

ARTICLE 15 NON-CONFORMING USE, STRUCTURE, AND LOTS

Sec. 15.01 Purpose

Within the zoning districts established by this Ordinance there exist: lots, structures, uses of land and structures, and characteristics of use which were lawful prior to adoption of this Ordinance, but do not conform to provisions of this Ordinance or which may be made non-conforming as a result of future amendments to this Ordinance. These include structures that were granted variances under the provisions of a previous ordinance. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.

Sec. 15.02 Legality of Non-Conformities

Non-conformities will be classified as “legal” or “illegal” based on the following guidelines. Regulation of non-conformities will vary based on their legality.

- A. Illegal non-conformities are those that have been developed in conflict with zoning regulations.
- B. Legal non-conformities are those that existed legally before the effective date of this ordinance, or before some amendment to this ordinance which resulted in the non-conformity.

Sec. 15.03 Reductions of the Degree of Non-Conformance

A reduction of the degree of non-conformance in one respect is not permitted to offset an increase in the degree of non-conformance in another respect. Thus, square footage may not be “traded” from one portion of a building to another. Nor may one non-conforming use be replaced by another unless the degree of non-conformance is reduced in some way.

Sec. 15.04 Non-Conforming lots of Record

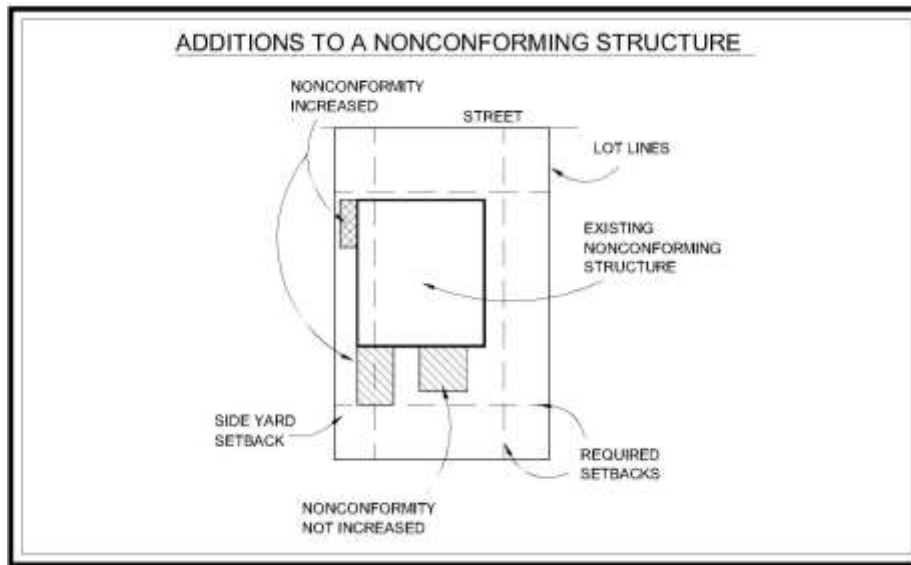
A legal non-conforming lot of record may be used as a buildable lot even though it does not meet the lot width or area requirements for the zoning district in which it is located, provided all structures comply with setback requirements required in the zoning district in which it is located. If two or more non-conforming contiguous lots are under common ownership, the lots may not be treated as separate lots unless in a manner consistent with the dimensional requirements of this ordinance. A nonconforming lot may not be changed in a way that increases its non-conformity.

Sec. 15.05 Non-Conforming Structures

Where a lawful structure exists at the effective date of adoption of this Ordinance or some future amendment to this Ordinance, that could not be built under the terms of this Ordinance or some future amendment to this Ordinance, by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provision:

- A. No such non-conforming structure may be moved, enlarged or altered in a way which increases its non-conformity, unless granted a variance by the ZBA. However, any non-conforming structure or portion of a non-conforming structure may be altered to decrease its non-conformity, or in a way that neither increases nor decreases the non-conformity (See Figure 7-1, next page).

FIGURE 15-1



- B. Should such non-conforming structure or non-conforming portion of structure be destroyed by any means to an extent of more than one hundred (100) percent of its assessed value at time of destruction, or fifty (50) percent of its market value at the time of its destruction as determined by a certified appraiser hired by the property owner, it shall not be reconstructed except in conformity with the provisions of this Ordinance, unless a variance is granted by the Zoning Board of Appeals.
- C. Should such structure be moved for any reason, it shall hereafter conform to the regulations for the zoning district in which it is located after it is moved.

