

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).