

## ARTICLE 5

### NON-CONFORMING USES

#### Section 5.1 Continued Use Permitted

Within the districts established by this Ordinance there exist lots, structures, uses of land and structures, which were lawful prior to the adoption of this Ordinance, but do not conform to provisions of this Ordinance, or which may be made non-conforming as a result of future amendments to this Ordinance. These include structures that were granted variances under the provisions of a previous ordinance. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that non-conformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.

#### Section 5.2 Non-Conforming Lots of Record

In any district in which single family dwellings are permitted, a legal non-conforming lot of record may be used as a building lot for single family dwelling and customary accessory buildings even though it does not meet the lot width or area requirements for the zoning district in which it is located, provided all structures comply with all other requirements of Section 3.12, Table of Zoning District Regulations for the zoning district in which it is located.

#### Section 5.3 Non-Conforming Uses of Land

Where a lawful use of land exist which would not be permitted by the regulations imposed by this Ordinance, or a future amendment to this Ordinance, the use may be continued provided:

- a) No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land or additional structures than was occupied at the date of adoption or amendment of this Ordinance.
  - b) No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the date of adoption or amendment of this Ordinance.
  - c) If any such non-conforming use of land ceases for any reason for a period of twelve (12) consecutive months, such cessation of activity shall be determined to demonstrate an intent to abandon the non-conforming use and any subsequent use of such land shall conform to the regulations specified by this Ordinance for the zoning district in which such land is located.
  - d) No additional structure not conforming to the requirements of this Ordinance shall
-

be erected in connection with such non-conforming use of land.

- e) A non-conforming use of land may be changed to another non-conforming use by approval of the Zoning Board of Appeals, provided that the Zoning Board of Appeals determines that the proposed use is more consistent with the current zoning classification than the current use. Whenever a non-conforming use of land has been changed to a conforming use, it shall not thereafter be changed to a non-conforming use.

#### **Section 5.4 Non-Conforming Structures**

Where a lawful structure exists at the date of adoption of this Ordinance or future amendment to this Ordinance, that could not be built under the terms of this Ordinance, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a) No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity, or in a way that neither increases nor decreases the non-conformity **unless granted a variance by the Zoning Board of Appeals. A variance may be granted provided the requested enlargement or alteration is in keeping with the intent of the Ordinance and is compatible with the surrounding structures in terms of height, massing, sightlines, and overall character of the area. Standards of Determination, Section 10.6 of the Ordinance shall also apply.**
- b) Should a non-conforming structure or non-conforming portion of structure be destroyed by any means to an extent of more than one hundred percent (100%) of its state equalized value (SEV) **at time of destruction**, or fifty percent (50%) of its market value **at the time of destruction as determined by a certified appraiser hired by the property owner**, it shall not be reconstructed except in conformity with the provisions of this Ordinance. The Zoning Board of Appeals may grant a variance for a structure deemed of historical significance to the character of the Village.
- c) Should such structure be moved for any reason, it shall be thereafter conformed to the regulations for the zoning district in which it is located after it is moved.

#### **Section 5.5 Non-Conforming Uses of Structures**

Where a lawful use of individual structures or structure and premise in combination exists at the date of adoption of this Ordinance or future amendments to the ordinance that would not be allowed in the zoning district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a) No existing structure devoted to a use not permitted by this Ordinance in the zoning

district in which it is located shall be enlarged, extended, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the zoning district in which it is located.

- b) If no structural alternations are made, any non-conforming use of a structure, or structure and premise, may be changed to another non-conforming use by approval of the Zoning Board of Appeals provided that the Zoning Board of Appeals determines that the proposed use is more consistent with the current zoning classification than the current use. Whenever a non-conforming use has been changed to a conforming use, it shall not thereafter be changed to a non-conforming use.
- c) If a non-conforming use of structure, or structures and premise in combination, ceases for any reason for a period of twelve (12) consecutive months, such cessation of activity shall be determined to demonstrate an intent to abandon the non-conforming use and any subsequent use of such structure, or structure and premise, shall conform to the regulations specified by this Ordinance for the zoning district in which it is located.
- d) Where non-conforming use status applies to a structure and premise in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land. Destruction for the purpose of this section is defined as damaged to an extent more than one hundred percent (100%) of the state equalized value (SEV) **at time of destruction**, or fifty percent (50%) of its market value ~~at the time of destruction~~ **as determined by a certified appraiser hired by the property owner. Structures housing a single family non-conforming use that are completely destroyed by fire, flood, act of a public enemy or similar event may be rebuilt and used as a single family home, provided the structure is rebuilt on the existing building footprint and reconstruction begins with one (1) year of the destruction.**

## **Section 5.6 Repairs and Maintenance**

- A. For any non-conforming structure or portion of a structure containing non-conforming use, work may be done for ordinary repairs, or on repair or replacement on non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding twenty percent (20%) of the current state equalized value (SEV) of the non-conforming structure or non-conforming portion of the structure, provided such work is done in any period of twelve (12) consecutive months.
- B. If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance and is declared by the Building Inspector to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the zoning district in which it is located.

- C. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by the Building Inspector.

**Section 5.7 Change of Tenancy or Ownership**

A non-conforming structure, or use of land or structure, may be sold or change tenants without affecting its non-conforming status.

**End of Article 5**