is less than 30% of the length of the adjacent boundary line;
4. In the case where an addition is requested that would increase the height of a *structure* that is within the required yard setback, the height may only be only be increased in the proportion of one foot in height to every foot in distance between the requested expansion and the existing structure on the adjacent *lot* or its required *yard*, whichever is closer.

Failure to meet each of these requirements shall be considered to be an increase in the *noncompliance* and therefore shall not be permitted.

82.3.2 **Commercial.** Degree of *noncompliance* shall be determined as the extent of the inability to meet a specific bulk requirement. No *noncompliance* shall be permitted to be increased where the bulk requirement which is currently being violated by a greater amount (i.e.: an addition to a building such that the existing 8 foot setback where 10 feet is required cannot be changed to 3 foot setback, thereby increasing the degree of *noncompliance*).

However, it shall not be deemed an increase in the *noncompliance* where an addition or extension continues the same degree of *noncompliance* (i.e.: an addition to *building* such that the existing 8 foot setback where 10 foot is required continues the building along the same 8 foot setback line).

SECTION 83– ENFORCEMENT

83.1 AUTHORITY

In accordance with the provision of Chapters 124 and 126 of the General Statutes of the State of Connecticut, as may be amended, the Planning and Zoning Commission of the City of West Haven makes the following provisions for the enforcement of the City of West Haven Zoning Regulations.

83.2 ENFORCEMENT AND REQUIRED CERTIFICATIONS

83.2.1 **Building Permits.** Before the construction or alteration of any building or structure or any part of either, the owner or authorized agent of such owner shall submit to the *Commissioner* and the *Building Official* of the City of West Haven a detailed statement of the proposed work on an application blank as furnished by the *Building Official*, and such plans and structural detail drawings of the proposed work as the *Commissioner*, these regulations, and the *Building Official* may require. Such application shall be accompanied by a statement in writing, sworn to before a Notary Public or other officer authorized to administer oaths, giving the full name and residence of each of the property owners, the intended use of the premises and a diagram showing the exact location of any proposed new construction and all existing buildings or structures that are to remain.

It shall be unlawful to construct, repair, renovate, or alter any building or structure or any part thereof until the application and plan herein required shall have been approved in writing by the *Commissioner* and a written permit issued by the *Building Official* of the City of West Haven.

The *Commissioner* shall approve or reject an application or amendment thereto, filed pursuant to the provisions of this section within a reasonable time, and if approved shall promptly certify its compliance with these regulations.

83.2.2. **Excavations or Filling Permits.** No excavation or filling of property shall be undertaken without written authorization by the *Commissioner*, who shall review such request and if deemed appropriate, order the filing of Special Permits and Site Plan Review. Upon certification that the request complies with the Regulations, the *Commissioner* shall issue written work authorization.

83.2.3. **Parking Lots.** No parking lot on any lot whose primary use is commercial or Industrial may be created, expanded, reduced or otherwise altered without written authorization by the *Commissioner*, who shall review such request and if deemed appropriate, order the filing of a Site Plan Review. Upon certification that the request complies with the regulations, the *Commissioner* shall issue written work authorization. Nothing herein shall prevent the resurfacing or repair of any existing parking lot, provided that no change is made in the area, size, traffic flow, and configuration of spaces or landscaping.

83.2.4. **Certificates of Occupancy.** No building may be occupied until a Certificate of Occupancy is granted by the *Building Official*, who shall not issue the Certificate of Occupancy until the *Commissioner* has issued a written Certificate of Zoning Compliance that certifies that all work pertaining to these regulations as set forth in the Building Permit application and Site Plan, if any, has been completed and complies with these regulations.

83.2.5 **Certificates of Zoning Compliance.** No *structure* or land or part thereof shall hereafter be occupied or used, in any case of establishment of a new *use*, extension or alteration of a *use*, or conversion from one *use* to another *use*, until the *Zoning*

Enforcement Officer shall issue a Certificate of Zoning Compliance (CZC), certifying that the zoning ordinance has been complied with in full.

Upon owner or tenant request of any conforming or nonconforming **use** already established, the **ZEO** shall issue a (CZC) stating the exact status of such **use**. In the case of other **uses** already established, the **ZEO** may carry on such programs of registration of **uses** and issuance of certificates of occupancy (C of O) as deemed appropriate. Each request for a CZC shall be accompanied by a fee in accord with the provisions of §101-1 of the West Haven Code of Ordinances.

83.3 ALTERATION OF PLANS.

After issuance of any permit under the provisions of this section, no changes, amendments, additions or deletions to specifications, plans, structural drawings, location of structures, landscaping, or scope and content of the proposed development are permitted without the written approval of the **Commissioner**. Such change, amendment, addition, deletion without written approval of the **Commissioner** shall constitute a willful violation of the provisions of this section and upon written notification of such violation, shall make any and all issued permits for the proposed development null and void.

83.4 CONTINUATION OF CONSTRUCTION.

Any approval or certification by the **Commissioner** and permit issued by the **Building Official** under the provisions of this Article, but under which no work is commenced within six months from the time of the issuance shall automatically expire by limitation. The **Commissioner** may with discretion and upon written notification invalidate any permit or certification by revoking approval issued there under for which construction has commenced, but is incomplete, and has ceased for a period of six months.

83.5 NON-CONFORMING USES.

No change or extension of use no building or site alteration shall be made in a non-conforming use of premises without a Certificate of Compliance having first been issued by the **Commissioner**, stating that such change, extension or alteration is in conformity with the provisions of these regulations.

83.6 PENALTIES

Pursuant to Section 8-12, including Section 8-12 (a), of the Connecticut General Statutes, the owner or agent of a building or premises where a violation of any provision of these regulations shall have been committed or shall exist, or the lessee or tenant of an entire building or entire premises where such violation shall have been committed or shall exist, or the owner, agent, architect, builder, contractor, or any other person who shall commit, take part or assist in which any such violation shall exist, shall be fined one hundred dollars (\$100.00) by the **Zoning Enforcement Officer** for each day that such violations continues; each day that such violation continues shall be a separate offense, but if the offense be willful the person convicted thereof shall be fined two hundred and fifty (\$250) dollars for each day that such violation shall continue.

Any person having been served with an order to discontinue any such violation, fails to comply with such order within ten (10) days after such service or continues to violate any provision of the regulations named in such order shall also be subject to a civil penalty of two hundred and fifty dollars (\$250.00) per day for each day of such failure to comply, payable to the Treasurer of the City of West Haven.

Nothing herein shall prevent the further imposition of civil or criminal penalties as may otherwise be provided by Statute.

83.7 NOTIFICATION OF VIOLATION

Notice of a violation of these regulations shall be deemed to have been given to the owner of the property in violation, provided such notice is mailed or delivered to the owner or tenant at such address as is listed in the Tax Assessment records of the City of West Haven, or in the event that there is a pending zoning application concerning the property, then to the agent at the address given on the pending application.

83.8 APPEALS OF ZONING OFFICIALS

Pursuant to Connecticut General Statute Section 8-6, any person aggrieved by any decision, order, action or inaction of the *Commissioner* of Planning and Development or the *Zoning Enforcement Officer* may appeal such decision, action or order within thirty (30) days thereof, or in the event of failure to grant a permit or certification within twenty (20) days from the filing of a completed application for same, within thirty (30) days from the expiration of such twenty (20) day period, to the Zoning Board of Appeals, who shall conduct a public hearing, duly noticed, on such appeal at which any interested party may submit evidence.

83.9 JURISDICTION

The Superior Court of the State of Connecticut shall have jurisdiction to enforce all the regulations and penalties which are provided for in these regulations.