

Proposed Non-Conforming Business Use Condominium Zoning (7/15 /15 draft)

The Planning Board may grant a Special Permit to allow an existing non-conforming use to continue to operate and (a) make modifications; (b) change ownership; and/or (c) expand the non-conforming use upon satisfaction of all requirements specified in this Subsection and upon such other requirements, terms and conditions deemed necessary or appropriate by the Planning Board

1. Definition.

As used herein Non-Conforming Business Use District (NBUD) is a commercial zoning classification that permits, rather than mandates, a non-conforming business use to operate. The district is intended to allow and encourage reinvestment and expansion in existing businesses and business uses where such uses are deemed desirable.

2. Purpose.

The purpose of this subsection is to encourage reinvestment and quality development on lots which contain pre-existing non-conforming uses by maintaining and/or expanding an existing pre-existing, non-conforming use or reinvesting in such a use or converting to a new use and combining such use with another use so as to :

(1) Allow and encourage reinvest and expansion in existing businesses and business uses where such uses are deemed desirable

(2) Maintain the physical design characteristics of Milton and a surrounding neighborhood;

(3) Encourage the development of alternative housing types in Milton to complement existing single-family housing stock;

(4) To promote small businesses to maintain amenities and services within neighborhoods;

(5) Preserve historic structures;

(6) Address environmental concerns;

(7) Improve building facades and streetscapes

(8) Maintain existing commercial tax revenue and/or generate new tax revenues for the Town

3. Permitted Uses.

Pre-existing uses and uses permissible in the Business District may be permitted except that preservation of or conversion to the following uses shall not be permitted: used car lots, motor vehicle dealerships, gasoline stations, car repair businesses and sexually-oriented businesses provided that business uses shall only be allowed on the first floor and only in the context of a mixed-use project.

4. Hours of Operation.

In a business district, hours of operation shall be limited to (a) 7AM to 11 PM or (b) the opening and closing times of similar businesses located within 1,000 feet of the property

In a non-business district, hours of operation shall be limited to 7AM to 9PM

5. Location.

A NBUD shall be allowed on a lot containing a non-conforming business use and (a) a residential use or (b) another use (including open space)

6. Commercial Establishment Limits.

- (1) The gross floor area of a single commercial establishment shall be less than 12,500 square feet;
- (2) No commercial establishment shall be located above the second floor;
- (3) All commercial activities must be conducted within completely enclosed buildings unless otherwise expressly authorized. This requirement does not apply to off-street parking or loading areas;

6. Expansion of a non-conforming use.

A non-conforming use may be expanded in accordance with this subsection under the following conditions only:

- (1) For each 1,000 SF of expansion of a non-conforming business use, an area of open space equal to 35% of the expansion area dedicated to public use shall be maintained or created if it does not already exist, however the minimum amount of open space maintained or created in accordance with an expansion shall be 350 SF;
- (2) For any expansion of a non-conforming business use of 10,000 SF or more, two residential uses must be maintained or created for the first 10,000 SF and an additional one residential unit shall be maintained or installed for each 10,000 SF thereafter. In lieu of maintaining or creating residential units, the applicant may contribute \$25,000 for each unit required but not created or maintained to Milton's Affordable Housing Trust.

7. Housing Types.

The housing types in a NBUD shall be condominium or rental dwelling units. Units shall be intended for individual occupancy. In rental units, short-term occupancy (less than 6 months) will not be allowed. Each unit must contain its own kitchen and bathroom facilities. Studio, 1-bedroom, 2-bedroom and 3-bedroom units shall be permitted. The minimum square footage per dwelling unit shall be 300 square feet.

8. Floor Area Ratio.

The Floor Area Ratio shall conform to underlying zoning except that pre-existing non-conforming setbacks may be maintained.

9. Setbacks.

All setbacks shall conform to underlying zoning except that pre-existing non-conforming setbacks may be maintained.

10. Building Height

The maximum building height shall conform to underlying zoning except that pre-existing non-conforming heights may be maintained. Height shall not include parapets, cupolas, or other decorative features occupying up to 10% of the roof area provided such features do not exceed 10% of the building's overall height

11. Off-street Parking.

Parking standards for ground-floor commercial uses may be reduced/waived at the discretion of the Planning Board if there is municipal parking provided within 1000 feet. Parking may be provided on site or on a private non-adjacent lot within 1,000 feet with proof of ownership or long-term control of the lot through lease or easement.

