

CHAPTER 22 - NONCONFORMING USES

22.1 DESCRIPTION AND PURPOSE. Nonconformities are lots, structures, and uses that do not conform to one or more of the requirements of this Chapter, or a subsequent amendment, which were lawfully established prior to the effective date of adoption of this Chapter. The purpose of this Article is to specify the conditions under which a nonconformity is permitted to continue to exist, as well as the conditions, which under a nonconformity must be discontinued.

A nonconformity shall not be permitted to continue to exist if it was unlawful at the time of establishment. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after passage of this Chapter by attachment on a building or premises, or additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district.

Nothing in this Chapter shall be deemed to require a change of plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Chapter and upon which construction has been diligently conducted. Actual construction shall include the placing and attaching of construction materials in a permanent position.

22.2 NONCONFORMING LOTS. A principal building and customary accessory buildings may be erected on a nonconforming lot provided that all zoning requirements are met. If the variation of a setback or other zoning restriction is required in order to erect a structure on a nonconforming lot, then such structure shall only be permitted if a variance is granted by the Zoning Board of Appeals.

22.3 NONCONFORMING STRUCTURES. A nonconforming structure may be continued provided it remains otherwise lawful. A nonconforming structure shall not be enlarged or altered in any way, which increases its nonconformity. If a nonconforming structure is moved it shall thereafter conform to the regulations for the district in which it is located after it is moved.

22.4 NONCONFORMING USES.

- A. Nonconforming Uses. In General: Except as provided for nonconforming single-family residential uses, a nonconforming use may be continued provided it remains otherwise lawful.
- 1) A nonconforming use shall not be enlarged or moved, in whole or in part, to any other portion of the lot or parcel that was not occupied by the use at the time the use became nonconforming. However, a nonconforming use may be extended throughout any part of a building, which was designed for such use, and which existed at the time the use became nonconforming.
 - 2) A structure occupied by a nonconforming use shall not be structurally altered in any manner or moved except in connection with a change to a use permitted in the district in which it is located.
- B. Nonconforming Residential Uses: A nonconforming residential use may be expanded or enlarged as follows:
- 1) The principle building may be enlarged by a maximum of twenty (20) percent of the total square footage, which existed when the use became nonconforming, provided that all applicable yard and other zoning restrictions are met.
 - 2) An accessory building may be constructed in accordance with the applicable provisions of this Chapter 8.
- C. Abandonment of Nonconforming. Use: If a property owner has an intent to abandon the nonconforming use of any parcel of land or structure and in fact, abandons the nonconforming use for a period of six (6) months, or more, then any subsequent use of the property shall conform to the requirements of this Article 2, Zoning Ordinance. When determining the intent of the property owner to abandon a nonconforming use, the Zoning Administrator shall consider such factors as the following:
- 1) Whether the property, buildings and grounds have fallen into disrepair.
 - 2) Whether signs or other indications of the existence of the nonconforming use have been removed.
 - 3) Whether equipment or fixtures necessary for the operation of the nonconforming use have been removed.
 - 4) Other information or actions that evidence an intention on the part of the property owner to abandon the nonconforming use.
- D. Substitution of Uses. A nonconforming use may be changed to another nonconforming use upon approval of the Planning Commission subject to the following conditions:

- 1) No structural alterations are required to accommodate the new nonconforming use and the proposed use is equally or more appropriate in the district than the existing use. In approving such a request, the Planning Commission may require appropriate conditions in accordance with the purposes and intent of this Chapter.
- 2) Once a nonconforming use is changed to a more restrictive classification, it shall not thereafter be changed to a less restrictive classification.
- 3) When a nonconforming use is replaced by a permitted use, it shall thereafter conform to the regulations of the district in which the use is located and the nonconforming use may not thereafter be resumed.

22.5 GENERAL CONDITIONS. The following general conditions apply to all non conforming lots, nonconforming structures, and nonconforming uses.

- A. Change of Tenancy or Ownership. The tenancy or ownership of a nonconformity may be transferred or changed. However, in the case of a nonconforming use, there shall be no change in the nature or character of such nonconformity, except as permitted by this Chapter.
- B. Maintenance and Repairs. Normal maintenance and incidental repairs, including repair or replacement of non-bearing walls, fixtures, wiring or plumbing, may be performed on any nonconforming structure or structure containing a nonconforming use.

A nonconforming structure or structure that contains a nonconforming use which is unsafe or unlawful due to a lack of repairs or maintenance, as determined by the Zoning Administrator or Building Official, may be restored to a safe condition. Where enlargement or structural alteration is necessary to allow compliance with health and safety laws, the cost of such work shall not exceed forty percent (40%) of the replacement cost of the existing structure as determined by the Village Assessor.

- C. Termination by Destruction. In the event that a nonconforming structure or structure containing a nonconforming use is partially or completely destroyed by casualty loss or act of God, the structure may be restored or reconstructed, but shall not be rendered more nonconforming than as it existed immediately preceding the casualty loss or act of God.

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