

CHAPTER 14: NONCONFORMITIES

Section 14.1 Purpose and Scope	14-2
Section 14.2 Transitional Rules	14-2
Section 14.3 Nonconforming Uses	14-2
Section 14.4 Nonconforming Structures.....	14-4
Section 14.5 Nonconforming Signs	14-4
Section 14.6 Nonconforming Lots of Record.....	14-5
Section 14.7 Nonconforming Lights.....	14-6
Section 14.8 Previously Issued Building Permits.....	14-6

Section 14.1 Purpose and Scope

The purpose of this Section is to regulate and limit the development and continued existence of uses, structures, and Lots established prior to the effective date of this Ordinance that do not conform to the requirements of this Ordinance. Some nonconformities may continue, but the provisions of this Section are designed to curtail substantial investment in nonconformities and to bring about their eventual conformance or elimination in order to preserve the integrity of this Ordinance and the character of the Village and its extraterritorial jurisdiction. Any nonconforming use, structure, or Lot which lawfully existed as of the effective date of this Ordinance and which remains nonconforming, and any use, structure, or Lot which has become nonconforming as a result of the adoption of this Ordinance or any subsequent rezoning or amendment to the text of this Ordinance, may be continued or maintained only in accordance with the terms of this Section.

Section 14.2 Transitional Rules

Section 14.2.1 Existing Unlawful Uses and Structures

If a structure or use conforms with the requirements of this Ordinance, then upon adoption of this Ordinance any noncompliance with or violation of the predecessor ordinance is deemed to be of no effect.

Section 14.2.2 Uses Rendered Non-Conforming

When a Lot is used for a purpose which was a lawful use before the effective date of this Ordinance, and this Ordinance or any amendment thereto no longer classifies such use as either a permitted use or special use in the zoning district in which it is located, such use is hereby deemed a nonconforming use and shall be controlled by the provisions of this Ordinance.

Section 14.2.3 Buildings, Structures and Lots Rendered Non-Conforming

Where any building, structure, or Lot which existed on the effective date of this Ordinance does not meet all standards set forth in this Ordinance or any amendment thereto, such building, structure, or Lot is hereby deemed nonconforming and shall be controlled by the provisions of this Ordinance.

Section 14.2.4 Non-Conforming Uses Generally

In order to qualify as a non-conforming use, the way in which the use was actually conducted as well as the purpose of the use must be lawful. The lawfulness of the use must be proven by the property owner.

Section 14.3 Nonconforming Uses

Section 14.3.1 Extension of Use

A nonconforming use of land shall not be enlarged, or intensified in any way except as provided below.

Section 14.3.2 Continuation, Maintenance and Minor Repair for Uses Other than Single Family Residential Uses.

The continuation of a nonconforming use of land and the maintenance or minor repair of a structure containing a nonconforming use other than a single family residential use, are permitted, provided that the continuation, maintenance, or minor repair does not expand, or increase the intensity of the nonconforming use. For the purposes of its Section, maintenance or minor repair shall mean:

- A. Subject to Section 14.3.3 herein below repairs that are necessary to maintain and to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure without expanding or altering the building or structure.
- B. Maintenance of land areas to protect against health hazards and promote the safety of surrounding land uses.
- C. Repairs which are required to remedy unsafe conditions which cause a threat to public safety.

Section 14.3.3 Damage or Destruction

If a nonconforming use, other than a single family residential use, is destroyed by any means or remodeled to an extent greater than 125% of the tax appraised value of the structure at the time of destruction then such use shall not be reestablished in any way that does not conform to the requirements of this Ordinance. For those residences which would have otherwise been deemed to be a nonconforming use but for the residential family exemption set forth herein, the use may be reestablished, but only if the architecture of the original use is retained as nearly as practicable.

Section 14.3.4 Change of Use

Any nonconforming use of land may be changed to a conforming use by securing all approvals and permits that this Ordinance requires for the intended or resulting use, building, structure, or Lot. No nonconforming use may be changed to another nonconforming use.

- A. Cessation of Use: If a nonconforming use **other than a single family residential use** is discontinued, regardless of reason or intent, for one hundred twenty (120) consecutive days or more, then the property shall thereafter be occupied and used only for a conforming use. If a nonconforming use of property **other than a single family residential use** is discontinued, but reestablished within one hundred twenty (120) days, then the nonconforming use may continue, provided that the nature and degree of the nonconformity will not be changed or increased from that which existed before the nonconforming use was discontinued. The nonconformity may be reestablished by taking reasonable and timely steps to restore conformity. Notwithstanding the preceding, any existing conforming residential use that is located on a nonconforming residential Lot may continue including any additions or improvements thereon.

Provided, however, that this Section shall not apply to any nonconforming non-residential use occupying a building or structure that normally operates fewer than ninety (90)

Chapter 14: Nonconformities

calendar days in any given calendar year. A nonconforming use which normally operates fewer than ninety (90) calendar days in any calendar year shall not be continued after twelve (12) months has passed without any operation of the nonconforming use.

- B. Signs for Nonconforming Uses: Wall signs shall not be erected on any portion of a structure housing a nonconforming use.

