

ARTICLE ELEVEN: NONCONFORMITIES

Section 11.1 General

11.1.1 **Purpose:** This Article will define and regulate different types of nonconformities with the intent that ultimately such nonconformities will be brought into compliance with the requirements of this Ordinance. This Article declares that nonconformities are incompatible with surrounding conforming properties. Consequently, such nonconformities should be removed or mitigated. Their continued existence should be discouraged and they should not be enlarged upon, expanded, or extended.

[Unabated nonconformities undermine the effectiveness of zoning regulations. Some nonconformities, such as industrial activities in residential areas, are a severe detriment to the neighborhoods. Noncomplying properties are also unfair to the majority of property owners who do comply with the regulations.]

11.1.2 Definitions:

- A. **Abandoned** shall mean the discontinuance of a nonconforming use for a period of six continuous months or more. Cessation of a use due to damage caused by fire, explosion, or other catastrophe does not constitute abandonment unless there is no action to commence restoration within twelve months of the incident. Any period of discontinuance of a commercial or industrial use caused by strikes, material shortages, or other circumstances without fault of the owner shall not be considered in calculating the length of discontinuance.
- B. **Destroyed** shall mean damage to a building caused by fire, explosion, or other catastrophe in which the costs to reconstruct or repair the building exceed more than seventy-five percent of the value of the building immediately prior to the time the damage occurred.
- C. **Mitigation Plan** shall mean a strategy developed by the property owner, Zoning Board of Appeals, and approved by the Village Board of Trustees to eliminate as many nonconforming aspects of a nonconforming use as possible and to alleviate or mitigate any negative impacts of the use on surrounding properties.
- D. **Nonconforming feature** shall mean a characteristic of a building or property such as signs, parking, loading, landscaping, performance standards, or condition of a special/provisional use which lawfully existed prior to the enactment of the requirements of this Ordinance, but does not comply with the current requirements of this Ordinance.

- E. **Nonconforming location** shall mean a use which lawfully existed prior to the enactment of the requirements of this Ordinance and is permitted in the zoning district, but does not meet the location requirements of the district.
- F. **Nonconforming lot** shall mean a lot which lawfully existed prior to the enactment of the requirements of this Ordinance, but which does not meet the minimum lot size or lot width requirements of the zoning district in which it is located.
- G. **Nonconforming structure** shall mean a structure or part thereof which lawfully existed prior to the enactment of the requirements in this Ordinance, but which is not in conformance with the zoning regulations for building bulk, dimensions, height, area, yards, or floor area ratio of the district in which it is located.
- H. **Nonconforming use** shall mean a use of land or a building which lawfully existed prior to the enactment of the requirements of this Ordinance and which does not comply with the use restrictions of the zoning district in which it is located.
- I. **Nonconformity** shall mean any nonconforming aspect of a structure, land, or use as defined in this Article.
- J. **Repair, major** shall mean the repair or replacement of bearing walls, fixtures, wiring, roof, or plumbing which exceeds twenty percent of the replacement value of the building or structure.
- K. **Repair, minor** shall mean the repair or replacement of non-bearing walls, fixtures, wiring, roof, or plumbing to an extent not exceeding twenty percent of the replacement value of the building or structure.
- L. **Vacant building** shall mean the cessation of all activity in a building. Said building shall not be considered vacant if the lessee of any building shall, at any time before the expiration of said lease, cease to occupy or use said building and the owner of said building is not entitled legally to regain possession of said building.

Section 11.2 Application of Nonconforming Provisions

11.2.1 Lawful Existing Nonconformities:

- A. Any nonconformity lawfully existing on the effective date of this Ordinance or prior Zoning Ordinances, but does not conform with the regulations of this Ordinance, may be continued under the regulations of this Article.

- B. If a building or land hereafter becomes subject to the provisions of this Ordinance, whether by annexation to the Village or otherwise, and any aspect of the use or land is nonconforming, such use or aspect of the use shall be considered a lawful nonconformity and may continue under the provisions of this Article.
- C. If a nonconformity is created by subsequent amendment to this Ordinance, such nonconformity shall be considered a lawful nonconformity which may continue subject to the provisions of this Article.
- D. Any use, structure, or feature which was illegally established shall not be permitted to continue under the provisions of this Article.

