

Article 12. Nonconformities

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12-101. General Provisions

A. Purpose.

1. This Article regulates and limits the continued existence of uses, structures, including pre-Code structures in Section 12-108, lots and signs that were established prior to the effective date of this Code and do not conform to its current regulations in the applicable zoning district.
2. The zoning districts established by this Code are intended to regulate the future use of land within the Village, promoting the development and maintenance of desirable residential, commercial, office, and industrial areas with compatible uses. This helps protect and enhance public health, safety, and welfare. The continued existence of nonconformities often conflicts with the goals of these districts, so their gradual elimination is generally preferred.

B. Applicability.

1. Separate restrictions are established for:
 - a. Nonconforming uses of land,
 - b. Nonconforming uses of structures designed for a permitted use,
 - c. Nonconforming uses of structures not designed for a permitted use,

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- d. Nonconforming "pre-Code" structures,
- e. Nonconforming lots of record, and
- f. Nonconforming signs.

2. The restrictions for each category of nonconformity generally correspond to how incompatible it is with permitted uses and the amount of investment associated with that type of nonconformity. When practical difficulties arise, relief from certain restrictions in this Article may be granted through a Variance (Section 2-114).
3. Nonconforming uses of land, nonconforming uses within structures designed for permitted uses, and nonconforming signs are often significantly incompatible, involve smaller investments, and have shorter economic lifespans. In such cases, the standards for addressing the nonconformity are more stringent.
4. With nonconforming uses in structures not designed for any conforming use, the degree of incompatibility is often significant, but the investment and economic lifespan are also typically substantial. In such cases, while eventual elimination is required, a longer period is allowed to amortize the investment. While this Article allows such nonconformities to continue without specific limitation of time, it restricts further investments that would make the nonconformity more permanent in inappropriate districts.

C. **Exceptions for Repairs Pursuant to Public Order.** This Article does not prohibit strengthening or restoring a structure to a safe condition if ordered by a public official who is responsible for public safety, provided the structure has been deemed unsafe. However, such restoration must comply with this Article's provisions that restrict the repair or restoration of partially damaged or destroyed structures or signs.

12-102. Inventories and Certificates of Nonconformity

- A. **Burden of Owner to Establish Legality of Nonconformity.** The burden of establishing that any nonconformity is lawfully existing under the provisions of this Article shall, in all cases, be upon the owner of such nonconformity and not upon the Village.
- B. **Certificate of Occupancy for Legal Nonconformities.**
 1. The owner, or any person receiving notice, of any nonconforming use, structure, lot or sign may at any time apply to the Village Manager for a Certificate of Occupancy to confirm the legality of such nonconformity as of a specified date. Such application shall be filed and processed pursuant to the provisions of Section 2-101 of this Code.
 2. Any person receiving notice of a nonconforming use or sign pursuant to Paragraph B-1 above shall apply to the Village Manager for a Certificate of Occupancy for the identified nonconformity within 60 days of receiving the notice. If no appeal is filed against the Village Manager's determination in the notice, the application must include an affidavit

acknowledging the determination. Such affidavits shall be kept on file by the Village Manager and shall be a matter of public record.

3. If, upon reviewing an application for a Certificate of Occupancy for a nonconformity, the Village Manager finds that the use, structure, lot, or sign in question was lawfully existing when the provision creating the nonconformity was adopted, remains lawful except for the nonconformity, and any required affidavit is complete, they will issue a Certificate of Occupancy. This certificate will confirm these facts, describe the nonconformity, and specify any termination date. If these conditions are not met, the Village Manager will deny the certificate and declare the item in violation of this Code.

12-103. Nonconforming Uses of Land and Nonconforming Uses in Structures Designed for a Permitted Use

A. Authority to Continue.

1. Any lawfully existing nonconforming use not involving the use of a structure, involving only a structure that is accessory to a nonconforming land use, or is located in a structure designed for a use permitted in the district in which it is located may be continued so long as it remains otherwise lawful, subject to the regulations contained in Subsections B through G of this Section, and in Sections 12-102 and 12-105.
2. For purposes of this Section, any structure that is used in connection with a nonconforming use of land and that has an assessed value of less than \$5,000 on the effective date of this Code or any amendment hereto creating such nonconformity shall be considered an accessory structure to the nonconforming use of land.