Section 14.4 Nonconforming Structures

Section 14.4.1 Expansion or Enlargement

A nonconforming structure other than a single family residential use shall not be expanded or enlarged in any way so as to increase the existing nonconformity or nonconformities, except as provided below.

Section 14.4.2 Maintenance or Minor Repair

The maintenance or minor repair of a nonconforming structure is permitted other than a single family residential use, provided that it does not expand or enlarge the nonconforming structure in a way that increases the nonconformity of the structure. For the purposes of this Section, maintenance or minor repair shall mean:

- A. Repairs that are necessary to maintain and to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure without expanding or altering the building structure.
- B. Repairs which are required to remedy unsafe conditions which cause a threat to public safety.

Section 14.4.3 Damage or Destruction

If a nonconforming structure other than a single family residential use, is damaged or destroyed by any means to an extent greater than fifty percent (50%) of its replacement cost at the time of destruction, then such structure shall not be restored, nor any use of the structure be reestablished in any way which does not conform to the requirements of this Ordinance. However, with respect to structures located within a multi-family development, the fifty percent (50%) cost shall be measured with reference to the development as a whole and not an individual multi-family dwelling.

Section 14.5 Nonconforming Signs

Section 14.5.1 Continuation

Other than signs governed by G.S. 160A-199, and signs which have been approved pursuant to a conditional use permit, nonconforming signs may be continued subject to the limitations set forth in this Section. All signs that are nonconforming shall have three (3) years from the date of the adoption of this ordinance to be replaced with a conforming sign where applicable or removed where no longer permitted.

Section 14.5.2 Enlargement or Alteration

A nonconforming sign other than a sign which has been approved pursuant to a conditional use permit, including its permanent message or its structure, shall not be extended, enlarged, moved, or otherwise altered unless the sign is made to conform to the applicable requirements of this Ordinance.

Section 14.5.3 Damage or Destruction

When a nonconforming sign is demolished or damaged to the extent that more than fifty percent (50%) of its surface area requires replacement, the sign shall be removed or made to conform to the applicable standards of this Ordinance.

Section 14.5.4 Repair or Maintenance

The maintenance or minor repair of a nonconforming sign, other than a sign which has been approved pursuant to a conditional use permit, is permitted, provided that it does not increase the nonconformity. When the repair, maintenance, or replacement cost of a nonconforming sign other than a sign which has been approved pursuant to a conditional use permit, exceeds one hundred dollars (\$100), the sign shall be removed or made to conform to the applicable requirements of this Ordinance.

Section 14.6 Nonconforming Lots of Record

Section 14.6.1 Development Prohibited

No use or structure shall be established on a Lot of record which does not conform to the Lot area and Lot width requirements established in this Ordinance for the zoning district in which it is located, except as otherwise set forth herein below.

Section 14.6.2 Use for Single-Family Dwelling

Notwithstanding the limitation above, a nonconforming lot may be used for a single-family dwelling, provided that:

- A. The Lot is located in a district in which dwellings are permitted;
- B. Development of the site will be in compliance with dimensional requirements of the applicable zoning districts with the exception of minimum Lot size and minimum Lot width. All other dimensional criteria must be met.
- B. The Lot was platted prior to the Effective Date of this Ordinance.

Section 14.6.3 Authorization of Nonconforming Projects

Whenever an amendment to this chapter becomes effective after an application for a development permit is submitted but before the permit is issued, and the effect of the amendment is to render the proposed development nonconforming in some respect, then the permit issuing authority may nevertheless issue the permit even though the project is nonconforming if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his position in some substantial way in reasonable reliance on this chapter as it existed prior to the amendment and thereby would be unreasonably prejudiced if required to comply with this chapter as so amended.

Section 14.7 Nonconforming Lights

Section 14.7.1 Continuation

Any lighting fixture lawfully in place or approved by the Village prior to the adoption of these lighting standards shall be exempt from the provisions of this code. At the time that a non-conforming fixture is replaced, moved, upgraded, or otherwise changed, the fixture must be brought into compliance with these lighting standards. Any expansion of, or addition to, an existing lighting system must conform to the requirements of these lighting standards.

Section 14.7.2 Maintenance

Routine maintenance, including changing the lamp, ballast, starter, photo control, lens, and other required components, is permitted for all existing fixtures. When the fixture housing is changed, the fixture must come into compliance.

- A. Notwithstanding anything set forth in this Section 14.71 to the contrary, all stationary sources of illumination in all Districts that were or are installed either before or after the date of adoption of this Ordinance, shall be directed away from other properties and shielded in a manner so that only reflected or refracted light is visible.

Section 14.8 Previously Issued Building Permits

- A. Any development for which a building permit has been issued prior to the effective date of this Ordinance, or prior to the effective date of any amendment hereto which renders the development non-conforming, may be carried out in accordance with that building permit and shall be deemed lawfully existing under the terms of this Ordinance, provided that:
 - (1) The permit was validly issued
 - (2) The permit has not expired and
 - (3) The permit has not been revoked.
- B. This Section shall not apply where the property owner consents to making the development conform to the requirements of this Ordinance, or any amendment thereto, which would make the development non-conforming.