

ARTICLE 18

NON-CONFORMING BUILDINGS, LOTS AND USES

Section 18.1 INTENT

Non-conformities are lots, uses, structures, buildings, or site plans for developed sites which do not conform to one or more provisions or requirements of this Ordinance or to any subsequent amendment, but which were lawfully established prior to the time of adoption of the Ordinance or amendment. Such non-conformities are considered to be incompatible with the current or intended use of land, buildings or structures in the district in which they are located. It is therefore the intent of this section to:

- A. Meet the objectives stated below by establishing regulations that govern the completion, restoration, reconstruction, extension, and/or substitution of non-conformities, and specify the circumstances and conditions under which non-conformities shall be permitted to continue.
- B. Eventually eliminate, or bring into compliance, lots, buildings, structures and uses which legally existed at the date of adoption of this Ordinance, but do not meet the current standards of this Ordinance. This Ordinance also has special provisions to permit certain non-conforming situations considered to be less harmful to continue under certain conditions, but to discourage their expansion, enlargement, or extension.
- C. Discourage the continuation of non-conforming uses that are more intense than the uses permitted within the zoning district and are considered to be incompatible with permitted uses, or encourage their redevelopment into a more conforming use.
- D. Permit legal non-conforming buildings, structures or uses to remain until they are discontinued, removed or abandoned.
- E. Encourage a gradual upgrading to a more conforming status of site landscaping, parking, paving, signs or other features of a site developed in compliance with the Zoning Ordinance requirements at the time of their construction, but which do not meet the site requirements of this Ordinance.
- F. Encourage the combination of contiguous non-conforming lots of record to create lots which conform or more closely conform to current requirements, are compatible with other lots in the zoning districts in which they are located, to promote the public health, safety and welfare and to eliminate problems associated with the overcrowding of land.

Section 18.2 APPLICABILITY

To avoid undue hardship, nothing in this Ordinance shall be deemed to required a change in plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance, upon which actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has been substantially begun

preparatory to rebuilding such work shall be deemed to be actual construction, provided that such work shall be diligently continued until completion of the building involved.

Section 18.3 NON-CONFORMING USES

Where, at the effective date of adoption or amendment of this Ordinance, a lawful use on open land, a lot(s), building(s), or accessory structure(s) exists that is made non-conforming by this Ordinance or its amendments, such use may be continued, as it remains otherwise lawful, subject to the following provisions:

- A. **Expansions.** Any non-conforming use may be extended throughout any parts of a building which were designed for such use, and which existed at the effective date of this Ordinance. Except for single-family dwellings as permitted below, a non-conforming use shall not be enlarged, expanded or extended to occupy a greater area of land, constructed or reconstruction or structurally altered except with approval by the Zoning Board of Appeals.
- B. **Accessory Uses and Structures.** No new accessory use, building or structure shall be established.
- C. **Relocation.** The non-conforming use shall not be moved in whole or in part to any other portion of the lot or parcel occupied by such use.
- D. **Change in Use.** If no structural alterations are made, any non-conforming use of a building, or building and land in combination, may be changed to another non-conforming use if the Zoning Board of Appeals finds the proposed use is more appropriate to the district than the existing non-conforming use. In permitting the change, the Zoning Board of Appeals may require conditions and safeguards in accord with the purpose and intent of this Ordinance. Where a non-conforming use of a structure, land, or structure and land in combination is hereafter changed to a more conforming use, it shall not thereafter be changed to a less conforming use.
- E. **Removal.** Removal or destruction of a structure containing a non-conforming use shall eliminate the non-conforming status of the land.
- F. **Abandonment or Discontinuance.** If the non-conforming use of land ceases for any reason for a period exceeding one (1) year and the Ordinance Administrator determines that the owner has established intent to abandon the non-conforming use, any subsequent use of such land shall conform to the requirements specified by this Ordinance for the zoning district in which it is located. A non-conforming use shall be determined to be abandoned if one (1) or more of the following conditions exists, and shall be deemed to constitute an intent on the part of the property owner to abandon the non-conforming use:
 - 1. Utilities, such as water, gas and electricity to the property, have been disconnected.
 - 2. The property, buildings, and grounds, have fallen into disrepair.
 - 3. Signs or other indications of the existence of the non-conforming use have been removed.