B. Ordinary Repair and Maintenance.

Normal maintenance, minor repairs, and updates such as replacing or moving non-bearing walls, non-bearing partitions, fixtures, wiring, or plumbing may be performed on any structures accessory to a nonconforming land use or designed for a permitted use but partially or fully used for a nonconforming purpose. However, this does not permit any violations of Subsections C through G of this Section.

C. Structural Alteration and Enlargement.

1. Structural alterations are not allowed for any structure accessory to a nonconforming land use or designed for a permitted use but partially or fully devoted to a nonconforming use unless the structure's use is brought into compliance with the zoning district's use regulations.
2. Structures that are accessory to a nonconforming land use or designed for a permitted use but partially or fully devoted to a nonconforming use may not be enlarged or expanded in any manner, including adding interior floor space, unless their use is changed to conform to the zoning district's use regulations.
3. Alterations or expansions must not create new nonconformities in parking, loading, bulk, yard, or space requirements or increase any existing nonconformities.

4. **Extension of Use.** A nonconforming use of land, a structure that is accessory to a nonconforming use of land, or a nonconforming use in a structure designed for a permitted use shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activity shall include, without limitation:
 5. An extension of such use, including any accessory uses, to any structure or land area not occupied by the nonconforming use on the effective date of this Code or any amendment that made the use nonconforming;
 6. An extension 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 that made the use nonconforming; and
 7. An extension of the hours of operation of such use beyond the normal hours of operation on the effective date of this Code, or any amendment that made the use nonconforming.
- D. **Moving.** A structure accessory to a nonconforming land use, or one designed for a permitted use but partially or fully devoted to a nonconforming land use shall not be moved in whole or in part, and regardless of distance to another location on the same or a different lot unless the structure and its use fully comply with all zoning district regulations after the move. Similarly, a nonconforming land use may not be relocated in whole or in part to another location on the same or a different lot unless it fully conforms to all zoning district regulations after the move.
- E. **Change in Use.** A nonconforming use of land not involving a structure or involving only a structure that is accessory to the nonconforming use of land, or a nonconforming use in a structure designed for a use permitted in the district in which it is located shall not be changed to any use other than a use permitted in the zoning district. When such a nonconforming use has been changed to a permitted use, it shall not thereafter be changed back to any non-permitted use. For purposes of this Subsection F, a use shall be deemed to have been so changed when a permitted use has commenced and continued for at least five days. Any change of use in violation of this Subsection shall be deemed an abandonment of the lawfully existing nonconforming use.
- F. **Damage or Destruction.**
 1. Any structure that is accessory to a nonconforming land use or designed for a permitted use but partially or fully devoted to a nonconforming use that is damaged or destroyed by more than 25 percent of its replacement cost shall not be restored unless the structure complies with the zoning district's use regulations. Additionally, restoration must not create any new parking, loading, bulk, yard, or space nonconformities or increase the degree of any existing nonconformities.
 2. If a structure is damaged or destroyed by circumstances beyond the owner's control to an extent of 25 percent or less of its replacement cost, repairs or restoration may proceed. However, such work must not create new nonconformities in parking, loading, bulk, yard, or space requirements or increase any existing nonconformities. Additionally, repairs or restoration must comply with the zoning district's regulations, require a Certificate of Zoning

Compliance, and begin within one year of the damage or destruction. The restoration must also be diligently pursued to completion.

3. In no event shall any damage or destruction to such a structure by means within the control of the owner be repaired or restored except in accordance with Subsections B and C of this Section.

