

SECTION 16. NONCONFORMITIES

- 16.1 PURPOSE
 - 16.2 GENERAL STANDARDS OF APPLICABILITY
 - 16.3 NONCONFORMING USE
 - 16.4 NONCONFORMING STRUCTURES
 - 16.5 NONCONFORMING LOTS OF RECORD
 - 16.6 NONCONFORMING SIGNS
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16.1 PURPOSE

The purpose of this Section is to provide for the regulation of nonconforming structures, lots and uses, and to specify those circumstances and conditions under which nonconforming structures and uses shall be eliminated.

16.2 GENERAL STANDARDS OF APPLICABILITY

A. Authority to Continue

Any structure, lot or use that existed as a lawful nonconformity at the time of the adoption of this Code, and any building, structure, lot or use that has been made nonconforming because of the terms of this Code or its subsequent amendments, may continue subject to the provisions of this Section so long as it remains otherwise lawful. A structure or use that is illegal at the time of the adoption of this Code, remains illegal if it does not conform with each and every requirement of this Code.

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 Code shall be upon the property owner of the nonconforming structure, use or lot.

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 structures.

16.3 NONCONFORMING USE

A. Definition of Nonconforming Use

A nonconforming use is the use of land or a structure that, as of the effective date of this Code, are used for purposes that are not allowed in the zoning district in which they are located.

B. Ordinary Repairs and Maintenance

Normal maintenance and incidental repair may be performed on any 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 structure in any manner.

C. Structural Alterations

No structural alterations shall be performed on any 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 structure to a safe condition upon the order of any official charged with protecting the public safety.
2. When the alteration is for the purpose of bringing about a conforming use.
3. When the alteration will not create any new nonconformity, increase the degree of any existing nonconformity or increase the bulk of the structure in any manner.

D. Expansion of Use

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

1. Expansion of any structure devoted entirely to a nonconforming use.
2. An expansion, extension or relocation of a use or its accessory uses to any land area or structure not currently occupied by such nonconforming use.
3. An expansion, extension or relocation of such use, including its accessory uses, within a structure, to any portion of the floor area that was not occupied by such nonconforming use.

E. Relocation

A nonconforming use of land or a structure shall not be relocated, in whole or in part, to any other location on the same lot or parcel. The nonconforming use may only be relocated to another lot or parcel if the use conforms to all regulations of the zoning district in which it is relocated, including all use regulations.

F. Change of Use

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

G. Discontinuation or Abandonment

1. If a nonconforming use is discontinued, or the structure that it occupies becomes vacant and remains unoccupied for a continuous period of one-hundred eighty (180) days, such use shall be deemed to be abandoned and shall not be reestablished or resumed regardless of the intent to resume or to continue the use. Any subsequent use or occupancy of such land or structure shall comply with all regulations of the zoning district in which such land or structure is located.
2. The period of such discontinuance caused by government action or acts of god shall not be included in calculating the length of discontinuance for this section.
3. If a nonconforming use is offered for sale but continues to remain occupied and functioning during this period, that period shall not be included in calculating the length of discontinuance for this section.

H. Damage or Destruction

1. In the event that any structure and/or property that is devoted in whole or in part to a nonconforming use, is damaged or destroyed to the extent of fifty percent (50%) or more of its replacement value at that time, then the nonconforming use cannot be continued unless the use conforms to all regulations of the zoning district in which it is located.
3. In the event that any structure and/or property that is devoted in whole or in part to a nonconforming use is damaged or destroyed to the extent of less than fifty percent (50%) of the replacement value at that time, the structure and/or property may be repaired, reconstructed or restored and the nonconforming use continued, provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit must 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.
4. The replacement value of the structure and/or property, exclusive of foundation, which is devoted in whole or in part to a nonconforming use, shall be based on: 1) the sale of that 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 structure and/or property was insured prior to the date of damage or destruction or, if that is not available; 4) an alternative method determined acceptable by the Village.
5. 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 nonconforming use shall not be continued.

