

REVIEW GUIDE

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Article 8. Nonconformities

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44-08-01. Purpose and Intent

- A. **Purpose.** The purpose of this ~~a~~Article is to establish regulations for nonconforming uses, buildings, lots, ~~and~~or structures and specify those circumstances and conditions to which those nonconforming uses, ~~buildings~~, lots, ~~and~~or structures ~~and buildings~~ must comply.
- B. **Intent.**
1. The intent of this ~~a~~Article is to encourage the development and maintenance of appropriate groupings of compatible uses and thus to protect the public health, safety and welfare.
 2. The intent of the ~~v~~illage ~~b~~oard is to curtail substantial investment in ~~nonconforming uses, buildings, lots, and/or structures~~~~such nonconformities~~ and to bring about their eventual elimination in order to preserve the integrity of the zoning districts. While such nonconformities are allowed to continue, subject to the provisions of this section and without a specific time limitation, the regulations restrict further action that would make the ~~nonconforming use, building, lot, and/or structure~~ ~~nonconformity~~ more permanent as contrary to the desired eventual elimination of the nonconformity.

44-08-02. General Standards of Applicability

- A. **Authority to Continue.** Unless otherwise prohibited in this ~~chapter~~Ordinance, any nonconforming ~~use, building, lot, and/or structure~~~~building, structure, lot, and use~~ which existed lawfully at the time of the adoption of this ~~chapter~~Ordinance and which remains nonconforming, and any such ~~use, building, lot, and/or structure~~~~building, structure, lot, or use~~ which has become nonconforming upon the adoption of this ~~chapter~~Ordinance or of any subsequent amendments, may be continued subject to the provisions of this ~~section~~Article so long as it remains otherwise lawful.
- B. **Illegal Use.** Illegal uses existing on the effective date of ~~the ordinance from which~~ this ~~chapter~~Ordinance is derived shall not be validated by virtue of its enactment.
- C. **Burden of Owner to Establish Legality.** The burden of establishing the legality of a nonconformity that is lawfully existing under the provisions of the ~~e~~Ordinance shall, in all cases, be upon the property owner of the nonconforming ~~use, building, lot, and/or structure~~~~use, building, structure or lot~~ and not upon the ~~v~~illage.
- D. **Safety Regulations.** All safety regulations, including, but not limited to, building, fire, and health, shall apply to nonconforming buildings and structures.

44-08-03. Nonconforming Uses of Land

This section regulates land, buildings, or structures that, on the effective date of this ordinance ~~from which this chapter is derived~~, are used for purposes that are not permitted in the zoning district in which they are located.

- A. **Ordinary Repairs and Maintenance.** Normal maintenance and incidental repair or replacement, and installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing may be performed on any building or structure that is devoted in whole, or in part, to a nonconforming use.
- B. **Structural Alterations.** No structural alterations shall be performed on any building or structure used for a nonconforming use, except in the following situations:
1. When the alteration is required by law or is necessary to restore the building or structure to a safe condition upon the order of any official charged with protecting the public safety.
 - ~~2. When the alteration will result in eliminating the nonconformity.~~
 - ~~3. When the alteration will not create any new nonconformity, increase the degree of any existing nonconformity, or increase the bulk of the building or structure in any manner.~~
- C. **Expansion of Use.** A nonconforming use of land, buildings, or structures shall not be expanded, extended, enlarged or increased in intensity. Such prohibited activity shall include, without limitation:
1. Any extension of the hours of operation of such use beyond the normal hours of operation on the effective date of ~~the ordinance from which this chapter is derived~~ this Ordinance.
 2. Expansion of any building or structure devoted entirely to a nonconforming use.
 3. An expansion or extension of a use, or its accessory uses, to any structure, building, or land area, other than that occupied by such nonconforming use, on the effective date of the ~~e~~Ordinance, that caused such use to become nonconforming.
 4. An expansion or extension of such use, including its accessory uses, within a building ~~and/or other~~ structure, to any portion of the floor area that was not occupied by such nonconforming use on the effective date of the ~~e~~Ordinance that caused such use to become nonconforming.
- D. **Relocation.** A nonconforming use of land, buildings, or structures shall not be relocated in whole, or in part, to any other location on the same lot or parcel, or to any other lot or parcel, unless the use shall ~~due to the relocation, thereafter~~ conform to all regulations of the zoning district in ~~to~~ which it is relocated.
- E. **Change of Use.** A nonconforming use shall not be changed to any use other than a use ~~permitted-allowed~~ within the zoning district in which the use is located. When such a nonconforming use has been changed, in whole or in part, to ~~an permitted~~ allowed use, the whole or part which has been made to conform may not thereafter be changed back to a use that is not ~~permitted-allowed~~. A change of use shall be deemed to occur when an existing nonconforming use has been terminated and ~~an permitted-allowed~~ use has commenced. Any change in use in violation of this ~~chapter~~ Ordinance shall be deemed an abandonment of the lawfully existing nonconforming use.
- ~~1. The planning and zoning commission may recommend that the village board allow a change of one nonconforming use to another nonconforming use if the planning and zoning commission finds that the proposed use is more appropriate to the district than the existing nonconforming use. In permitting such a change in use, the planning and zoning commission may recommend that the village board impose conditions on the nonconforming use.~~