11.2.2 Rules of Interpretation:

- A. The regulations of this Article pertaining to a building occupied by a nonconforming use shall apply not only to buildings completely occupied by such a use, but shall also apply to buildings in which the nonconforming use occupies only a portion of the building.
- B. Nothing herein contained shall be construed as prohibiting change in tenancy, ownership, or management of a nonconforming lot, use, or structure, provided such change is otherwise lawful.
- C. A variation granted by the Zoning Board of Appeals shall not be considered a nonconformity and shall not be subject to the provisions of this Article.

11.2.3 Exceptions:

- A. If the Village takes by eminent domain or by purchase a portion of a lot for a public right-of-way, and thereby renders said lot or a structure on said lot nonconforming, the following rules shall apply:
 - 1. A nonconforming lot may be developed or redeveloped for any use permitted in the district in question as long as all development regulations in said district, other than those regulating lot area and width, are complied with.
 - 2. A nonconforming structure may be continued, structurally altered, repaired, or reconstructed provided that such modifications shall not increase the nonconformity.

- B. Nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building or lot for which there was an approved building permit at the time of the effective date of this Ordinance. Such building shall be considered a lawful nonconformity and shall be subject to the provisions of this Article. A permit which has been abandoned under the provisions of Article Twelve shall not qualify for this exemption.

Section 11.3 Rules for Specific Types of Nonconformities

11.3.1 Nonconforming Structures and Lots:

- A. Nonconforming lots shall comply with the provisions for substandard lots in Article Four.
- B. Alterations to a nonconforming structure shall not increase, extend, or expand the nonconformity.
- C. If the part of the structure which is not in conformance is demolished, removed, or declared uninhabitable, it shall not be replaced or restored unless it is in conformance with the regulations in this Ordinance.

11.3.2 Nonconforming features:

- A. Nonconforming parking and loading areas shall comply with the provisions in Article Seven.
- B. Nonconforming signs shall comply with the provisions in Article Eight.
- C. Nonconforming screening and landscaping areas shall comply with the provisions in Article Nine.
- D. Any other nonconforming feature shall be allowed to continue to exist, but cannot be altered, enlarged, or expanded in a manner that would increase its nonconformity.
- E. Any other nonconforming feature that is removed, demolished, or destroyed shall be replaced or restored only if it is conformance with the regulations in this Ordinance, unless the nonconforming feature is a historically significant element of a structure designated as a landmark or is located within a conservation or historic district.

- F. The sale of merchandise or food outdoors is only allowed upon receipt of a permit issued by the Village, unless permitted otherwise by the provisions of this Ordinance. When the sales are not permitted by the provisions of this Ordinance, they shall be discontinued immediately.
- G. Nonconforming accessory uses shall be terminated when the principal use is terminated.

11.3.3 Nonconforming Provisional and Special Uses:

- A. Any provisional use that is nonconforming with respect to location, which is abandoned, demolished, destroyed, or declared uninhabitable, shall not be replaced or restored unless it is to a use that is permitted at that location.
- B. No provisional use that is nonconforming with respect to location shall be:
 - 1. Expanded to another part of the building; or
 - 2. Enlarged, extended, or expanded unless the use is changed to a use which is permitted at that location; or,
 - 3. Structurally altered or undergo major repairs.
- C. Any use that would be required to be approved as a provisional or special use, that was legally established prior to the adoption of this Ordinance, which is abandoned, demolished, destroyed, or declared uninhabitable shall not be replaced or restored unless it is approved in accordance with Article Five.
- D. Any provisional or special use shall not expand into another part of the building, enlarge the building, make structural alterations, or make major repairs unless approved in accordance with Article Five.

11.3.4 Nonconforming Use of Land:

- A. Any lawful use of land which becomes nonconforming as a result of the adoption of this Ordinance, annexation, or subsequent amendments, may be continued only for a period of five years from the date upon which such use becomes nonconforming.