Parking requirements:

Residential – 1 per unit

Office – 1:1,000

Retail – 4:1,000

Restaurant: 1:3 seats

Off-street parking spaces must be located to the rear of the principal building or otherwise screened so as to minimize visibility from public right-of-ways or residential zoning districts.

For the purposes of calculating the parking requirements for restaurants, each outdoor seat shall count as 0.5 seat

12. Drainage and Septage Disposal.

Appropriate provision, approved by the Board of Health, shall be made for on-site disposal of waste in the absence of a municipal sewer to which suitable connection can be made.

13. Affordable Housing Units

In a NBUD containing less than ten market-rate dwelling units, an application shall provide for one additional dwelling unit to be used for an affordable dwelling unit suitably restricted so as to count on the state's Subsidized Housing Inventory (SHI) or its future equivalent, or in lieu thereof the application may provide for a monetary contribution to the Town's Affordable Housing Trust Fund in an amount which is reasonable, as determined by the Planning Board under the relevant circumstances. In a NBUD containing more than ten dwelling units, a number of dwelling units equal to 10% of the number of market-rate dwelling units (rounded to the nearest whole number) shall be suitably restricted affordable units so that these units shall count on the SHI or its future equivalent. When application of the 10% requirement, leaves a fractional share of $\frac{1}{2}$ or less, an appropriate monetary contribution to the Affordable Housing Trust Fund determined by the Planning Board shall be required.

14. Open Space

Every NBUD shall include Open Space.

Exclusive of any required Open Space in connection with an expansion of a non-conforming use, at least 33% of the total land area shall be Open Land independent of

Open Space shall be pervious areas dedicated to vegetation, lawns or public spaces. Insofar as permitted hereunder and subject to the approval of the Planning Board. Open Space may be used to provide access to underground utility services. The Planning Board may permit Open Space to be utilized for the coursing or temporary retention of storm drainage and associated underground drainage structures. As reasonably necessary Open Land may be used for underground structures for on-site waste disposal. No other structure may be erected or maintained on Open Land except as may be reasonably necessary for and incidental to the use of the Open Land, such as lamp posts, benches, small sheds, stone walls and fences. The number, characteristics and location of structures in the Open Land, if any, shall be subject to approval by the Planning Board. Open space shall not be used for parking or roadways but may include permeable paths and walkways.

15. Design Standards for Buildings

- (1) All commercial floor space provided on the ground floor of a mixed-use building must have a minimum floor-to-ceiling height of 12 feet;
- (2) All commercial floor space provided on the ground floor of a mixed-use building must contain at least 800 square feet
- (3) A minimum of 75% percent of the street-facing building façade area between two feet and eight feet in height must be comprised of clear windows that allow views of indoor space or product display areas.
- (4) The bottom of any window or product display window used to satisfy the transparency standard of paragraph (1) above may not be more than 2 feet above the adjacent sidewalk.
- (5) Product display windows used to satisfy these requirements must be internally lighted.
- (6) Buildings must have a primary entrance door facing a public sidewalk. Entrances at building corners may be used to satisfy this requirement.
- (7) Building entrances may include doors to individual shops or businesses, lobby entrances, entrances to pedestrian-oriented plazas, or courtyard entrances to a cluster of shops or businesses.
- (8) Exterior lighting fixtures shall be appropriate to the architecture, be approved by the International Dark Sky Association, or, if such an association is no longer active, by a similar organization designated by the Planning Board, and be appropriately shielded to prevent any significant lighting over-spill into adjoining residential areas.
- (9) Sound shall be controlled such that no more than 50 decibels is audible beyond the property lines
- (10) Outdoor seating areas are encouraged

16. Site Plan

(a) A site plan for a NBUD shall be part of the special permit application. The site plan may contain one or more plans prepared in a form suitable for recording by a Registered Professional Engineer or a Registered Land Surveyor, and in accompanying text and materials. Applicants are encouraged to secure the assistance of a Registered Architect or Landscape Architect in preparation of a Site Plan. A Site Plan approved by the Planning Board is a prerequisite of a special permit for NBUD granted under this subsection, and construction of the NBUD shall be in accordance with the approved Site Plan. The Site Plan shall show:

- a. An existing condition plan showing:

