

ARTICLE 17. NONCONFORMITIES

NOTES ON REVISION

Nonconforming Uses: There are a number of provisions related to nonconforming uses that have been simplified in this section. Rather than citing three types of nonconforming uses – 1) nonconforming use in a structure 2) nonconforming use within an accessory structure or 3) nonconforming use of a structure designed for a permitted use – the provisions have been consolidated into one category – nonconforming use. The existing provisions add a layer of complexity to these regulations that are not necessary and do not provide any specialized regulations.

Nonconforming Accessory Structures: The provisions that define an accessory structure by dollar amount are suspect and have been stricken. There were specific provisions regarding the destruction of an “accessory structure” at 25% but the provisions should use one set number (the Illinois standard is 50%) that is applied equitably.

Nonconforming Uses: A current provision allows for the expansion of nonconforming uses in a structure that was designed for something that was not designed for a district’s permitted use. This has been eliminated because it contradicts purposes of gradual elimination. It is also very subjective in determining whether or not a building has been built/designed for a permitted use.

Damage and Destruction (Uses and Structures): We have revised and clarified damage and destruction provisions for nonconforming structures and uses.

Nonconforming Signs: The percentage used for sign damage should be the same for all structures (50%). Provisions requiring termination of certain signs within 30 days of Code adoption have been eliminated because they have expired.

Nonconforming Lots of Record: The nonconforming lots of record were simplified and the actual district standards readjusted to reflect existing development (therefore all special bulk standards have been eliminated).

ARTICLE 17. NONCONFORMITIES

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17.1 PURPOSE

- A. This Article regulates and limits the continued existence of uses, structures, including signs, and lots established prior to the effective date of this Code, or any amendment thereto, that do not conform to the regulations of this Code applicable in the zoning districts in which such uses, structures and lots are located.
- B. The zoning districts established by this Code are designed to guide the future use of land within the Village by encouraging the development or maintenance of desirable residential, business, and office areas with appropriate groupings of compatible and related uses and thus to promote and protect the public health, safety and general welfare. The continued existence of nonconformities is frequently inconsistent with the purposes for which such districts are established and thus the gradual elimination of such nonconformities is generally desirable.

17.2 GENERAL PROVISIONS

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 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. Exception for Repairs Pursuant to Public Order

Nothing in this Article shall be deemed to prevent the restoration of a structure to a safe condition in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition, provided such restoration is not otherwise in violation of the various provisions of this Article prohibiting the repair or restoration of partially damaged or destroyed structures or signs.

D. Nonconforming Accessory Uses and Structures

No use, structure or sign that is accessory to a principal nonconforming use or structure shall continue after such principle use or structure shall have been terminated, unless it shall thereafter conform to all the regulations of the zoning district in which it is located.

17.3 NONCONFORMING USES

A. Authority to Continue

A nonconforming use is the use of land and structures that, as of the effective date of this Code, are used for purposes that are not permitted in the zoning district in which they are located. Uses that were specifically authorized as a special use shall not be considered nonconforming uses even if the use is no longer permitted within that zoning district. Any lawfully existing nonconforming use may be continued so long as it remains otherwise lawful, subject to the regulations of this Article.

B. Ordinary Repair and Maintenance

Normal maintenance and incidental repair or replacement, and the installation or relocation of non-bearing or curtain walls, non-bearing partitions, fixtures, wiring or plumbing, may be performed on any structure containing a nonconforming use. This section shall not be deemed to authorize any violation of this Article.

C. Structural Alteration

No structure that contains a nonconforming use shall be structurally altered unless the use shall thereafter conform to the use regulations of the zoning district in which it is located. No alteration shall create any new nonconformity or increase the degree of any existing nonconformity.

D. Enlargement of Structure

No structure containing a nonconforming use shall be enlarged or added to in any manner, including the interior addition of floor area, unless the use of such structure shall thereafter conform to the use regulations of the district in which it is located. No enlargement shall create any new nonconformity or increase the degree of any existing nonconformity of such structure.

E. Expansion of Use

1. Prohibited Expansions

A nonconforming use shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activity shall include, without being limited to:

- a. An expansion of such use, including its accessory uses, to any structure or land area other than that occupied by such nonconforming use on the effective date of this Code, or any amendment thereto.
- b. An expansion 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 Code, or any amendment thereto.
- c. An expansion of the hours of operation of such use beyond the normal hours of operation on the effective date of this Code, or any amendment thereto.

F. Relocation

1. No structure containing a nonconforming use shall be moved, in whole or in part, for any distance whatsoever, to any other location on the same or any other lot, unless the use, as well as the structure, shall conform to all regulations of the zoning district in which it is located after being so moved.
2. No nonconforming use shall be moved, in whole or in part, for any distance whatsoever, to any other location on the same or any other lot, unless such use shall conform to all regulations of the zoning district in which it is located after being so moved.

