

CHAPTER 15: NONCONFORMITIES

6-15-1 PURPOSE

The purpose of this Chapter is to provide for the regulation of nonconforming buildings, structures, lots, or uses, and to specify those circumstances and conditions under which nonconforming buildings, structures, and uses shall be gradually eliminated upon reaching the end of their respective normal useful life.

6-15-2 GENERAL STANDARDS OF APPLICABILITY

A. Authority to Continue

Any nonconforming building, structure, lot, or use that existed lawfully at the time of the adoption of this Ordinance, and which remains nonconforming, and any such building, structure, lot, or use that has become nonconforming upon the adoption of this Ordinance or any subsequent amendments thereto, may continue subject to the provisions of this Chapter so long as it remains otherwise lawful.

B. Burden on Property Owner to Establish Legality

In all cases, the burden of establishing the legality of a nonconformity under the provisions of this Ordinance, as of the effective date of this Ordinance, shall be upon the property owner of the nonconforming building, structure, or use and not upon the Village.

C. Safety Regulations

All police power regulations enacted to promote public health, safety, convenience, comfort, and general welfare including, but not limited to, all building, fire, and health codes shall apply to nonconforming buildings and structures.

6-15-3 NONCONFORMING USE OF LAND, BUILDINGS, OR STRUCTURES

This Section regulates land, buildings, or structures on the effective date of this Ordinance are used for purposes that are not permitted in the zoning district in which they are located, unless the use was authorized as a special use or variation.

A. Ordinary Repairs and Maintenance

Normal maintenance and incidental repair or replacement may be performed on any building or structure that is devoted in whole or in part to a nonconforming use, provided it will not create any new nonconformity, increase the degree of nonconformity, or increase the bulk of the building or structure in any manner.

B. Structural Alterations

No structural alterations shall be performed on any building or structure devoted to a nonconforming use, except in the following situations:

1. When the alteration is required by law or is necessary to restore the building or structure to a safe condition upon the order of any official charged with protecting the public safety.

2. When the alteration will result in eliminating the nonconformity.
3. When the alteration will not create any new nonconformity, increase the degree of any existing nonconformity, or increase the bulk of the building or structure in any manner.

C. Expansion of Use

A nonconforming use of land, buildings, or structures shall not be expanded, extended, enlarged, or increased in intensity. Such prohibited activity shall include, without limitation:

1. Expansion of any building or structure devoted entirely to a nonconforming use.
2. An expansion or extension of a use or its accessory uses to any land area, building, or structure other than that occupied by such nonconforming use, on the effective date of this Ordinance.
3. An expansion or extension of such use, including its accessory uses, within a building or other structure, to any portion of the floor area that was not occupied by such nonconforming use on the effective date of this Ordinance.

D. Relocation

A nonconforming use of land, buildings or structures shall not be relocated in whole or in part to any other location on the same lot or parcel, or to any other lot or parcel, unless the use shall thereafter conform to all regulations of the zoning district in which it is relocated, unless the lot or parcel to which it is relocated permits the nonconforming use.

E. Change of Use

A nonconforming use shall not be changed to any use other than a use permitted within the zoning district in which it is located. When such a nonconforming use has been changed in whole or in part to a permitted use, the whole or part which has been made to conform may not thereafter be changed back to a use that is not permitted. A change of use shall be deemed to occur when an existing nonconforming use has been terminated and a permitted use has commenced. Any change in use in violation of this Ordinance shall be deemed an abandonment of the previously existing lawful nonconforming use.

F. Discontinuation or Abandonment

If a nonconforming use is discontinued, or becomes vacant, and remains unoccupied for a continuous period of one hundred and eighty (180) days, regardless of the intent to resume or not to terminate the use, such use shall be deemed to be abandoned and shall not be reestablished or resumed. Any subsequent use or occupancy of such land, building or structure shall comply with all regulations of the zoning district in which such land, building, or structure is located. The period of such discontinuance caused by government action, acts of God, or other acts without any contributing fault by the user, shall not be included in calculating the length of discontinuance for this Section.

G. Damage or Destruction

1. In the event that any building, structure and/or property that is devoted in whole or in part to a nonconforming use, is damaged or destroyed, by any means not within the control of the property owner or tenant, to the extent of fifty percent (50%) or more of its replacement value at that time, then the building or structure shall not be restored or rebuilt unless the building or structure, including foundation and use thereof, thereafter conforms to all regulations of the zoning district in which it is located.

The replacement value of the building, structure and/or property, which is devoted in whole or in part to a nonconforming use, shall be based on: 1) the sale of that building, structure, and/or property within the previous year or, if that is not applicable; 2) an appraisal within the last two (2) years or, if that is not available; 3) the amount for which building, structure, and/or property was insured prior to the date of damage or destruction or; 4) an alternative method determined acceptable by the Village.

2. When such building, structure, and/or property that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means not within the control of the property owner or tenant, to the extent of less than fifty percent (50%) of the replacement value at that time, the building, structure, and/or property may be repaired, reconstructed, or restored provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit shall be obtained for such rebuilding, restoration, repair, or reconstruction within one (1) year of the date of damage or destruction, and construction shall be completed within one (1) year of issuance of the building permit.
3. In the event that the permit is not obtained within one (1) year or that repairs or restoration are not completed within one (1) year of the issuance of the building permit, then the building or structure and the use thereof shall not be restored unless that use conforms to all regulations of the district in which it is located.
4. In the event that any building or structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed by means within the control of the property owner or tenant, the building, structure, and/or property and use thereof shall comply with all requirements of this Ordinance.