F. Discontinuation or Abandonment.

1. If a nonconforming use is discontinued, or becomes vacant, and remains unoccupied for a continuous period of one hundred eighty (180) days, regardless of the intent to resume or not to terminate the use, such use shall be deemed to be abandoned and shall not be reestablished or resumed.
2. Any subsequent use or occupancy of such land, building, or structure shall comply with all regulations of the zoning district in which such land, building, or structure is located.
- 2.3. The period of such discontinuance caused by government action, ~~acts of God~~ natural disaster, or other acts without any contributing fault by the user, shall not be included in calculating the length of discontinuance for this section.

G. Damage or Destruction. The following standards shall apply to buildings and/or structures damaged or destroyed by any means not within the control of the property owner. In the event a building or structure is damaged or destroyed by means within the control of the owner, the building or structure shall not be altered in any fashion except to make it conforming to all requirements of this Ordinance.

1. Replacement Value. The replacement value of the building or structure will be based on either a sale within the prior year, an appraisal within the last two (2) years, or the amount for which the building or structure was insured prior to the date of the damage or destruction.
2. Fifty (50) Percent or More of Replacement Value.
 - a. In the event that any building or structure that is devoted in whole, or in part, to a nonconforming use is damaged or destroyed, by any means not within the control of the property owner, to the extent of fifty (50) percent or more of its replacement value, then the building or structure shall not be restored or rebuilt unless the building or structure, including foundation, and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located.
 - a. ~~The structure's or building's replacement value will be based on either a sale within the prior year, an appraisal within the last two years or the amount for which the building or structure was insured prior to the date of the damage or destruction.~~
3. Less than Fifty (50) Percent of Replacement Value.
 - a. When such building or structure is damaged or destroyed, by any means not within the control of the property owner, to the extent of less than fifty (50) percent of the replacement value at that time, it may be repaired and reconstructed and used for the same purposes as it was before the damage or destruction, provided that a building permit for the repair or reconstruction is obtained within one (12) months-year of the date of damage or destruction and construction is completed within one (1) year of the issuance of the building permit.
 - b. No restoration, rebuilding, repairs, or reconstruction shall be made that would create any new nonconformity, increase the degree of any previously existing nonconformity, or increase the bulk of the building or structure in any manner.
 - c. In the event that ~~the a building~~ permit is not obtained within one (1) year or ~~that if~~ repairs are not completed within one (1) year of the issuance of the building permit, then the ~~structure or building~~ or structure shall not be restored unless the ~~structure or building~~ or structure and the use conforms to all regulations of the zoning district in which it is located.
 - b.d. ~~In the event a building or structure is damaged or destroyed by means within the control of the owner, the building or structure shall not be altered in any fashion except to make it conforming to all requirements of this chapter.~~

44-08-04. Nonconforming Buildings and Structures

This ~~s~~Section regulates buildings and structures that are existing on the effective date of ~~the~~ this Ordinance ~~from which this chapter is derived~~ that do not conform to the yard, height, lot coverage, floor area ratio or other ~~dimensional or bulk~~ provisions of this ~~chapter~~ Ordinance.

A. Ordinary Repairs and Maintenance.

1. Normal maintenance and incidental repair or replacement, and installation or relocation of nonbearing walls, nonbearing partitions, fixtures, wiring or plumbing may be performed on any nonconforming building or structure.
- ~~4.2.~~ No repairs or reconstruction shall be made that would create any new nonconformity, increase the degree of any previously existing nonconformity, or increase the bulk of the building in any manner.

B. Structural Alterations. No structural alterations shall be performed on any nonconforming building or structure, except in the following situations:

1. When the alteration is required by law or is necessary to restore the building or structure.
2. When the alteration will result in eliminating the nonconformity.
3. When the alteration will not create any new nonconformity, increase the degree of any existing nonconformity, or increase the bulk of the building or structure in any manner.

C. Additions and Enlargements.

1. A building or structure, which is nonconforming with respect to its bulk, may be added to or enlarged, provided that such addition or enlargement does not increase the degree of the existing nonconformity of the building or structure.
2. In determining the extent of the allowable addition or enlargement, the nonconformity of the building or structure shall be based only upon those portions of the building having both foundation and roof.
- ~~4.3.~~ A nonconforming building or structure shall not be added to or enlarged if such addition or enlargement would increase the degree of the existing nonconformity of the building or structure, such as but limited to by encroaching ~~further into~~ a required setback(s) more than the existing encroachment.

~~C.D.~~ Relocation. A nonconforming building or structure shall not be relocated in whole, or in part, to any other location on the same lot or parcel, or to any other lot or parcel, unless the building or structure ~~thereof shall~~ would thereafter conform to all regulations of ~~the zoning district in which it is relocated~~ this Ordinance.