4. Removal of equipment or fixtures which are necessary for the operation of the Non-conforming use.
5. Other actions, which in the opinion of the Ordinance Administrator, constitute an intention on the part of the property owner or lessee to abandon the non-conforming use.

Section 18.4 NON-CONFORMING RESIDENTIAL DWELLINGS

A. Single Family Dwellings in Non-Residential Districts

1. Single family residential dwellings in non-residential zoning districts may be expanded to occupy the floor area necessary for living purposes.
2. Single family dwellings and accessory structures, in a zoning district which does not permit that use may be continued, replaced, repaired or remodeled if damaged by flood, fire, or vandalism, if approved by the ZBA, subject to the following:
 - a. Replacement shall commence no later than six (6) months after the date of damage.
 - b. Work shall be diligently pursued toward completion. The applicant may be required to provide the Village with evidence or otherwise demonstrate to the satisfaction of the Ordinance Administrator that work is being diligently pursued.
 - c. Failure to complete replacement or diligently work toward completion shall constitute abandonment and result in the loss of its non-conforming status unless good cause for the delay is determined at a hearing before the ZBA.

B. Single Family Dwellings in Residential Districts

1. A non-conforming building used as a single family residence, and its accessory structures, may be continued, replaced, repaired or remodeled if damaged by flood, fire, vandalism, accident or other natural disaster if approved by the ZBA. Such approval requires a finding that the resulting building will improve conformity to this Ordinance.
2. Replacement of non-conforming single family buildings may be permitted by the Ordinance Administrator, subject to the following:
 - a. Replacement shall commence within one (1) year of the date of damage.
 - b. Work shall be diligently pursued toward completion. Failure to complete replacement or diligently work toward completion shall result in the loss of legal, non-conforming status unless good cause for the delay is accepted at a hearing before the ZBA.

3. Permitted Expansions to Single Family Dwellings: An expansion (footprint or floor area) of a non-conforming single family building or structure shall be permitted when both of the following conditions exist:
 - a. Only one (1) side of the building or structure does not conform to setback requirements.
 - b. The expansion is on the conforming side of the building and will conform to all setback and height requirements.

Section 18.5 NON-CONFORMING NON-RESIDENTIAL BUILDINGS OR STRUCTURES

Where a lawful building or structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance, that building or structure may be continued provided it remains otherwise lawful, subject to the following provisions.

- A. Except as noted below, no building or structure may be enlarged unless approved by the ZBA.
- B. **Market Value.** Market value of non-conforming buildings and structures shall be determined by a certified appraiser in an appraisal provided by the applicant and reviewed and approved by the Village Assessor and Ordinance Administrator.
- C. **Value of Repairs.** The value of repairs or improvements shall be based on a written estimate from a licensed contractor provided by the applicant and approved by the Ordinance Administrator. This value shall not include any costs associated with modernization of electrical, plumbing, heating or cooling systems to meet current Building Code requirements.
- D. **Damage by Fire or Other Catastrophe.** Reconstruction of buildings and structures damaged by fire or other catastrophe may be approved by the Ordinance Administrator according to the following:
 1. Buildings and structures damaged to a point where the value of repairs exceeds the market value shall not be rebuilt, repaired, or reconstructed, except in complete conformity with the provisions of this Ordinance.
 2. In the event that the value of repairs is less than the market value, the structure or building may be restored to its previous status, subject to the following:
 - a. Any request for such rebuilding, repair, or restoration shall be made to the Ordinance Administrator within one hundred eighty (180) days following the incident.
 - b. Any such rebuilding, repair, or restoration shall be completed within one (1) year from the date of the catastrophe.
- E. **Relocation of a Non-Conforming Non-Residential Building or Structure.** Should any non-conforming building or structure be relocated or moved for any reason for any distance, it shall

thereafter conform to the regulations for the district in which it is located after it is relocated or moved.