[Since the use of land does not represent major improvements, it is reasonable to expect a land owner to bring the property into compliance. Some examples where this may apply are for salvage yards, used car lots, and parking lots.]

- B. The term “use of land” includes both principal and accessory uses and refers not only to the use of bare or unimproved land, but also to any use of land which involves a structure or involves an accessory structure, but no principle structure. Temporary structures or manufactured homes that are not part of a unified development shall be considered accessory buildings.
- C. Any nonconforming use of land that is abandoned or discontinued for a continuous period of six months or more shall not be resumed unless it complies with the provisions of this Ordinance.
- D. Any nonconforming use of land shall not expand on the zoning lot or move to another portion of the zoning lot unless it complies with the provisions of this Ordinance.

11.3.5 Nonconforming Use of a Building or other Structure:

- A. If a nonconforming use of a building or other structure is abandoned or discontinued for a continuous period of one year or more, or the building or other structure containing said use is demolished, destroyed, or declared uninhabitable, then the subsequent use of such building or other structure shall be in conformance with the provisions of this Ordinance.
- B. If a structure with a nonconforming use is damaged by fire, explosion, or other catastrophe, but is not destroyed, then repairs to the structure will be allowed within twelve months from the date the damage was incurred, and shall be carried on without interruption.
- C. Any nonconforming use of a structure shall not expand into any other portion of the structure unless it complies with the provisions of this Ordinance.
- D. No major repair or structural alteration may be made to any portion of a structure which contains a nonconforming use if the effect of said major repair or alteration is to extend the life of that portion of the structure.
- E. Any structure with a nonconforming use may not change to another use unless the new use complies with the provisions of this Ordinance.

Section 11.4 Provisions for Existing Residences in R-1, R-2, and R-3 Zoning Districts

- A. If a nonconforming structure in the R-1, R-2, or R-3 zoning districts is damaged as a result of fire, explosion, or other catastrophe; and the owner wishes to reconstruct or repair the structure for the same use; but the owner believes that the damaged structure does not meet the definition of a destroyed structure based upon the value of the structure as established by the equalized assessed valuation; then the Zoning

Administrator may require that the owner submit evidence of the value of the structure immediately prior to the occurrence causing said damage and of the estimated cost of said repair or reconstruction below fifty percent of the value of the structure prior to the occurrence. Evidence of the value of the structure immediately prior to the said occurrence may include, but not be limited to a recent appraisal on such property.

[The adoption of these Regulations created nonconforming residential uses in the R-1 through R-3 Districts. Pursuant to applicable Village regulations as set forth in this Ordinance, a nonconforming use damaged by fire, explosion, or other catastrophe must be rebuilt as a conforming use if such damage amounts to more than seventy-five percent of the value of the structure immediately prior to the occurrence. In this case, the structure is considered destroyed. In order to lessen the effects of the new regulations, these nonconforming use provisions set forth criteria, by which a nonconforming use that is destroyed may be rebuilt and continued as a nonconforming use.]

- B. Within twenty days following submission of documents to support the owner's claim that the structure was not "destroyed" as defined in this Article, the Zoning Administrator shall render a decision regarding whether said structure was in fact "destroyed".
- C. If the Zoning Administrator determines that the structure was destroyed, then the structure shall not be repaired or reconstructed for the same or another nonconforming use except in compliance with an approved site plan which meets the requirements for provisional uses as enumerated in Article Five.
- D. The reconstruction of the nonconforming use must commence within the first twelve months following the day on which the nonconforming use was destroyed.

Section 11.5 Administration

- 11.5.1 **Evidence of nonconformity:** The burden of establishing a legal nonconformity is to be met by the owner or party seeking to apply the provisions of this Ordinance. The following items may constitute sufficient proof to establish if the nonconformity was lawfully established:

[As part of the zoning approval process, Article Twelve requires the Zoning Administrator to determine if any part of the building permit application is nonconforming. If there is a nonconformity, then the owner must supply adequate proof that the nonconformity is lawful as defined in this Article. Upon submitting such evidence, the permit will be reviewed to determine if it complies with the requirements of this Article.]