G. Nonconforming Secondary Living Units

In the case of living space located within and/or above a detached garage, such use shall be deemed a legal nonconforming use and subject to the provisions of this Section. However, due to issues of safety, proper egress, lack of adequate parking and overcrowding within residential neighborhoods, such use of such secondary living space secondary living units must be discontinued within ten (10) years of the date of adoption of this Ordinance.

6-15-4 NONCONFORMING BUILDINGS AND STRUCTURES

This Section regulates buildings and structures, existing on the effective date of this Ordinance, which do not conform to the yard, height, lot coverage, or other dimensional or bulk provisions of this Ordinance.

A. Ordinary Repairs and Maintenance

Normal maintenance and incidental repair or replacement may be performed on any nonconforming building or structure. No repairs or reconstruction shall be made that would create any new nonconformity, increase the degree of any previously existing nonconformity, or increase the bulk of the building in any manner.

B. Structural Alterations

No structural alterations shall be performed on any nonconforming building or structure, except in the following situations:

1. When the alteration is required by law or is necessary to restore the building or structure to a safe condition upon the order of any official charged with protecting the public safety.
2. When the alteration will result in eliminating the nonconformity.
3. When the alteration will not create any new nonconformity or increase the degree of any existing nonconformity. The only exception shall be that any structural alteration of any single-unit or two-unit dwelling in a residential district shall be permitted provided that the proposed structural alteration meets all applicable building height, setback, and lot coverage requirements.

C. Additions and Enlargements

A building or structure that is nonconforming with respect to its bulk shall not be added to or enlarged.

D. Relocation

A nonconforming building or structure shall not be relocated in whole or in part to any other location on the same zoning lot or parcel, or to any other zoning lot or parcel, unless the building or structure thereof shall thereafter conform to all regulations of the zoning district in which it is relocated.

E. Damage or Destruction

1. In the event that any nonconforming building or structure is damaged or destroyed, by any means not within the control of the property owner or tenant, to the extent of fifty percent (50%) or more of its replacement value at that time, then the building or structure shall not be restored or rebuilt unless the building or structure, including foundation, thereafter conforms to all regulations of the zoning district in which it is located.

The replacement value of the building or structure shall be based on: 1) the sale of that building or structure within the previous year or, if that is not applicable; 2) an appraisal within the last two (2) years or, if that is not available; 3) the amount for which the building, structure, or property was insured prior to the date of the damage or destruction or; 4) an alternative method determined acceptable by the Village.

2. When such building or structure is damaged or destroyed, by any means not within the control of the property owner or tenant, to the extent of less than fifty percent (50%) of the replacement value at that time, it may be repaired and reconstructed provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit shall be obtained for such rebuilding, restoration, repair, or reconstruction within one (1) year of the date of damage or destruction, and the construction shall be completed within one (1) year of issuance of the building permit.
3. In the event that the building permit is not obtained within one (1) year, or that repairs are not completed within one (1) year of the issuance of the building permit, then the building or structure shall not be restored unless the building or structure conforms to all regulations of the district in which it is located.
4. In the event that any nonconforming building or structure is damaged or destroyed by means within the control of the property owner or tenant, the building or structure, as restored or repaired, shall comply with all requirements of this Ordinance.

F. Nonconforming Secondary Living Units

In the case of detached secondary living units (such as “coach houses”), such units shall be deemed a legal nonconforming structures and subject to the provisions of this Section. However, due to issues of safety, proper egress, lack of adequate parking and overcrowding within residential neighborhoods, such detached secondary living units must be removed within ten (10) years of the date of adoption of this Ordinance.

6-15-5 NONCONFORMING LOTS OF RECORD

This Section regulates lots of record, existing on the effective date of this Ordinance, which do not conform to the lot area or lot width requirements of the district in which they are located. No nonconforming lot of record may be improved except in compliance with this Section.

A. Individual Lots of Record in Residential Districts

In residential districts, notwithstanding limitations imposed by other provisions of this Ordinance, a single-unit dwelling may be erected on a single nonconforming lot of record provided that the lot is in separate ownership and it meets all other zoning district bulk requirements.

B. Lots of Record Held in Common Ownership

If on the effective date of this Ordinance, in situations where there are two (2) or more lots of record with continuous frontage in single ownership, and one (1) or more of the lots having contiguous frontage does not meet the requirements for lot width or lot area as established by this Ordinance, the land so involved shall be considered to be a single undivided parcel for the purposes of this Ordinance. No portion of said parcel shall be used, transferred or conveyed which does not meet the lot width and lot area requirements established by this Ordinance. No division of the parcel shall be made which leaves the remaining lot(s) with lot width or lot area below the requirements of this Ordinance. No building permit shall be issued for the use of any lot, or portion of a lot, transferred or conveyed in violation of this Section.

6-15-6 VERTICAL EXTENSION OF NONCONFORMING SIDE WALLS

In an effort to accommodate additions to existing single-unit and two-unit homes, the extension of a nonconforming side wall vertically, which does not meet the minimum side yard requirement, is permitted without a variation, subject to the following:

1. The extended building wall shall not create any additional nonconformities on the site.
2. The extended wall shall not encroach any closer to the applicable property line.
3. The maximum lot coverage and building height shall not be exceeded.
4. The side yard is a minimum of two feet, six inches (2' 6") in width. Side yards less than two feet, six inches (2' 6") in width shall not be permitted to extend vertically without a variation.

6-15-7 NONCONFORMING SIGNS

The provisions for nonconforming signs are contained within Section 6-13-12 (Nonconforming Signs).