

## ARTICLE 15. NONCONFORMITIES

- 15.1 GENERAL APPLICABILITY
- 15.2 NONCONFORMING USE
- 15.3 NONCONFORMING STRUCTURE
- 15.4 NONCONFORMING LOT OF RECORD
- 15.5 NONCONFORMING SITE ELEMENTS

### 15.1 GENERAL APPLICABILITY

#### A. Authority to Continue

Any use, structure, lot, or site element that legally existed as a nonconformity as of the effective date of this Ordinance, and any use, structure, lot, or site element that has been made nonconforming as of the effective date of this Ordinance, and any subsequent amendments, may continue subject to the provisions of this Article so long as it remains otherwise legal. A use, structure, lot, or site element that is illegal as of the effective date of this Ordinance, remains illegal.

#### B. Burden on Property Owner

The burden of establishing the legality of a nonconformity under the provisions of this Ordinance is the responsibility of the property owner of the nonconforming use, structure, lot, or site element, or the operator of the use.

#### C. Safety Regulations

All police power regulations enacted to promote public health, safety, and welfare including, but not limited to, all building, fire and health codes apply to nonconformities.

### 15.2 NONCONFORMING USE

#### A. Definition

A nonconforming use is the use of a structure or land that at one time was an allowed use within a zoning district, but because of subsequent amendments to the Ordinance is no longer allowed.

#### B. Expansion

A nonconforming use of a structure or land cannot be expanded, extended, enlarged, or increased in intensity. Such prohibited activity includes additions or enlargements of any structure devoted entirely to a nonconforming use, and any expansion, extension, or relocation of a nonconforming use to any other structure, any portion of the floor area, or any land area currently not occupied by such nonconforming use.

#### C. Relocation

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

#### D. Change of Use

A nonconforming use can only be changed to a use allowed within the zoning district where it is located. When a nonconforming use has been changed, in whole or in part, to an allowed use, the whole or part that conforms cannot be changed back to a use that is not allowed in the district. A change of use occurs when an existing nonconforming use has been terminated and another use has commenced. Any change in use in violation of this Ordinance is deemed an abandonment of the previously existing nonconforming use.

#### E. Discontinuation or Abandonment

If a nonconforming use is discontinued, or the structure that it occupies becomes vacant and remains unoccupied for a continuous period of one year, the nonconforming use is terminated. Any subsequent use or occupancy of such land or structure must comply with all regulations of the zoning district in which the structure or land is located. A period of discontinuance caused by acts of God are not included in calculating the length of discontinuance for this section.

#### F. Damage or Destruction

In the event that any structure that is devoted in whole or in part to a nonconforming use is structurally damaged or destroyed through no fault of the property owner or tenant, the nonconforming use may be re-established provided that no new nonconformities are created and the degree of the previous nonconformity is not increased. If the structure containing the nonconforming use is a nonconforming structure, the structure may only be rebuilt, restored,

repaired, or reconstructed in accordance with Section 15.3. However, if a building permit is not obtained within one year of the date of damage or destruction, then the nonconforming use may not be reestablished unless it conforms to all regulations of the zoning district in which it is located, including use.

### 15.3 NONCONFORMING STRUCTURE

#### A. Definition

A nonconforming structure is a principal or accessory structure that at one time conformed to applicable zoning regulations, but because of subsequent amendments to the Ordinance no longer conforms to applicable dimensional regulations.

#### B. Maintenance

Normal maintenance and repair may be performed on any nonconforming structure. No repairs or reconstruction are permitted that would create any new nonconformity or increase the degree of the previously existing nonconformity.

#### C. Structural Alterations

No structural alterations are permitted 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 public safety.
2. When the alteration will eliminate the nonconformity.
3. When the alteration will not create any new nonconformity or increase the degree of any existing nonconformity. For example, if a structure is nonconforming in terms of the required front setback (i.e., does not meet the required minimum), the structure may add a rear addition if it meets all other bulk and setback requirements of the district.

#### D. Relocation

A nonconforming structure cannot be relocated, in whole or in part, to any other location on the same lot unless such relocation would make the structure conforming. A nonconforming structure may be relocated to another lot if the structure conforms to all regulations of the zoning district where it is relocated.

