

CHAPTER 13

NON-CONFORMING USES, STRUCTURES AND LOTS

SECTION:

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6-13-1: GENERAL PROVISIONS

- A. Purpose: The purpose of this Chapter is to provide for the regulation, maintenance and gradual amortization of uses, structures and lots that were lawfully established, but are no longer in compliance with the amended Village Zoning Code (i.e. “Non-conforming Structures, Lots and Uses”). Non-conforming structures, lots and uses can substantially and adversely affect the orderly development and taxable value of other conforming property in each district. This Chapter provides for the gradual elimination of non-conforming structures, lots and uses by specifying the circumstances and conditions under which non-conforming structures, uses and lots shall be permitted, repaired, replaced or amortized. The goal of this Chapter is to promote the health, safety and welfare of the public by organizing and protecting compatible, related uses in appropriate zoning districts.
- B. Application and Scope: The provisions in this Chapter apply to non-conforming uses, structures and lots that were lawfully established, but are no longer in compliance with the amended Zoning Code. This Chapter does not authorize the continuation of any use, structure or lot that is or was initiated, constructed or established in violation of the then-existing Code (i.e. “Unlawful Use, Structure or Lot”).

6-13-2: NON-CONFORMING USES

- A. Authority to Continue: Non-conforming uses may be continued, subject to the conditions and limitations set forth in this Section. Non-conforming uses that fail to comply with the terms and provisions of this Section shall be deemed unlawful and subject to elimination.
- B. Alteration or Expansion of Use: A non-conforming use of a structure or lot shall not be altered or expanded in any way designed to increase the scope

or intensity of the existing non-conforming use or to introduce new unlawful uses on the property.

C. Relocation: A non-conforming use shall not be moved in whole or in part to another location on the same lot or any other lot, unless such use shall thereafter conform to all regulations of the zoning district in which it is located after relocation.

D. Abandonment:

1. Non-conforming use of a lot: When a non-conforming use of a lot, not involving a structure, is abandoned for a period of one hundred twenty (120) consecutive days, such use shall not thereafter be re-established or resumed. Any subsequent use or occupancy of such a lot shall comply with the regulations of the zoning district in which such a lot is located.

2. Non-conforming use of a structure: The abandonment of any non-conforming use of a lawful structure for a period of twelve (12) consecutive months shall terminate any rights conferred by this Section to continue such non-conforming use. Any subsequent use or occupancy of such structure shall comply with the regulations of the zoning district in which such a lot is located.

3. Non-conforming accessory uses: No use, which is accessory to a principal non-conforming use, shall continue after such principal non-conforming use shall have been ceased or terminated.

E. Termination of Use:

1. The following nonconforming uses shall be terminated no later than five (5) years after the effective date of this Chapter, after such use is annexed into the Village, or any amendment to the Zoning Code creating such nonconforming use, whichever is later:

a. Non-conforming commercial and industrial uses in all Residential Zoning Districts.

b. Non-conforming industrial uses in all Commercial/Business Zoning districts.

c. Non-conforming commercial uses in all Industrial Zoning Districts.

2. All non-conforming residential uses in Commercial/Business and Industrial Zoning Districts shall be eliminated upon any change in ownership. Changes in ownership include any transfer of a legal or

beneficial interest, or tenancy in a lease for a term exceeding 35 years, either by reason of a voluntary transaction, judicial order or by action of law. The Village may withhold the issuance of transfer tax stamps subject to the written commitment by the successor owner to eliminate the non-conforming residential use upon the transfer of title.

6-13-3: NON-CONFORMING STRUCTURES

- A. Authority to Continue: Non-conforming structures may be preserved, maintained and used, subject to the conditions and limitations set forth in this Section. Non-conforming structures that fail to comply with the terms and provisions of this Section shall be deemed unlawful and subject to elimination. Non-conforming garages constructed in unincorporated Lake County and annexed to the Village, shall not be subject to elimination but be subject to all other restrictions in this Section. In addition, detached garages located within the Stonegate Circle Subdivision, as defined in Ordinance No. 62-000-70, shall be permitted to make such repairs and alterations as are allowed under applicable floodplain and floodway regulations, except for those that will increase the existing garage floor area.

- B. Alteration or Expansion of Non-conforming Structures: Any non-conforming structure may be altered or remodeled to the extent permitted in this Chapter, provided, however, that no such alteration or remodeling shall either create any additional non-conformity or increase the degree of the existing non-conformity of all or part of the structure without a variance approved under the Village Zoning Code.

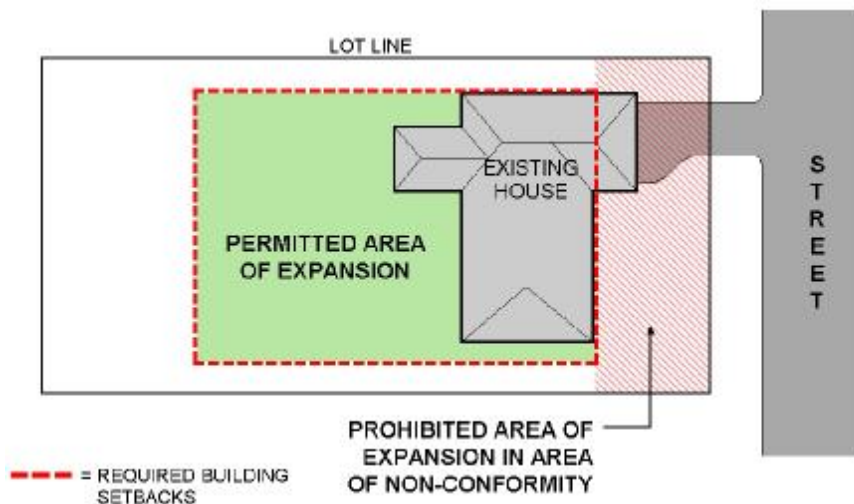


Illustration for 6-13-3-B
Permitted Alteration or Expansion of Non-Conforming Structures