12-104. Nonconforming Uses in Structures Not Designed for a Permitted Use

- A. **Authority to Continue.** Any lawfully existing nonconforming use located in a structure not designed or intended for any use permitted in its district may be continued so long as it remains otherwise lawful. It must also follow the regulations contained in Subsections B through G of this Section, and in Sections 12-102 and 12-105.
- B. **Ordinary Repair and Maintenance.** Normal maintenance, minor repairs or replacements, and the installation or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring, or plumbing are allowed for any structure used fully or partially for a nonconforming use and not designed for a permitted use in its district. However, this does not permit any violations of Subsections C through G of this Section.
- C. **Structural Alteration and Enlargement.**
 1. Structural alterations are not allowed for any structure used fully or partially for a nonconforming use and not designed for any permitted use in its district unless the structure's use is brought into compliance with the zoning district's use regulations.
 2. Structures that are used fully or partially for a nonconforming use and not designed for any permitted use in its district may not be enlarged or expanded in any manner, including adding interior floor space, unless the use is changed to conform to the zoning district's use regulations.
 3. Alterations or expansions must not create new nonconformities in parking, loading, bulk, yard, or space requirements or increase any existing nonconformities.
- D. **Extension of Use.**
 1. **Prohibited Extensions.** A nonconforming use in a structure not designed or intended for any use permitted in the district in which such structure is located shall not be extended, expanded, enlarged or increased in intensity by:
 - a. An extension of such use to any structure or land area other than that occupied by such nonconforming use on the effective date of this Code, or any amendment hereto that causes such use to become nonconforming; or
 - b. An extension of the hours of operation of such use beyond the normal hours of operation on the effective date of this Code or any amendment hereto that causes such use to become nonconforming.

2. **Permitted Extensions.** A structure used fully or partially for a nonconforming use and not designed for any permitted use in its district may be extended to any part of the structure that legally existed on the effective date of this Code, or any amendment hereto that causes such use to become nonconforming. However, such an extension is only allowed if the required off-street parking and loading spaces are provided as per Section 10-102 and 10-103 of this Code.
- E. **Moving.** A structure used fully or partially for a nonconforming use and not designed for any permitted use in its district shall not be moved in whole or in part, regardless of distance to another location on the same or a different lot unless the structure and its use fully comply with all zoning district regulations after the move. Similarly, a nonconforming land use may not be relocated in whole or in part to another location on the same or a different lot unless it fully conforms to all zoning district regulations after the move.
- F. **Change in Use.** A nonconforming use in a structure not designed or intended for use permitted in the district in which such structure is located shall not be changed to any use other than a use permitted in the zoning district. When such a nonconforming use has been changed to a permitted use, it shall not thereafter be changed back to any non-permitted use. For purposes of this Subsection F, a use shall be deemed to have been so changed when a permitted use has commenced and continued for at least five days. Any change of use in violation of this Subsection shall be deemed an abandonment of the lawfully existing nonconforming use.

G. **Damage or Destruction.**

1. Any structure used fully or partially for a nonconforming use and not designed for any permitted use in its district is damaged or destroyed by more than 25 percent of its replacement cost shall not be restored unless the structure complies with the zoning district's use regulations. Additionally, restoration must not create any new parking, loading, bulk, yard, or space nonconformities or increase the degree of any existing nonconformities.

If a structure is damaged or destroyed by circumstances beyond the owner's control to an extent of 25 percent or less of its replacement cost, repairs or restoration may proceed. However, such work must not create new nonconformities in parking, loading, bulk, yard, or space requirements or increase any existing nonconformity. Additionally, repairs or restoration must comply with the zoning district's regulations, require a Certificate of Zoning Compliance, and begin within one year of the damage or destruction. The restoration must also be diligently pursued to completion.
2. In no event shall any damage or destruction to such a structure by means within the control of the owner be repaired or restored except in accordance with Subsections B and C of this Section.

12-105. Nonconforming Accessory Uses and Structures

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

12-106. Nonconforming Lots of Record

- A. **Authority to Utilize Dwellings.** In any district in which dwellings are a permitted use, notwithstanding the regulations imposed by any other provisions of this Code, a dwelling permitted for that district may be built on a legal nonconforming lot of record or on any parcel created by real estate tax divisions prior to November 13, 1979. This is allowed even if the lot does not meet the district's area and width requirements, as long as it complies with all other regulations, including lot coverage and yard requirements.
- B. **Other Uses of Nonconforming Lots.** In any district in which dwellings are not permitted, a legal nonconforming lot of record may be used for any use permitted in the district in which it is located if, but only if, the development of such lot meets all requirements of the district in which it is located, except lot area, width and depth requirements.

