

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

To see whether the Town will vote to amend Section 10 of the General Bylaws, known as the Zoning Bylaws, by adding the following Subsection to Section III so that the new subsection shall read:

. NON-CONFORMING BUSINESS USE ZONING

On a lot in a residential district that contains a pre-existing, non-conforming commercial use or uses or has contained such a use within two (2) years of an application, the Planning Board may grant a Special Permit to allow (a) a development combining a business use in combination with another use, including public Green Space and (b) an existing non-conforming use to continue to operate and (1) make modifications; (2) change ownership; and/or (3) 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 (NBU) is a commercial zoning classification that permits and encourages reinvestment and expansion in existing non-conforming commercial uses and/or allow the redevelopment of properties that recently contained such a non-conforming use where such uses are deemed desirable. Non-conforming commercial uses are limited to that are legal, not operating in violation of any statutory or regulatory requirement, and are (or were recently) openly serving the public.

2. Purpose.

The purpose of this subsection is to encourage reinvestment and quality development on lots which contain or have recently contained pre-existing non-conforming commercial uses by maintaining and/or expanding such uses or reinvesting in such use or uses or converting to a new use and combining such use with another use so as to meet some or all of the following purposes as they may be applicable:

- (1) Allow and encourage reinvestment and expansion in uses and/or expansion of uses where such uses are deemed desirable
- (2) Maintain the physical design characteristics of the surrounding neighborhood;

- (3) Encourage the development of alternative housing types in Milton to complement the existing single-family housing stock;
- (4) Promote small businesses and provide or maintain amenities and services within neighborhoods;
- (6) Address environmental concerns;
- (7) Improve building facades and streetscapes and address parking, loading and other impacts associated with existing non-conforming uses;
- (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 expansion of or conversion to the following uses shall not be permitted: used car lots, motor vehicle dealerships, gasoline stations, car repair businesses, Adult Live Entertainment Establishments, Adult Theaters, and Sexually Oriented Businesses provided that business uses shall only be allowed on the first and second floors.. Residential and public Green Space is also permitted in accordance with the NBU provisions.

4. Hours of Operation.

Hours of operation shall be limited to 7AM to 9PM

5. Location.

A NBU may be applicable to a lot or combination of lots in a Residential district that contains a pre-existing, non-conforming commercial use or uses or has contained such a use within two (2) years of an application use where such use may be combined with (a) a residential use or (b) another use (including Green Space) under a special permit to be granted by the Planning Board.

NBUGreen 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 shall be conducted within completely enclosed buildings provided that outdoor seating areas may be authorized for restaurants

as long as they are adequately screened and buffered from neighboring residential properties. This requirement does not apply to off-street parking or loading areas;

- (4) No more than 25% of the first floor may be dedicated to providing vertical access and/or amenities to the upper floors but shall be dedicated to commercial uses open to the public.
- (5) Retail uses are strongly encouraged for first floor commercial spaces.

6. Expansion of a non-conforming use.

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

- (1) For each 1,000 SF of expansion of a non-conforming business use, an area of Green Space equal to 33% of the expansion area dedicated to public use shall be maintained or created if it does not already exist, however the minimum amount of Green Space maintained or created in accordance with an expansion shall be 300 SF;
- (2) For any expansion of a non-conforming business use of 10,000 SF or more, two residential units 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 the greater of 1) 1/2 the difference between average sale price of market-rate unit and affordable unit OR \$300k for each unit required but not created or maintained to Milton's Affordable Housing Trust.

7. Housing Types.

The housing types in a NBU shall be condominium or rental building units. 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 building unit shall be 300 square feet. Studio units may not comprise more than 50% of any one building and 3-bedroom units may not comprise more than 25% of any one building.

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 but not expanded.

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 and the Planning Board deems that there is sufficient capacity in the municipal parking to accommodate the demand for proposed use(s). 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 is permissible in underground garages or structured facilities for residential and non-retail commercial units.

Parking requirements:

Residential – 1 per unit

Office – 4:1,000 square feet

Retail – 4:1,000 square feet

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 rights-of-ways or abutting residential zoning districts. Such screening is intended to mitigate the visibility of automobiles and the interference of residents' quiet enjoyment caused by car lighting. Screening should not impeded the visibility of the first floor commercial space, and must be at least 50% be vegetative in nature. Solid, unbroken walls or fences shall not be permitted.