- C. Maintenance and Repair of Non-Conforming Structures: Normal

maintenance and incidental repair or replacement of lawful fencing, non-bearing walls and partitions, fixtures, wiring, plumbing, parking, landscaping, roofing and mechanical equipment may be performed on any non-conforming principal structure. Subject to paragraph D, nothing in this Section shall be deemed to prevent the Owner from taking actions necessary to address an unsafe condition in accordance with any order of a public official charged with protecting public safety, and who finds such structure is unsafe in its then-present condition.

- D. Restoration and Reconstruction: All non-conforming structures that are damaged or destroyed, by any means whatsoever, willful or negligent, to the extent that restoration and reconstruction costs exceed fifty percent (50%) of the cost of replacement of the entire structure, shall be eliminated or reconstructed in a manner that conforms to all regulations of the zoning district in which it is located. For the purpose of this Chapter, the costs of restoration or reconstruction shall be cumulative for all damage occurring within the last ten (10) years and shall be compared to the value of such structure at the beginning of such ten (10) year period. However, non-conforming principal structures devoted primarily to Single-Family Residential and Assembly uses may be replaced if damaged or destroyed, regardless of the extent.

For the purposes of this Section, the cost of replacement of a structure destroyed or damaged shall be established by the presentation of a certified affidavit of a professional, licensed architect or a MAI appraiser.

- E. Abandonment: The abandonment of any non-conforming, non-residential structure for a period of twelve (12) months shall terminate any rights conferred by this Section to continue the non-conforming use and occupancy of such non-conforming structure. Any non-conforming structure abandoned in the manner herein described shall be eliminated or reconstructed in a manner that conforms to all regulations of the zoning district in which it is located and permitted.
- F. Relocation: A non-conforming structure shall not be moved in whole or in part to any other location on the same or any other lot unless every portion of said structure is made to conform to all of the regulations of the district in which it is to be relocated.

6-13-4: NON-CONFORMING LOTS

- A. Authority to Continue: Non-conforming lots that fail to comply with the terms and provisions of this Section shall be deemed unlawful and the use thereof shall be subject to elimination under the Zoning Code. Non-conforming lots may only be used if the following conditions and limitations are satisfied:

1. SEPARATE OWNERSHIP. The lot has remained in separate or individual ownership from adjoining tracts of land continuously during the entire time since such lot became nonconforming. Adjoining lots which have come under common legal and/or beneficial ownership any time since either or both of such lots became nonconforming may not be put to separate, independent uses.
2. Minimum Lot Area; Building Placement: A buildable non-conforming lot must have a total lot area of at least 75 percent of the minimum lot area required in the district in which said lot is located.
3. Development Must Comply With Zoning Code; Proportionality: New principal structures constructed on non-conforming lots shall comply with all the regulations (except lot area, lot width and/or lot depth, depending on the specific nonconformity) applicable in the zoning district in which the lot is located, provided that a building setback (Equation 1) or lot frontage (Equation 2) shall be reduced (X) from the minimum required building setback or lot frontage (C) in the same proportion as the non-conforming lot area (A) is to the minimum required lot area (B). Likewise, the impervious surface and/or Floor Area Ratio applicable to the subject property shall be reduced proportionately.

$$\text{Equation 1: } X = \frac{\text{Non-Conforming Lot Area } (A)}{\text{Min. Required Lot Area } (B)} \times \frac{\text{Min. Required Building Setback } (C)}{\text{Min. Required Building Setback}}$$

$$\text{Equation 2: } X = \frac{\text{Non-Conforming Lot Area } (A)}{\text{Min. Required Lot Area } (B)} \times \frac{\text{Min. Required Lot Frontage } (C)}{\text{Min. Required Lot Frontage}}$$

6-13-5: VARIANCES

- A. Consideration of Owner's Investment: In considering an application for a variation from any time limitations described in this Chapter for the continuation of any non-conforming use or structure, the Village shall consider, in addition to the conditions on the grant of a variation described in Chapter 14 of this Title, the value of the Owner's or Occupant's investment in the subject use or structure. Such investment shall be subject to straight-line depreciation from the date of the owner's original investment; provided in no case shall the amortization period for any structure or use be greater than double what is otherwise provided in this Chapter.

- B. Evidence: In applying for a variance from any time limitations described in this Chapter for the continuation of any non-conforming use or structure, it shall be the duty of the Owner/Occupant to present all data and documentation regarding the value of the Owner/Occupant's investment in the subject use or structure, any applicable leases and any debt financing related to the subject property. No agreements, leases, loans, or other encumbrances entered, incurred or imposed on the subject property after a structure or use becomes nonconforming shall be considered relevant in the review of an application for a variance.