~~D.E.~~ Damage or Destruction. The following standards shall apply to buildings and/or structures damaged or destroyed by any means not within the control of the property owner. In the event a building or structure is damaged or destroyed by means within the control of the owner, the building or structure shall not be altered in any fashion except to make it conforming to all requirements of this Ordinance.

1. Replacement Value. The replacement value of the building or structure will be based on either a sale within the previous year, an appraisal within the last two (2) years, or the amount for which structure or building was insured prior to the date of the damage or destruction.
2. Fifty (50) Percent or More of Replacement Value.
 - a. In the event that any nonconforming building or structure is damaged or destroyed, by any means not within the control of the property owner, to the extent of fifty (50) percent or more of its replacement value at that time, then the building or structure shall not be restored or rebuilt unless the building or structure, including foundation, thereafter conforms to all regulations of the zoning district in which it is located.

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The structure's or building's replacement value will be based on either a sale within the previous year, an appraisal within the last two years, or the amount for which structure or building was insured prior to the date of the damage or destruction.

3. Less than Fifty (50) Percent of Replacement Value.

- a. In the event that any nonconforming building or structure ~~When such building or structure~~ is damaged or destroyed, by any means not within the control of the property owner, to the extent of less than fifty (50) percent of the replacement value at that time, it may be repaired and reconstructed, provided that no new nonconformities are created, and that existing degree of nonconformity is not increased.
- b. A building permit shall be obtained for such rebuilding, restoration, repair, or reconstruction within one (1) year of the date of damage or destruction, and the construction shall be completed within one (1) year of issuance of the building permit.
- c. In the event that the permit is not obtained within one (1) year or that repairs are not completed within one (1) year of the issuance of the building permit, then the structure or building shall not be restored unless the structure or building conforms to all regulations of the district in which it is located. ~~In the event that any nonconforming building or structure is damaged or destroyed by means within the control of the property owner, the building or structure as restored or repaired shall comply with all requirements of this chapter.~~

44-08-05. Nonconforming Lots of Record

This ~~s~~Section regulates lots of record, existing on the effective date of ~~the this o~~Ordinance ~~from which this chapter is derived~~, which do not conform with the lot area or lot width requirements for the zoning district in which they are located. No nonconforming lot of record may be improved except in compliance with this ~~s~~Section.

- A. ~~Individual !~~**Lots of Record in the R-1 and R-2 Zoning Districts.** In the R-1 and R-2 zoning districts, notwithstanding limitations imposed by other provisions of this ~~chapter~~Ordinance, a legally established use single-family dwelling and its accessory building(s) and/or structure(s) may be erected on a single nonconforming lot of record, provided that the lot is in separate ownership and all other requirements of this Ordinance are met.

B. Lots of Record Held in Common Ownership.

1. If, on the effective date of ~~the this o~~Ordinance ~~from which this chapter is derived~~, two (2) or more lots of record with continuous frontage in single ownership do not meet the requirements for lot width or lot area as established by this chapter, the land so involved shall be considered to be a single undivided parcel for the purposes of this ~~chapter~~Ordinance.
2. No portion of the parcel shall be used, transferred, or conveyed which does not meet the lot width and lot area requirements established by this ~~chapter~~Ordinance.
- ~~1.3. No division of the parcel shall be made which leaves remaining lots with lot width or area below the requirements as stated in this chapter. No building permit shall be issued for the use of any lot or portion of a lot transferred or conveyed in violation of this section.~~
- ~~2.4.~~ No lot shall be created by subdivision or any other means, which does not comply with all provisions of this ~~chapter~~Ordinance, unless the owner has been granted a variation~~Variance~~ in accordance with section 44-82. This provision shall not prevent the division of existing multifamily dwelling units into separate ownership, such as condominiums or fee simple townhomes.

- C. **Variation**~~Variance~~. A variation~~variance~~ from this section may be obtained to permit the separation of two (2) adjoining lots held in common ownership, provided that the ~~p~~Planning and ~~z~~Zoning ~~e~~Commission finds that the applicant complies with the standards for a variation~~variance~~ in section 44-82. In addition, the applicant must comply with one (1) of the following standards:

1. Both lots met the lot area and lot width requirements in effect at the time the applicant purchased the lots.

Commented [JW1]: This sentence seems to be contradictory to the language in (4) below

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2. ~~Over-More than fifty (50) percent~~half of the lots within five hundred (500) feet of the subject lots have been developed as individual building sites and do not comply with either the lot width or lot area requirement for the zoning district in which they are located.
3. The owners of the abutting lots refuse to sell or convey, at a fair market price, portions of their lots that could be added to the subject lots to render them conforming without rendering the abutting lots or structures located on such lots nonconforming.

44-08-06. Condemnation

- A. The village, at any time, by ordinance duly enacted, and in accordance with the authority vested in it by 65 ILCS 5/11-13-17 and other state and federal laws may acquire by negotiated purchase, by condemnation, or by other means, any buildings or structures that do not conform to the village standards.
- B. The village may acquire, by negotiated purchase, by condemnation, or by any other means, any land which is necessary or appropriate for the rehabilitation or development of any area blighted by substandard buildings or structures.