ARTICLE IX
NONCONFORMANCE

175-27. General Provisions.

A. ***Change of Ownership***. Nonconforming uses, lots, and buildings and structures may be transferred and the new owner may continue the nonconforming use or continue to use the nonconforming lot, building or structure subject to the provisions of this article.

B. ***Repair and Maintenance***. The normal upkeep and maintenance of nonconforming uses, buildings, and structures including repairs or renovations that do not involve structural changes or expansion of the building, structure, or paving are permitted subject to the provisions of this article. Routine maintenance includes activities such as the replacement of roofing, siding, windows, and deck surfaces and the repaving of existing paved areas.

175-28. Nonconforming Uses.

A. ***Routine Maintenance***. Routine maintenance and repairs of the building or structure housing the nonconforming use as well as those modifications required by applicable health and safety codes shall be permitted by the Zoning Administrator.

B. ***Nonconforming Status of Projects Under Construction***. Any use of a building for which a building permit has been issued prior to the adoption or amendment of these regulations and the erection of which is in conformity with the plans submitted and approved for such permit, but that does not conform to the use provisions of these regulations, shall be a nonconforming use, and may be continued or modified in accordance with the following provisions.

C. ***Continuation of a Nonconforming Use***. Any nonconforming use may be continued, except that if any such nonconforming use is abandoned or desisted or voluntarily or by legal action caused to be discontinued for a period of one (1) year, then any subsequent use of the building, other structure or use of the land shall be required to be in conformity with the provisions of these regulations.

D. ***Enlargement of a Nonconforming Use***. A nonconforming use may be expanded only upon the approval and issuance of a conditional use permit, within the confines of the lot or parcel of land upon which it was located at the time of the adoption or amendment of these regulations; provided, however, that the land area and/or size of the building or the structure being used for said nonconforming use at the time of the adoption or amendment of these regulations is not increased by more than fifty (50) percent.

E. ***Conversion of a Nonconforming Use to an Allowed Use***. A nonconforming use may be converted to a permitted use or conditional use permitted with a conditional use permit in the zone in which it is located. Once a nonconforming use is converted to a conforming use, it may not revert to a nonconforming status. A building or structure containing a nonconforming use may be enlarged, extended, reconstructed or structurally altered if said use is changed to a permitted use or a conditional use for which a conditional use permit has been issued and the building or structure completely conforms to the provisions of these regulations.

F. ***Change of a Nonconforming Use to Another Nonconforming Use***. A nonconforming use may, upon approval and issuance of a conditional use permit, be changed to another nonconforming use of the same or a more-restricted use classification, if no structural alterations are made to the building or other structure provided that said new nonconforming use is less deleterious to the neighborhood, considering all factors, than was the previous nonconforming use.

175-29. Nonconforming Lots.

A. ***Single, Vacant Nonconforming Lots***. A nonconforming vacant lot which, at the time of passage of this chapter, was in separate ownership from any adjacent lot and which was duly recorded in the Strafford County Register of Deeds prior to the adoption of this chapter may be used for a single family dwelling in the RA, RB, RC, and R districts and for a permitted use in a non-residential district provided that:

1. The lot is in a district where the proposed use is permitted.
2. The requirements of this chapter regarding setbacks, yards and height are met.
3. The arrangements for sewage disposal and water supply are approved by the Code Enforcement Officer in accordance with the provisions of state law.
4. The lot contains a minimum of 5,000 (five thousand) square feet of area unless a Special Exception has been granted by the Zoning Board of Adjustment.

B. ***Requirements for Individual Nonconforming Vacant Lots in the WCO and SPO Districts***. The erection of a structure or septic system on an existing vacant lot within the Wetlands Conservation District or Shoreland Protection Overlay District may be permitted by special exception if the Zoning Board of Adjustment, after due public notice and public hearing, finds that such exception complies with all other applicable requirements set forth in this Article and with each of the following:

1. The lot upon which the exception is sought was an official lot of record, as recorded in the Strafford County Registry of Deeds, prior to the date on which this Article was posted and published in the town.
2. The use for which the exception is sought cannot be carried out on a portion or portions of the lot which are outside the Wetland Conservation Overlay District or Shoreland Protection Overlay District without undue hardship.
3. Due to the provisions of the Wetland Conservation District or Shoreland Protection

Overlay District, no reasonable and economically viable use of the lot can be made without the exception.