- F. **Safety Related Repairs, Improvements, and Modernization.** Repairs, improvements, or modernization of non-conforming buildings or structures may be permitted by the Ordinance Administrator to maintain a non-conforming building in a structurally safe and sound condition, under the following conditions:
1. The cost of such repairs or improvements in any consecutive twelve (12) month period does not exceed the market value.
 2. Any such repairs, improvements, and modernization shall not result in an enlargement of the non- conforming structure.
 3. Where a non-conforming building or a structure containing a non-conforming use that becomes physically unsafe and/or dangerous due to lack of maintenance and repairs, as declared by the Ordinance Administrator, it shall not thereafter be restored, repaired, or rebuilt except in full conformity with this Ordinance.
- G. **Non-Safety Improvements and Modernization.** Repairs, improvements, or modernization of non-conforming structures, which are not deemed necessary by the Ordinance Administrator to keep a non-conforming building structurally safe and sound, shall be permitted under the following conditions:
1. The cost of such repairs or improvements in any twelve (12) month consecutive period does not exceed fifty percent (50%) of the market value.
 2. Any such repairs, improvements or modernization shall not result in an enlargement of the non-conforming structure or building.
- H. **Alterations That Decrease Nonconformity.** Any non-conforming structure or building, or any structure or building, or portion thereof containing a non-conforming use, may be altered if such alteration serves to clearly increase conformity to this Ordinance. The Ordinance Administrator shall determine if a proposed alteration increases the degree of conformity.

Section 18.6 NON-CONFORMING LOTS

Use of or development on a non-conforming lot are subject to the following regulations:

- A. **Use of Non-Conforming Lots.** Any non-conforming lot may be used only for a use permitted in the zoning district in which it is located. In districts where single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory building(s) may be erected on any single lot of record in existence on the effective date of adoption or amendment thereto. This provision shall apply even though the lot fails to meet the requirements for area or width, or both, that are applicable in the district, provided that the lot is in conformance with all other applicable yard setback, minimum floor area and maximum height requirements for the district in which it is located.

- B. **Variance from Area and Bulk Requirements.** If the use of a non-conforming lot requires a variance from the area or bulk requirements, then the use shall be permitted only pursuant to a variance granted by the ZBA.

- C. **Non-Conforming Contiguous Lots under the Same Ownership.** The following regulations shall apply to non-conforming contiguous lots under the same ownership:
 - 1. If two (2) or more lots or combination of lots with contiguous frontage are under single ownership at the time of adoption or amendment of this Ordinance, and if all or part of the individual lots do not meet the requirements established for lot width and area, the lands shall be considered as a singular, individual parcel for the purposes of this Ordinance. Any altering of lot lines or combination of lots shall result in lots that more closely conform to the requirements of this Ordinance.

 - 2. No portion of the nonconforming parcel shall be used, occupied, or sold in a manner that diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of a parcel be made that creates a new lot having a width or area less than the requirements stated in this Ordinance.

 - 3. These provisions shall not apply to contiguous lots in single ownership where each of the lots is occupied by an existing dwelling unit.

- D. **Combination of Non-Conforming Lots.** The following regulations shall apply to the combination of non-conforming lots.
 - 1. Any combination, in whole or in part, of non-conforming lots of record shall result in lots that more closely conform to the requirements of this Ordinance.

 - 2. Once any combination that creates a conforming lot occurs, the resulting lot shall not retain non-conforming lot of record status and will hereafter be required to comply with the lot requirements of this Ordinance.

Section 18.7 NON-CONFORMING SITES

- A. The intent of this Section is to permit improvements and minor modifications to an otherwise conforming use and building which does not meet all of the various site improvement related regulations of this Ordinance. The purpose is to allow gradual compliance with the site related requirements, for the entire site, for sites which predate the various Ordinance standards for landscaping, paving, and other non-safety site related items.

- B. Improvements or expansions may be permitted by the Planning Commission during special land use or site plan review without a complete upgrade of all site elements under the following conditions. The Village may require a performance guarantee to ensure that all improvements permitted under this Section will be made in accordance with the approved plan.
 - 1. The applicant is proposing reasonable site improvements on the overall site in relation to the scale and construction cost of the building improvements or expansion.

2. The applicant has addressed safety related site issues on the overall site.
3. The improvements or minor expansion will not increase noncompliance with site requirements.
4. The applicant has upgraded the overall site landscaping consistent with *Chapter 15 Landscaping*.
5. Signs must conform with *Chapter 17 Signs*.
6. A site plan shall be submitted in accordance with *Chapter 14 Site Plan Review*.

Section 18.8 CHANGE OF TENANCY OR OWNERSHIP

In the event there is a change in tenancy, ownership, or management of an existing non-conforming use or structure and/or building shall be allowed to continue provided there is no change in the nature or character of such nonconformity and the use, structure, and/or building is otherwise in compliance with this Ordinance.