Sec. 15.06 Non-Conforming Uses of Land

Where a lawful use of land exists, which would not be permitted by the regulations imposed by this Ordinance, or a future amendment to this Ordinance, the use may be continued so long as it remains otherwise lawful provided:

- A. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.
- B. No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance.
- C. If any such non-conforming use of land ceases for any reason for a period of more than twelve (12) consecutive months, such cessation of activity shall be determined to demonstrate an intent to abandon and the use shall be reviewed by the ZBA as outlined in Section 15.09. If the non-conforming use is determined to have been abandoned than any subsequent use of such land shall conform to the regulations specified by this Ordinance for the zoning district in which such land is located.
- D. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such non-conforming use of land.
- E. A non-conforming use of land may be changed to another non-conforming use by approval of the Zoning Board of Appeals, provided that the Zoning Board of Appeals determines that

the proposed use is more consistent with the current zoning classification than the current use based on the standards in Section 15.10. Whenever a non-conforming use of land has been changed to a conforming use, it shall not thereafter be changed to a non-conforming use.

Sec. 15.07 Non-Conforming Uses of Structures and Land

If a lawful use involving individual structures or involving structure and premises in combination exists at the effective date of adoption of this Ordinance, or future amendment to the ordinance that would not be allowed in the zoning district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No existing structure devoted to a use not permitted by this Ordinance in the zoning district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the zoning district in which it is located.
- B. Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.
- C. If no structural alterations are made, any non-conforming use of a structure, or structure and premises, may be changed to another non-conforming use by approval of the Zoning Board of Appeals provided that the Zoning Board of Appeals determines that the proposed use is more consistent with the current zoning classification than the current use based on the standards in Section 15.10. Whenever a non-conforming use has been changed to a conforming use, it shall not thereafter be changed to a non-conforming use.
- D. When a non-conforming use of a structure, or structures and premises in combination, is discontinued or abandoned for twelve (12) consecutive months such cessation of activity shall be determined to demonstrate an intent to abandon the non-conforming use and the use shall be reviewed by the ZBA as outlined in Section 15.09. If the non-conforming use is determined to have been abandoned than it shall not thereafter be used except in conformity with the regulations of the zoning district in which it is located.
- E. Where non-conforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land. Destruction for the purpose of this section is defined as damaged to an extent more than one hundred (100) percent of the assessed value at time of destruction. Repairs and Maintenance
 - A. For any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of twelve (12) consecutive months for ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding twenty five (25) percent of the current assessed value of the non-conforming structure or non-conforming portion of the structure, provided that the cubic content existing when it became non-conforming shall not be increased in violation of this article.
 - B. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by the Building Inspector, unless the property is condemned by the Village.

Sec. 15.08 Chance of Tenancy or Ownership

A non-conforming structure, or use of land or structure, may be sold or change tenants without affecting its non-conforming status.

Sec. 15.09 Standards for Determining Abandonment

If the Village identifies a legal nonconforming use that they believe has been abandoned, they shall submit the property to the ZBA for a determination of abandonment. The ZBA shall hold a public hearing, following notice as outlined in Section 6.02 E of this Ordinance. The ZBA shall determine whether or not intent to abandon the nonconforming use was demonstrated based on a preponderance of the following factors:

- A. Reports such as from the building inspection or health department indicating the property is or has not been suitable for occupation.
- B. Disconnection of utilities
- C. Evidence that the use was relocated to a new site.
- D. Evidence of a “going out of business” sale.
- E. Signs advertising the business has been removed.
- F. The use has been discontinued for 1 year, except where government action such as road construction has prevented access to the premises, or where a clear intent to discontinue has not been demonstrated.
- G. Removal of the equipment or fixtures necessary for the operation of the nonconforming use.
- H. Request by the property owner for changes in their property tax designation inconsistent with the nonconforming use.
- I. Other actions by the property owner or lessee that demonstrates an intent to abandon the nonconforming use such as allowing the property to go into foreclosure.

Sec. 15.10 Standards for Allowing the Change in a Non-Conforming Use

A property owner may request approval from the ZBA to change a nonconforming use to another nonconforming use. The ZBA shall hold a public hearing following notice as outlined in Section 6.02 E of the zoning ordinance. The ZBA shall approve the request if it determines that the proposed use is more consistent with the current zoning classification than the current use based on the following factors:

- A. The similarity of zoning districts each use is permitted in and whether they are permitted by right or by conditional use permit (CUP).
- B. The anticipated off-site impact of each use due to traffic, hours of operation, and generation of noise, dust or odors or general intensity of the proposed use. such as from the building inspection or health department indicating the property is or has not been suitable for occupation.

Sec. 15.11 Uses Subject to Conditional Use Permit Approval Not Non-Conforming Uses

Any use which requires special land use approval and has been granted such approval is a permitted use and is not a nonconforming use provided it continues to comply with the conditions of that approval. An existing legal use that is located in a zoning district that currently requires special land use approval, but which did not when it was established, is a legal nonconforming use until special land use approval is granted.