4. The location and design of the building(s) and all structures shall provide for the maximum setback from the reference line consistent with reasonable use of the property considering the size, shape, slope, and natural conditions of the lot including, but not limited to, soils, flood hazard areas, and wetlands.
5. The design and construction of the proposed septic system will, to the extent practical, be consistent with the purpose and intent of this Article.
6. The proposed septic system will not create a threat to individual or public health, safety and welfare, such as the degradation of ground or surface water, or damage to surrounding properties.
7. All other state, federal and local approvals required for the septic system have been obtained.
8. Where site review is required, prior approval shall be obtained from the Planning Board.

At the time of submission of the special exception application to the Zoning Board of Adjustment, the Conservation Commission, the Health Officer, and the Planning Board shall be informed of the application for special exception.

C. ***Nonconforming Lots in Contiguous Ownership***. Where two (2) or more adjacent nonconforming lots are held by the same fee title or beneficial ownership when this chapter is passed, the area and frontage of the lots shall be combined in such a manner as to comply as nearly as practical with the dimensional requirements of this chapter. This provision shall not apply to lots within a subdivision previously approved by the Planning Board under this Chapter or prior Durham Zoning Ordinances.

D. ***Alteration or Expansion of a Conforming Structure or Building on a Nonconforming Lot.*** An alteration or expansion of a conforming structure or building on a nonconforming lot shall be permitted by the Zoning Administrator as long as the structure or building remains conforming with respect to height, setbacks, and coverage and does not further deviate from this chapter.

175-30. Nonconforming Structures and Buildings.

A. ***Continuance of a Nonconforming Building or Structure***. Any lawful nonconforming building or structure in existence when this chapter is passed may continue unchanged but may not be altered or extended in any way which will result in a new and increased violation.

B. ***Restoration and Reconstruction of a Nonconforming Building or Structure***. Nothing herein shall prevent the substantial restoration or reconstruction within one (1) year of a building or structure destroyed in part or whole by fire or other casualty so long as this does not result in a new or increased violation.

C. ***Alteration of a Nonconforming Building or Structure***. A building or structure that is nonconforming with respect to height, setback or coverage may be altered or extended if

the alteration or extension does not further deviate from this chapter except as provided in D. below.

D. ***Requirements for Nonconforming Buildings and Structures in the WCO and SPO Districts***.

1. Legally nonconforming buildings and structures existing prior to the date on which this Article was enacted may be continued, provided that such buildings and structures shall not be expanded further to encroach upon the wetland, water body, or designated buffer zone.
2. Where an existing building or structure within the Wetland Conservation Overlay District or Shoreland Protection Overlay District is destroyed or in need of extensive repair, it may be rebuilt, provided that such rebuilding is completed within one (1) year of the event causing destruction, the new or rebuilt structure shall be of the same size and built in the same location as the original building or structure, not extend closer to the wetland, water body, or buffer zone than the original foundation and the result will not be a new or increased threat to the wetland or water body.
3. The construction of attached additions or other expansions to nonconforming one- and two-family dwellings shall be permitted within the Wetland Conservation Overlay District and Shoreland Protection Overlay District provided that:

   a. The dwelling lawfully existed prior to the date on which this Article was enacted.

   b. The number of dwelling units shall not be increased.

   c. The building footprint existing prior to the date on which this Article was enacted shall not be cumulatively increased by more than fifteen (15) percent.

   d. The usable building volume existing prior to the date on which this Article was enacted shall not be cumulatively increased by more than thirty (30) percent.

   e. The proposed construction shall conform to all other applicable ordinances and regulations of the Town of Durham.