16.4 NONCONFORMING STRUCTURES

A. Definition of Nonconforming Structure

Structures which at one time conformed to applicable zoning regulations, but because of subsequent amendments to the Code no longer conform to applicable setback, height, lot coverage or other dimensional or bulk provisions or do not meet other on-site development standards, such as an insufficient number of parking spaces, of this Code, are considered nonconforming structures.

B. Ordinary Repairs and Maintenance

Normal maintenance and incidental repair may be performed on any nonconforming 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 structure in any manner.

C. Structural Alterations

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

1. When the alteration is required by law or is necessary to restore the 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.

D. Additions and Enlargements

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

E. Relocation

A nonconforming structure shall not be relocated, in whole or in part, to any other location on the same zoning lot or parcel. A nonconforming structure may be relocated to another zoning lot or parcel if the structure conforms to all regulations of the zoning district in which it is relocated.

F. Damage or Destruction

1. In the event that any nonconforming structure is damaged or destroyed to the extent of fifty percent (50%) or more of its replacement value at that time, then the structure may not be restored or rebuilt unless the structure, including foundation is made to conform to all regulations of the zoning district in which it is located.
2. When such a structure is damaged or destroyed 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. The replacement value of the structure shall be based on: 1) the sale of that 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 structure or property was insured prior to the date of the damage or destruction or, if that is not available; 4) an alternative method determined acceptable by the Village.
4. 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 structure shall not be restored unless it conforms to all regulations of the district in which it is located.

G. Extension of Walls for Nonconforming Single-Family Structures

Where a legal nonconforming single-family residential structure encroaches onto the required front, corner side, rear or interior side setback, said structure may be enlarged or extended vertically or horizontally as defined by its existing perimeter walls, so long as:

1. The resulting structure does not increase the degree of the existing nonconformity or otherwise violate this Section.
2. If the encroachment is within the interior side setback, the resulting setback is at least fifty percent (50%) of that which would otherwise be required.
3. If the encroachment is within the front, corner side or rear setback, the resulting setback is at least eighty percent (80%) of that which would otherwise be required.

H. Existing Developments Deemed Conforming for Impervious Surface

Lots existing as of January 25, 2011 shall not be considered nonconforming if they exceed the maximum impervious surface requirement of this Code, and all current impervious surfaces may be repaired and reconstructed. However, if the lot is redeveloped, in that the principal structure is torn down, such lots must then conform to the impervious surface limitations of this Code.

16.5 NONCONFORMING LOTS OF RECORD

A. Individual Lots of Record in Residential Districts

In residential districts, notwithstanding limitations imposed by other provisions of this Code, a single-family dwelling may be erected on a single nonconforming lot of record provided that it meets the following conditions:

1. The owner of that lot, or a related party of the owner of that lot, owns or controls no other contiguous lots.
2. The lot meets all other zoning district bulk requirements.
3. As of January 25, 2011, a single-family house located solely on that lot was demolished or otherwise destroyed.

B. Lots of Record in Residential Districts Owned by Related Parties

If two (2) or more contiguous lots of record are held in common ownership or owned or controlled by related parties and one (1) or more of the lots does not meet the requirements for lot area or lot width as established by this Code, then the lots of record shall be considered to be a single undivided parcel for purposes of this Code. No portion of the parcel shall be used, transferred or conveyed which does not meet the lot width and lot area requirements established by this Code. 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 Code. 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.

16.6 NONCONFORMING SIGNS

- A.** Any nonconforming sign may remain in use, so long as it remains otherwise lawful, until the first to occur of the following:
 1. A change in use of the property. A nonconforming sign may remain in use if there is a change in ownership but not use.
 2. An existing business for which a sign exists is abandoned or discontinued for one-hundred eighty (180) days.
- B.** No nonconforming sign shall be relocated wholly or in part to any other location on the same or any other lot, unless the entire sign shall thereafter conform to all regulations of the zoning district in which the sign is relocated.
- C.** No nonconforming sign shall be altered or enlarged in a way that increases the nonconformity of the sign. This item in no way precludes normal maintenance and cleaning.

- D. In the event that any nonconforming sign is damaged or destroyed to the extent of more than fifty percent (50%) of the fair market value of the sign immediately prior to the damage, the sign shall not be restored or repaired unless it thereafter conforms to all applicable regulations for the district.