Chapter 12 NONCONFORMITIES

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10-12-1 GENERAL APPLICABILITY

(A) Authority to Continue

Any structure, lot, or use that lawfully existed as a nonconformity as of the effective date of this Ordinance, and any lawfully existing structure, lot, or use 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 Chapter so long as it remains otherwise legal. A structure, lot, or use that is illegal as of the effective date of this Ordinance, remains illegal if it does not conform to every requirement of this Ordinance.

(B) Burden on Property Owner

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

10-12-2 NONCONFORMING USE

(A) Maintenance

Normal maintenance and incidental repair may be performed on a structure that is devoted in whole or in part to a nonconforming use, provided it does not create any new nonconformity or increase the intensity of the nonconformity.

(B) Structural Alterations

No structural alterations are permitted on any structure devoted to a nonconforming use, 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 is for the purpose of bringing about a conforming use, or

3. When the alteration will not create any new nonconformity or increase the intensity of any existing nonconformity.

(C) Expansion

A nonconforming use of a structure of 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.

(D) Relocation

A nonconforming use of a structure or land cannot be relocated, in whole or in part, to any other location on the same lot or parcel. 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.

(E) Change of Use

A nonconforming use cannot be changed to any use other than one 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.

(F) 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 180 days, the nonconforming use is deemed abandoned and cannot be reestablished or resumed regardless of intent. 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 or other events without any contributing fault by the user are not included in calculating the length of discontinuance for this section.

(G) Damage or Destruction

1. 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.

2. If the structure containing the nonconforming use is a nonconforming structure, the structure may only be rebuilt, restored, repaired, or reconstructed in accordance with the provisions of Section 10-12-3 (Nonconforming Structure).

10-12-3 NONCONFORMING STRUCTURE

(A) Maintenance

Normal maintenance and incidental 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.

(B) 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, or

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.

(C) 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.

(D) Damage or Destruction

1. In the event that a nonconforming structure is structurally damaged or destroyed by the fault of the property owner or tenant, the structure, as restored or repaired,

must comply with all requirements of this Ordinance.

2. In the event that any nonconforming structure is damaged or destroyed, through no fault of the property owner or tenant, to the extent of 50 percent 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.

3. When such a structure is damaged or destroyed, through no fault of the property owner or tenant, to the extent of less than 50 percent 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 zoning 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 zoning 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.

4. The replacement value of the structure is based on:

   (a) the sale of that structure within the previous year or, if that is not applicable;

   (b) an appraisal within the last two years or, if that is not available;

   (c) the amount for which the structure was insured prior to the date of the damage or destruction; or,

   (d) an alternative method determined acceptable by the Village Board.

(E) Removal and Replacement Exception

A legally nonconforming residential structure located in the TC Town Center District or C General Commercial District may be removed and replaced with a new comparable nonconforming residential structure upon granting of a variance by the Village Board after a public hearing before the PZC, if the following conditions are determined by the Village Board to exist:

1. That due to old age, dilapidated, or dangerous condition of the existing structure, said structure has an adverse effect on the neighborhood and owner, and repairs and restoration would be difficult, impractical and/or not cost effective; and

2. The Village Board determines that to allow such removal and replacement would not significantly impact the growth and development plans of the Village as established in the Village comprehensive plan; and

3. Failure to receive a variance to remove and replace the said structure would cause an undue hardship on the owner.

The removal and replacement of said structure shall be completed within one year of the date of the granting of the variance or the variance shall be void.

10-12-4 NONCONFORMING LOT OF RECORD

(A) Definition

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

Notwithstanding limitations imposed by other provisions of this Ordinance, a nonconforming lot of record may be used for a permitted or special use within the zoning district.

(C) Development

Development of a nonconforming lot of record must meet all applicable public health and safety provisions of Title 7, and dimensional or bulk regulations of the district in which it is located with the exception of the lot dimension requirement that renders it nonconforming.

(D) Common Ownership Limitation

If two or more lots of record have contiguous frontage in common ownership as of the effective date of this Ordinance and one or more of the lots does not meet the requirements for lot dimensions as established by this Ordinance, the lots involved are considered to be a single lot for the purposes of this Ordinance. No division of the lot is permitted that creates a nonconforming lot and/or renders the remaining lot(s) nonconforming. No zoning permit will be issued for the use of any lot or portion of a lot, transferred or conveyed in violation of this Chapter.

10-12-5 NONCONFORMING SIGNS

(A) Any sign lawfully existing or under construction on the effective date of this Ordinance that does not conform to one or more of the provisions of this Ordinance may be continued in operation and maintained indefinitely as a nonconforming sign subject to compliance with this Ordinance.

(B) Routine maintenance of nonconforming signs is allowed, including changing of copy, necessary non-structural repairs, and incidental alterations that do not expand, extend or enlarge the nonconforming features of the sign. However, no structural alteration, enlargement, or expansion may be made to a nonconforming sign unless the alteration, enlargement, or expansion will result in the elimination of the nonconforming features of the sign.

(C) Removal or Modification of Nonconforming Sign

1. A nonconforming sign and its associated sign structure must be removed or modified to comply with these regulations if:
   i. the structure to which it is accessory is demolished or destroyed to an extent exceeding 50 percent of the structure's assessed value;
   ii. the sign and sign structure is demolished or destroyed to an extent exceeding 50 percent of its replacement cost; or
   iii. if the business or use on the property ceases to operate for a continuous period of three months or more.

2. Such nonconforming sign and sign structure subject to removal under this paragraph must be removed by the owner of the sign or the owner or lessee of the property. If the owner or lessee fails to remove the sign, the Zoning Administrator must give the owner/lessee written notice of the requirements of this paragraph and the sign must be removed within 30 days of such notice.

3. If such sign is not removed or modified after the 30-day period, the Village Board may take action to authorize the removal of the sign and sign structure at the expense of the owner, agent, or person having beneficial interest in the building or premises on which the sign is located. In addition, the Village is authorized to institute and pursue all other available remedies and penalties under the law.