[If the owner cannot prove that the nonconformity is lawful, then it will be necessary to bring the property into compliance prior to issuing any permit. If the owner fails to comply, zoning enforcement action may be necessary.]

[Some reasons why the property may no longer be conforming is a change of zoning, amendments to the zoning district which no longer allow the use, or annexation of property that does not conform to Village zoning districts.]

- A. Date of construction of the structure or date the use was established (Proof may consist of a certified copy of the business license or structure permit).
- B. Continuous operation of the nonconformity (Proof may consist of affidavits signed by persons who have personal knowledge of the continuous use of the premises since said use was in conformity with the then-existing zoning regulations).
- C. Any advertisement, correspondence, or other documentation with a date identifying that the operation was legally in existence prior to adoption of this Ordinance, annexation, or subsequent amendments.
- D. The date of collection or reporting of taxes, fees, or other payments that may establish the date of existence of the nonconformity.
- E. Any other proof of documentation that can legally establish the date of existence of the nonconformity.

11.5.2 Illegal uses or terminated nonconforming uses: Properties subject to zoning enforcement for an illegal use or termination of a nonconforming use prior to the date of the adoption of this Ordinance are not eligible to continue as a nonconforming use and must be ceased.

11.5.3 Notification of nonconforming uses: If a non-residential property undergoes a change in ownership, or a change in use, or if a new owner desires to expand, remodel, or renovate any structure on the property or do any other work that requires a building or occupancy permit, as required by this Ordinance, the owner shall meet with the Zoning Administrator to discuss the nonconforming status and, if required, the preparation of a Mitigation Plan.

Upon notification of a nonconforming use or upon determination that a change in ownership or change in use or application for permit as provided herein, the Zoning Administrator shall prepare a notice of the nonconforming use, containing the following items:

- A. A description of the real estate sufficient for identification.
- B. The current zoning designation.
- C. A description of why the property is nonconforming.
- D. An explanation of regulations regarding nonconforming uses of structures.

If an owner does not wish to comply with all the requirements stated in this Ordinance, the owner shall have a period of three months from the date of change in ownership or change in use or application for permit as provided herein, whichever is earlier, to submit a Mitigation Plan. If no plan is timely submitted and the property does not meet the requirements of this Ordinance, the use of the property shall be terminated.

11.5.4 Mitigation Plan submission: The following material shall accompany an application for a Mitigation Plan:

- A. Application for Mitigation Plan.
- B. Site plan meeting the requirements of this Article.
- C. A description of proposed measures to mitigate the impact of the nonconforming use and time schedule for instituting such measures.
- D. Fee as established by the Village Board of Trustees from time to time.

11.5.5 Mitigation Plan site plan requirements: Each application for a Mitigation Plan approval shall be accompanied by a site and landscape plan (collectively, the "site plan"). The dimensions of said site plan shall not exceed twenty four inches by thirty six inches and shall be drawn to a scale which is not numerically greater than one hundred feet equals one inch. The following data and information shall be included in said site plan:

- A. The location, dimension, material, and configuration of all buildings, structures, and other improvements.
- B. A statement of the current use of the property. The owner may substitute another nonconforming use, insofar as the use proposed to be allowed through the Mitigation Plan is equal to, or is more restricted than, the classification of the former use and such substitution or addition does not increase congestion in the streets, impair the health, safety, morals or general welfare of the district in which it is located.
- C. The location and extent of usable open space.

- D. The location, access, and other dimensions of existing and proposed off-street parking facilities and the number and configuration of spaces to be provided.
- E. The location, dimensions, and materials of existing and proposed sidewalks, driveways, and other impervious surfaces.
- F. The location and intensity of illumination of any illuminated areas.
- G. The proposed use of open space.
- H. A landscaping plan in accordance with the requirements of Article Nine.
- I. The location of all property lines, utilities, and related easements, including electric lines, storm drainage, sanitary sewers, and water services.
- J. The elevation of all buildings and structures to depict height.
- K. The lot size in square feet and the dimensions thereof.
- L. The land uses surrounding the lot(s) for which site plan approval is being sought.
- M. A date, north arrow, scale, legal description and address of the property, and name of the development.