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

12. Bicycle Parking Bicycle Parking must be provided on site on the lot in reasonable proximity to the associated use. Bicycle Parking for office and residential uses may be provided in underground garages or structured facilities.

Bicycle Parking requirements:

Residential – 1 per bedroom

Office – The greater of 10 spaces or 1:500 square feet

Retail and Restaurant- The greater of 10 spaces or 1:500 square feet

13. 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.

14. Affordable Housing Units

All NBU developments containing residential units shall comply with Inclusionary Housing bylaw(s) ascribed in Milton, if any. If no such bylaw exists, then the following conditions shall apply:

In a NBU containing less than ten market-rate building units, an application shall provide for one additional building unit to be used for an affordable building 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 NBU containing more than ten building units, a number of building units equal to 10% of the number of market-rate building 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.

15. Green Space

Every NBU shall include Green Space.

Green Space is defined as pervious areas dedicated to vegetation, lawns or public spaces. Green Space must be open for public use during Hours of Operation. Insofar as permitted hereunder and subject to the approval of the Planning Board. Green Space may be used to provide access to underground utility services. The Planning Board may permit Green Space to be utilized for the coursing or temporary retention of storm drainage and associated underground drainage structures. As reasonably necessary Green Space may be used for underground structures for on-site waste disposal. No other structure may be erected or maintained on Green Space except as may be reasonably necessary for and incidental to the use of the Green Space, such as lamp posts, benches, small sheds, stone walls and fences. The number, characteristics and location of

structures in the Green Space, if any, shall be subject to approval by the Planning Board. Green Space shall not be used for parking or roadways but may include permeable paths and walkways.

16. Design Standards for Buildings

- (1) All commercial floor space provided on the ground floor of a mixed-use building shall have a minimum floor-to-ceiling height of 12 feet for new construction. For renovations to an existing building, the ceiling heights on the first floor must be maximized using reasonable design and building practices but not requiring modifications to more than 15% of the buildings support structure to provide the greatest possible clear height up to 12 feet between the finished floor elevation and the bottom of any structural support systems
- (2) Individual commercial units 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 unless such requirement requires modifications to more than 15% of the buildings support structure in which case the window area will be maximized to the greatest extent practical.
- (4) The bottom of any window or product display window used to satisfy the transparency standard of paragraph (3) above may not be more than 2 feet above the adjacent sidewalk unless such requirement requires modifications to more than 15% of the buildings support structure in which case the window sill will be lowered to the greatest extent practical.
- (5) Product display windows used to satisfy these requirements shall be internally lighted. Not more than 30% of window areas facing streets or public ways may be opaque, covered or otherwise treated to block visibility into the first-floor space.
- (6) Buildings must have a primary entrance door facing a street or public way. 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 and shall comply with any lighting control bylaw(s) in the Town of Milton in existence at the time of application.

17. Site Plan

A site plan for a NBU 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 granted under this subsection, and construction shall be in accordance with the approved Site Plan. The Site Plan shall contain:

- 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.
 - iv. Any parking and service areas, and adjacent properties/buildings
- b. A proposed site conditions plan, including a detailed landscaping plan showing:
 - i. The siting, grading, and landscaping plan for all proposed streets, Green Space, 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 NBU 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 NBU 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 NBU 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 building on its sides and rear at least equal in amenity and design to the appearance of the building 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.
- ix. Proposed commercial signage locations
- x. Exterior building lighting
- xi. A photometric plan

18. Submission of Permit Application to Other Boards

Every application for a special permit for a NBU under this subsection shall be referred to the Conservation Commission, the Historical Commission and the Board of Health as applicable. 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.

19. Application Filing, Hearing and Decision

Every application for a special permit for a NBU 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 NBU 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 metNBUNBU. The Planning Board shall have the right to require a traffic study of the applicant that may be peer reviewed by a traffic engineer of the Planning Board's choice. Such traffic studies shall be at the sole cost of the applicant and may be relied upon by the Planning Board in granting a Special Permit.

Applicants are strongly encouraged to host a pre-filing meeting with the Town Planner and Town Engineer prior to filing.

Applicants are strongly encouraged to host a meeting with abutters and any relevant neighborhood associations prior to filing.

20. Permit Amendment

After a special permit for a NBU 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.

21. 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.

22. 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.

NBU