#### E. Damage or Destruction

1. Non-residential nonconforming structures are subject to the following:
  - a. In the event that any non-residential nonconforming structure is damaged or destroyed by an act of God to the extent of 50% or more of its replacement value at the time, then the structure may not be restored or rebuilt unless the structure, including foundation, conforms to all regulations of the zoning district in which it is located.
  - b. When a non-residential nonconforming structure is damaged or destroyed by an act of God to the extent of less than 50% of the replacement value at the time, it may be repaired and reconstructed provided that no new nonconformities are created and that the existing degree of the nonconformity is not increased. A building permit must be obtained for such rebuilding, restoration, repair, or reconstruction within one year of the date of damage or destruction. In the event that the building permit is not obtained within one year, then the structure cannot be restored unless it conforms to all regulations of the district in which it is located.
3. If a nonconforming residential structure is destroyed or damaged by an act of God, regardless of the percent of damage, it may be rebuilt to its original condition before such casualty or loss.
4. The replacement value of the structure is 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 years or, if that is not available; 3) the amount for which the structure was insured prior to the date of the damage or destruction; or, 4) an alternative method determined acceptable by the Village.

#### F. Extension of Walls for Nonconforming Single-Family and Two-family Dwellings

Where a single-family or two-family dwelling is deemed nonconforming because of encroachment into a required rear or interior side setback, the structure may be enlarged or extended horizontally or vertically along the same plane as the existing perimeter walls, so long as the resulting structure does not violate any other district regulation.

## 15.4 NONCONFORMING LOT OF RECORD

### A. Definition

A nonconforming lot of record is a lot of record that at one time conformed to the lot dimension requirements of the zoning district in which it is located, but because of subsequent amendments to the Ordinance no longer conforms to the applicable lot dimensions.

### B. Use

A nonconforming lot of record may be used for a permitted or special use allowed within the zoning district.

### C. Development

Development of a nonconforming lot of record must meet all applicable dimensional or bulk regulations of the district in which it is located with the exception of that lot dimension requirement that renders it nonconforming.

### D. Lot Division

No division of a nonconforming lot is permitted that creates a nonconforming lot and/or renders a lot or lots remaining nonconforming.

### E. Common Ownership Limitation

If two or more lots with contiguous street frontage are held in common ownership that have historically been used as a single development site, and one or more of the lots does not meet the requirements for lot width or lot area as established by this Ordinance, the land is considered to be a single zoning lot for the purposes of this Ordinance. No portion of the lots may be used, transferred, or conveyed if it does not meet the lot width and lot area requirements of this Ordinance. No division of the lot may be made which leaves the remaining lot or lots with lot width or lot area below the minimum requirements of this Ordinance without approval of a variation. No building permit may be issued for the use of any lot or portion of a lot transferred or conveyed in violation of this section.

### F. Building Permits

No building permit will be issued for the use of any lot or portion of a lot, transferred or conveyed in violation of this Article.

## 15.5 NONCONFORMING SITE ELEMENTS

### A. Definition

A nonconforming site element is a site development element, such as landscape or lighting, that at one time conformed to the requirements of this Ordinance, but because of subsequent amendments, has been made nonconforming.

### B. Maintenance

Normal maintenance and incidental repair to a nonconforming site element may be performed. No repairs or reconstruction are permitted that would create any new nonconformity or increase the degree of the previously existing nonconformity.

### C. Required Conformance

#### 1. General

All nonconforming site elements must be brought into conformance when the following occurs:

- a. A new principal building is constructed on a site
- b. An existing principal building is increased in building footprint square footage by 30% or more.

#### 2. Nonconforming Parking Lot Landscape

When a parking lot of 15 or more spaces does not conform to required parking lot landscape requirements, it must be brought into conformance when such parking lot is fully reconstructed or expanded by an additional 50% or more spaces (viz., the total number of spaces after expansion is 150% or more of the spaces prior to expansion).

- a. Resealing or re-striping of an existing parking lot, which does not entail paving, resurfacing, or replacement of the asphalt, concrete, or other paving material, is not considered reconstruction.
- b. If such action would result in creating a parking area that no longer conforms to the parking regulations of this Ordinance, such existing parking lot is not required to install all or a portion of the required landscape. The applicant is required to show that landscape cannot be accommodated on the site.
- c. If only certain requirements are able to be accommodated on the site, those elements are required. The Zoning Administrator will make the determination that all or a portion of required landscape does not have to be installed.

**3. Nonconforming Exterior Lighting**

For exterior lighting, when 25% or more of exterior lighting fixtures are replaced, all exterior lighting on the site must be brought into conformance. This is calculated as installation of new lighting posts and/or non-post mounted lighting fixtures based on the total lighting installed by the type of mounting. For example, if over 25% of the wall-mounted fixtures are to be replaced, all wall-mounted fixtures must be brought into conformance while nonconforming freestanding fixtures may remain.