12-107. Nonconforming Signs

- A. **Authority to Continue.** Except as provided in Subsection F of this Section, any lawfully existing nonconforming sign may be continued so long as it otherwise remains lawful, subject to the regulations contained in Subsections B through E of this Section and in Sections 12-102 and 12-105.
- B. **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. Furthermore, this Subsection B shall not be deemed to authorize any violation of Subsections C through F of this Section.
- C. **Alteration, Enlargement, 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 that does not otherwise violate the provisions of this Code shall not be prohibited by this Subsection.
- D. **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.
- E. **Damage or Destruction.** Any nonconforming sign, or any nonconforming element of a sign that can be altered or discontinued independently, and that is damaged or destroyed by any means

to 35 percent or more of its replacement cost, shall not be restored but shall be removed or brought into compliance with the provisions of this Code.

F. Termination of Certain Signs.

1. **Immediate Termination.** The following nonconforming signs, or sign features, shall be terminated within 30 days after the effective date of this Code by removal of the sign or by alteration of the sign to eliminate the specified feature:
 - a. Attention-getting devices.
 - b. Moving or animated signs.
 - c. Portable signs.
 - d. Temporary signs, except as expressly permitted by Section 9-106 of this Code.
 - e. Any sign that advertises, identifies or pertains to a business no longer conducted, or a product no longer sold, on the premises where such sign is located.
 - f. Any sign on a tree or utility pole, whether on public or private property.
 - g. Any sign on public property, except governmental signs authorized in Section 9-106 of this Code.
 - h. Any sign that violates any provision or requirement of Section 11-104.
 - i. Any sign constructed or erected without a valid permit.
2. **Termination by Abandonment.**
 - a. Any nonconforming sign that remains unused for 30 consecutive days, regardless of intent to resume or abandon its use, shall be considered abandoned and may not be reestablished or resumed. Such signs must be promptly removed or brought into compliance with the provisions of this Code.
 - b. Any period of discontinuance 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 paragraph.
3. **Termination by Change of Business Ownership.** 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.

12-108. Pre-Code Structures

- A. **Authority to Continue.** Any pre-Code structure that is devoted to a use that is permitted in the zoning district in which it is located may be continued so long as it remains otherwise lawful, subject to the restrictions in Subsections B through E of this Section and in Sections 12-102 and 12-105.
- B. **Repair and Maintenance.** Normal maintenance and incidental repair may be performed on any pre-Code structure; provided, however, that this Subsection shall not be deemed to authorize any violation of Subsections C through E of this Section.
- C. **Structural Alterations and Enlargements.**
 - 1. **All Districts.** Any pre-Code structure may be altered or enlarged, provided that such alteration or enlargement conforms to all applicable height, yard, setback, and all other requirements of the zoning district in which the structure is located.
 - 2. **Exceptions for Single-Family Detached Dwellings in Single-Family Residential Districts.** The exceptions in this Section shall not apply to any alteration or enlargement of any pre-Code structure that requires the removal of more than 40 percent of the total linear feet of the existing exterior walls measured along the exterior perimeter of the structure.
- D. **Moving.** No pre-Code structure 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 entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.
- E. **Damage or Destruction.**
 - 1. Any pre-Code structure that is damaged or destroyed, by any means not within the control of the owner thereof, to any extent, may be repaired or restored. However, no repair or restoration shall be made that would create any new nonconformity unless a Certificate of Zoning Compliance is obtained and restoration is actually begun within one year after the date of such damage or destruction and is diligently pursued to completion. Further, provided, that if such pre-Code structure is within the flood plain, it must comply with the requirements of Section 9-105 of Article 9 of this Code.
 - 2. In no event shall any damage or destruction to such a structure by means within the control of the owner be repaired or restored except in accordance with Subsection C of this Section.