G. Change in Use

A nonconforming use shall not be changed to any use other than a use permitted in the zoning district in which the use or structure is located. When a nonconforming use has been changed to a permitted use, it shall not thereafter be changed back to any use not permitted in that zoning district. For purposes of this section, a use shall be deemed to have been so changed when an existing nonconforming use is terminated and a permitted use is commenced and continued for a period of five (5) days. Any change of use in violation of this section shall be deemed to be an abandonment of the lawfully existing nonconforming use.

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 conform to all regulations of the zoning district in which it is located. If the damage or destruction to a nonconforming structure has been purposefully caused by the owner, including damage less than fifty percent (50%), the structure must be repaired or restored in accordance with this Code.
2. 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.
3. 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.

I. Termination of Nonconforming Uses

When a nonconforming use is discontinued or abandoned for a period of three (3) consecutive months, regardless of any intent to resume or not to abandon such use, such use shall not thereafter be reestablished or resumed. Any subsequent use or occupancy of such land or structure shall comply with the use regulations of the zoning district in which such land or structure is located. Any period of such discontinuance caused by government action, strikes, material shortages or acts of God, and without any contributing fault by the

nonconforming user, shall not be considered in calculating the length of discontinuance for purposes of this section.

17.4 NONCONFORMING STRUCTURES

A. Authority to Continue

Any nonconforming structure may be maintained, altered, enlarged, rebuilt, restored and repaired so long as it remains otherwise lawful, subject to the restrictions of this section. No structure shall be considered nonconforming in terms of required parking when the fee-in-lieu provisions of Section 15.11 (In-Lieu-of Fee for B-2 District) have been utilized for that structure.

B. Maintenance, Repair, Alteration and Enlargement

Any nonconforming structure may be maintained, repaired, altered or enlarged. However, except as specifically allowed by this section, no such maintenance, repair, alteration, or enlargement shall either create any new nonconformity or increase the degree of any existing nonconformity of all or any part of such structure as it existed on the effective date of this Code. However, the following actions are specifically permitted:

1. Front and Rear Setback Vertical Extensions

Any portion of a nonconforming structure that is nonconforming with respect to a required front or rear setback may be extended vertically within its existing perimeter walls but may not be extended horizontally.

2. Side Setback Vertical Extensions

Any portion of a nonconforming structure that is nonconforming with respect to a required side setback may be extended vertically within its existing perimeter walls. However, no such extension shall be allowed within ten (10) feet of any side lot line in the R-1 and R-2 Districts or within six (6) feet of any side lot line in the R-3 and R-4 Districts.

3. Side Setback Horizontal Extensions

Any portion of a nonconforming structure that is nonconforming with respect to a required side setback may be extended horizontally between the required front and rear setback lines at a distance from the side lot line equal to the greater of the minimum existing distance between said side lot line and said nonconforming portion or ten (10) feet in the R-1 and R-2 Districts and six (6) feet in the R-3 and R-4 Districts.

4. Roof Elevation Extensions

Any portion of a nonconforming structure that is nonconforming with respect to the permitted maximum elevation may be extended horizontally at an elevation in excess of said permitted maximum elevation. However, the top of the roof of such extension shall not exceed the existing elevation of the nonconforming structure.

5. Roof Height Extensions

Any portion of nonconforming structure located on a conforming lot in a single-family residential district that is nonconforming with respect to the permitted maximum height and that is a nonconforming structure solely due to the nonconforming height of the structure may be extended horizontally at a height in excess of said permitted maximum height, but not in excess of the roofline of the existing structure, or horizontally and

vertically at a height in excess of the permitted maximum height, but not in excess of the height of the structure as of the date of initial occupancy of the original structure. Such extension shall not be permitted where the height of the structure, as of the date of initial occupancy of the original structure, exceeded the maximum height authorized by law. In either case, such extension shall not extend more than twenty-four (24) inches beyond the exterior face of the exterior walls of said existing structure. For the purposes of this section, any vertical or horizontal extension of a nonconforming structure in violation of the above shall be construed to increase the degree of an existing nonconformity.

C. 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.

D. 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. If the damage or destruction to a nonconforming structure has been purposefully caused by the owner, including damage less than fifty percent (50%), the structure must be repaired or restored in accordance with this Code.
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. 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.
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.

17.5 NONCONFORMING SIGNS

A. Ordinary Repair and Maintenance

Normal maintenance and incidental repair or replacement of non-bearing sign elements and electrical wiring and fixtures may be performed on any sign. Any repair or replacement shall, whenever possible, eliminate or reduce any nonconformity in the element being repaired or replaced and, further, this section shall not be deemed to authorize any violation of this Article.