11.5.6 Procedure for Mitigation Plan review:

- A. Upon receipt of a complete application with the accompanying material, the Zoning Administrator shall schedule the item to be reviewed by the Zoning Board of Appeals.
- B. The Zoning Administrator shall prepare a report, presenting the facts of the case to the Zoning Board of Appeals. The report shall make a recommendation to forward the case to the Village Board of Trustees; to approve; to approve with additional requirements; or to defeat the proposed Mitigation Plan. In the event the Zoning Board of Trustees defeats the proposed Mitigation Plan, the case shall not be forwarded to the Village Board of Trustees.
- C. The Zoning Board of Appeals shall conduct a hearing in accordance with the procedures in Article Thirteen.

11.5.7 Mitigation Plan findings: Before approving any Mitigation Plan, the Zoning Board of Appeals shall make a favorable finding of fact, solely based upon evidence presented at the public hearing. The findings shall always include the following:

- A. That the proposed continued operation will not increase congestion in the streets, or impair the health, safety, morals or general welfare of the surrounding properties.
- B. That there is a plan to bring as many features of the use into compliance with this Ordinance as is practical, or with the intent of the Ordinance.
- C. That the owners are taking adequate measures to offset negative impacts from the operation.
- D. That the continuation of the nonconforming use, in consideration of the degree of land use conflict between a nonconforming use and its surrounding properties, will diminish the value of nearby property, nor impair the public health, safety, morals or general welfare of the surrounding properties.

11.5.8 **Mitigation Plan approval:** The Zoning Board of Appeals will approve or defeat the proposed Mitigation Plan. Approval of the Mitigation Plan may also include additional conditions and requirements as are appropriate or necessary for the protection of the public health, safety, and welfare, and to satisfy the findings required for approving a Mitigation Plan. Such conditions may include, but are not limited to the following:

- A. Regulate the location, extent, and intensity of certain aspects of the use as appropriate.
- B. Require additional landscaping or screening of such uses by means of fences, walls, and vegetation.
- C. Regulate vehicular access and the design and location of parking and loading areas and structures.
- D. Require conformance to health, safety, and sanitation requirements as necessary.
- E. Regulate signs and outdoor lighting to be more compatible with the surrounding neighborhood.
- F. Any other conditions deemed necessary to effect the purposes of this Ordinance.

11.5.9 **Mitigation Plan certificate:** As part of the approval of the request for a Mitigation Plan, the Zoning Board of Appeals shall complete a "Certificate of Approval" which shall contain the following information:

- A. A legal description and common address of the subject property.
- B. A statement for each finding summarizing how such finding has been satisfied.

- C. Any conditions, safeguards, or flexible standards imposed on the Mitigation Plan as a condition of approval.
 - D. A list of mitigation measures not indicated on the site plan.
 - E. A time table for undertaking mitigation measures.
 - F. Any exhibits, including the site plan, shall be attached to the Mitigation Plan permit with a statement that the Mitigation Plan approval is conditioned on the project being operated in accordance with such plans unless specific exceptions are stated in the Certificate of Approval.
- 11.5.10 Failure to approve Mitigation Plan: If the Zoning Board of Appeals fails to approve the Mitigation Plan, the landowner may elect one of the following options:
- A. Resubmit a new application and plan.
 - B. Appeal to the Village Board of Trustees. If the Village Board of Trustees disapproves the Mitigation Plan, then the application shall be referred back to the Zoning Board of Appeals to determine a termination date for the nonconforming use.
 - C. In any one case, only three proposed Mitigation Plans may be submitted. If none of these plans are approved by the Zoning Board of Appeals or, upon appeal, to the Village Board of Trustees, then a date for termination of the nonconforming use must be established.
 - D. Such termination date shall be based on the severity of the impacts, the expected economic life of the structure, the market value of the investment, and any other relevant factors. In no case shall the termination date be longer than ten years.
- 11.5.11 Failure to reapply for or to comply with the Mitigation Plan: Failure to comply with the Mitigation Plan shall constitute a zoning violation and shall be subject to zoning enforcement action.

END ARTICLE ELEVEN.