- i. The existing topography of the land showing two foot contours.
 - ii. A mapping of all wetlands, a description of all wetlands and any proposed alteration of wetlands.
 - iii. Major site features such as large trees, wooded areas, rock-ridges and outcroppings, water bodies, meadows, stone walls and buildings, a description of these features and any proposed removal or changes in these features.
- b. A proposed site plan layout and detailed landscaping plan indicating:
 - i. The siting, grading, and landscaping plan for all proposed streets, Open Land, parking areas, paths, walkways, driveways, and structures.
 - ii. A written description of the landscape characteristics of the site and its contiguous neighborhood and of the effects of the NBUD on such characteristics, including the passage of water through the site and to and from contiguous property.
 - iii. A written description of the site's current uses, such as watershed, wildlife habitat, woodland or meadowland and of the effect of the NBUD on such uses and a written description of all measures proposed to deal with these impacts.
 - iv. A statement of all significant impacts which the NBUD is likely to cause and a description of all measures proposed to deal with these impacts.
 - v. The design of all structures. The plans should make the appearance of each dwelling on its sides and rear at least equal in amenity and design to the appearance of the dwelling on its front.

- vi. Storm water and drainage calculations and the design and location of adequate storm water and drainage systems.
- vii. Utility Plan including designs for and locations of water, electric, gas, telephone and cable systems.
- viii. Septage disposal plan, including the design and location of any on-site sewage treatment facility.

17. Submission of Permit Application to Other Boards

Every application for a special permit for a NBUD under this subsection shall be referred to the Conservation Commission, the Historical Commission and the Board of Health. The Conservation Commission and Board of Health shall act upon the referral in the same manner as upon an application for subdivision approval under the Subdivision Control Law. The Historical Commission shall advise regarding buildings and any site features as specified herein.

18. Application Filing, Hearing and Decision

Every application for a special permit for a NBUD shall be filed with the Town Clerk and ten copies of the application (including the date and time of filing with the Town Clerk) shall be filed forthwith with the Planning Board. The Planning Board shall forthwith transmit a copy of the application to the Conservation Commission and the Board of Health and shall specify the date of the public hearing. After due publication and notice, the Planning Board shall hold a public hearing within 65 days of filing of the application or within such further time as may be permitted by G.L. c. 40A, Section 9 (or a successor statutory provision) or within such further time specified by written agreement between the applicant and the Planning Board filed with the Town Clerk. After hearing, the Planning Board, subject to whatever terms and conditions which it deems necessary or appropriate, shall grant a special permit for a NBUD pursuant to the authority of and subject to the standards set out in Section IX.C if it finds that those standards and all the requirements of this subsection have been met, that the NBUD will serve an identifiable housing need in a manner which is compatible with the residence district in which the NBUD is

located, that the lot has been properly identified as a Developable Condominium Parcel, and that any terms and conditions of that identification have been met.

19. Permit Amendment

After a special permit for a NBUD has been granted, the development may be altered or amended only upon an application for such alteration or amendment complying with the pertinent requirements of this subsection and after notice and public hearing and a finding by the Planning board that the alteration or amendment: (a) meets the requirements and purposes of this subsection; (b) is financially practical and in reasonable probability will be completed; and (c) is desirable or reasonably necessary. In permitting an alteration or amendment, the Planning Board may impose such conditions or restrictions which it deems to be reasonably necessary to accomplish the purpose or satisfy the requirements of this subsection.

20. Expiration of Permit

In the event no substantial use of a special permit granted under this subsection is made and no substantial construction has commenced within two years of the Planning Board's decision (excluding any time involved in judicial review of the decision), the special permit shall expire, except for good cause. The Planning Board may set reasonable limits for completion of parts or of the whole of the development and may determine the order of construction.

21. Recording of Permit

The Special Permit issued by the Planning Board shall be recorded with the Registry of Deeds by the Applicant at the Applicant's expense within thirty days after the Town Clerk has certified that the time for appealing the special permit has expired. A copy of the recorded document with the recording information shall be provided to the Town Planner promptly after recording.

1. Use and Dimensional Requirements

- (a) Business Use. In an NBUD development, business use shall be required in that portion of the street level of buildings adjacent to and accessible from a street or adjacent to and accessible from the set-back area by which the building is set back from the street. Business use shall include entrances to and exits from the building for both pedestrians and motor vehicles and space providing public amenities such as meeting space. Parking as a business use shall not be permissible in the business use area.