B. Alteration, Enlargement and Moving

No nonconforming sign shall be changed or altered in any manner that would increase the degree of its nonconformity, be enlarged or expanded, be structurally altered to prolong its useful life, or be moved in whole or in part to any other location where it would remain nonconforming. A change in sign message which does not otherwise violate the provisions of this Code shall not be deemed to be prohibited by this section.

C. Change of Sign

A nonconforming sign that has been changed to eliminate its nonconformity or any element of its nonconformity shall not thereafter be changed to restore such nonconformity or nonconforming element.

D. Damage or Destruction

Any nonconforming sign, or any nonconforming element of a sign capable of change or discontinuance separate from other elements of the sign, damaged or destroyed by any means to the extent of fifty percent (50%) or more of its replacement cost new shall not be restored but shall be removed or brought into conformity with the provisions of this Code.

E. Termination of Sign

1. Any nonconforming sign the use of which is discontinued for a period of sixty (60) consecutive days, regardless of any intent to resume or not to abandon such use, shall be deemed to be abandoned and shall not thereafter be reestablished or resumed. Every such sign shall be immediately removed or brought into conformity with the provisions of this Code. Any period of discontinuation caused by government actions, strikes, material shortages or acts of God, and without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for purposes of this section.
2. Any nonconforming sign advertising, identifying or pertaining to a business on the premises on which it is located shall be terminated upon any change in the ownership or control of such business.

F. Signs Associated With Certain Special Use Permits

Where a legal nonconforming business is operating in a residential district pursuant to a special use permit lawfully issued prior to the effective date of this Code, any lawfully existing nonconforming sign that is located on the premises of, and accessory to, such business may be maintained, repaired, replaced, changed, altered or structurally altered in a manner otherwise inconsistent with this section, as long as any such maintenance, repair, replacement, change, alteration or structural alteration does not increase the degree of nonconformity of the sign with area, setback or height regulations

17.6 NONCONFORMING LOTS OF RECORD

A. Creation of a Nonconforming Lot of Record

A nonconforming lot of record is a lot of record that:

1. Was created by a plat or deed recorded at a time when the creation of a lot of such size, shape, depth and width at such location would not have been prohibited by any ordinance or other regulation.

2. Is located in a residential district and meets the minimum lot area and lot dimension for a nonconforming lot, or is located in a district other than a residential district.
3. Was vacant on June 18, 1988, or became vacant thereafter by reason of demolition or destruction of a nonconforming structure that is not authorized to be rebuilt or replaced.
4. Was a through lot created pursuant to Paragraph D below.

Except as authorized by Paragraph D below, a legal nonconforming lot of record cannot be created by the sale or transfer of property that results in the creation of a nonconforming lot of record or that increases the degree of nonconformity of any existing nonconforming lot of record.

B. Authority to Use for Single-Family Detached Dwellings in Residential Districts

In any residential district, notwithstanding the regulations imposed by any other provisions of this Code, a single-family detached dwelling and any permitted accessory structure may be erected, maintained, altered, enlarged, rebuilt, restored and repaired on a legal nonconforming lot of record. Construction of such dwelling and any accessory structure, shall comply with all the regulations applicable to such dwellings and accessory structures in the zoning district in which the lot in question is located.

C. Authority to Use for Permitted Uses in Non-Residential Districts

A legal nonconforming lot of record located in any district other than a residential district may be developed for any use permitted or specially permitted in the district in which it is located if, and only if, the development of such lot meets all requirements of the district in which it is located, including floor area ratio, coverage and setback requirements, with the exception of lot area, width, and depth requirements.

D. Exception for Through Lots

A through lot that meets the following standards may be subdivided, but only into two (2) lots of substantially equal area. Each of the resulting lots shall be deemed to be a legal nonconforming lot of record subject to the requirements of this section.

1. Is a lot of record.
2. Was platted prior to October 4, 1995.
3. Was created by a plat or deed recorded at a time when the creation of a lot of such size, shape, depth and width at such location would not have been prohibited by any ordinance or other regulation.
4. Is the only through lot that is a lot of record within the block in which it is located.
5. Is capable of being subdivided into two (2) lots, each containing not less than eighty-seven and one-half percent (87.5%) of the required lot area for the zoning district in which it is located, and each having a lot width and depth no less than those required for nonconforming lots within that district.

6. Is capable of being subdivided without creating any new, or increasing any existing, nonconformity with respect to any building located on such through lot.
7. Is not capable of being subdivided in conformance with all of the requirements of this Code.