

# CHAPTER 10

## NONCONFORMITY

### 10.1 Purpose

### 10.2 Nonconforming Uses of Land, Buildings or Structures

### 10.3 Nonconforming Buildings and Structures

### 10.4 Nonconforming Signs and Landscaping

#### 10.1 PURPOSE

The purpose of this Chapter is to establish regulations and limitations on the continued existence of uses, buildings or structures established prior to the effective date of this Zoning Ordinance which do not conform to the provisions of this Zoning Ordinance. Many such nonconformities may continue, but the provisions of this Chapter are designed to curtail substantial investment in such nonconformities and to bring about their eventual elimination, where appropriate, in order to preserve the integrity of the zoning districts and the regulations established by this Zoning Ordinance.

#### 10.2 NONCONFORMING USES OF LAND, BUILDINGS OR STRUCTURES

##### A. Authority to Continue

Any lawfully existing nonconforming use (see definition in Chapter 2) of part or all of a building or structure, or any lawfully existing nonconforming use of land not involving a building or structure, or involving a building or structure that is accessory to such use of land, may be continued so long as it remains otherwise lawful, subject to the provisions of this Chapter.

##### B. Ordinary Repair 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. The repair and/or replacement of an existing nonconforming driveway and/or nonconforming driveway material shall be permitted provided the existing driveway configuration is not altered or expanded and the extents of the existing nonconformity are documented by the Zoning Official's approval of a driveway permit and related plans.

No structural alterations shall be performed on any building or structure containing a nonconforming use, except in the following situations:

1. When the alteration is required by law.
2. When the alteration will result in eliminating the nonconforming use.
3. A building or structure containing residential nonconforming uses may be altered in any way to improve livability, provided no structural alteration shall be made which would increase the number of dwelling units or the bulk of the building.

##### C. Expansion

A nonconforming use shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activity shall include, but not be limited to:

1. Expansion of any building or structure devoted entirely to a nonconforming use.
2. Expansion of such use to any building or structure other than that occupied by such nonconforming use on the effective date of this Zoning Ordinance, or any amendment hereto which causes such use to become nonconforming.
3. Expansion of such use within a building or structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of this Zoning Ordinance, or any amendment hereto which causes such use to become nonconforming.
4. Operation of such nonconforming use in such a manner as to conflict with, or to further conflict with, any performance standards established for the district in which such use is located.

#### **D. Relocation**

No building or structure that is devoted in whole, or in part, to a nonconforming use shall be relocated in whole, or in part, to any other location on the same or any other lot, unless the entire building or structure and the use thereof shall thereafter conform to all the regulations of the zoning district in which such building or structure and use are located after being so relocated. No nonconforming use of land shall be relocated in whole, or in part, to any other location on the same, or any other lot, unless such use shall thereafter conform to all the regulations of the zoning district in which such use of land is located after being so relocated.

#### **E. Change in Use**

A nonconforming use of land, or of a building or structure, shall not be changed to any use other than a use permitted in the zoning district in which such land, building or structure is located. When such nonconforming use has been changed to a permitted use, it shall only be used thereafter for a use permitted in the zoning district in which it is located. For the purpose of this Chapter, a use shall be deemed to have been so changed when an existing nonconforming use shall have been terminated and the permitted use shall have commenced and continued for a period of seven (7) consecutive days.

#### **F. Abandonment or Discontinuance**

When a nonconforming use of part or all of land, or a building or structure, is abandoned or discontinued for a period of twelve (12) consecutive months (regardless of any reservation of an intent not to abandon and to resume such use), such use shall not thereafter be re-established or resumed. However, existing structures located in a single-family residential zoning district that are divided into two-family dwelling units, three- and four-family dwelling units or other multiple family dwelling units shall be permitted to remain provided the existing nonconformity is not expanded. Any subsequent use of such land, building or structure shall comply with the regulations of the zoning district in which such land, building or structure is located.

#### **G. Damage or Destruction**

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, to the extent of fifty (50) percent or more of the fair market value of such building or structure immediately prior to such damage, such building or structure shall not be restored unless such building or structure and the use thereof shall thereafter conform to all regulation of the zoning district in which such

building or structure and use are located. When such damage or destruction is less than fifty (50) percent of the fair market value of such building or structure immediately prior to such damage, such building or structure may be repaired and reconstructed and used for the same purposes as it was before the damage or destruction, provided that such repair or reconstruction is completed within twelve (12) months of the date of damage or destruction.

#### **H. Amortization**

The nonconforming uses listed below may continue for a period of time, as proscribed below, from the date of formal notification by the Village of Barrington of the initiation of the amortization period. Upon conclusion of the amortization period, every such nonconforming use duly notified shall cease to operate on the premises and all equipment and material specific to the operation of the nonconforming use shall be completely removed from the premises. From thence forward, any use of the premises shall conform to all the requirements of this Ordinance.

1. Nonconforming Uses to be Terminated Within Five (5) Years of Notification. Any nonconforming building or structure having an assessed valuation not in excess of ten thousand (\$10,000) dollars on the effective date of this Ordinance.
2. Nonconforming Uses to be Terminated Within Two (2) Years of Notification.
  - a. Any nonconforming building or structure having an assessed valuation not in excess of two thousand (\$2,000) dollars on the effective date of this ordinance.
  - b. Any nonconforming use of land where no enclosed building or structure is involved, or where the only building or structure employed is accessory and incidental to such use, or where such use is maintained in connection with a conforming building or structure.

#### **I. Exception**

In any residential district, where a dwelling is nonconforming only as to the number of dwelling units it contains, the use thereof shall be exempt from the requirements of Subsections 10.2(B) and 10.2(H), provided no such building shall be altered to increase the number of units in the building.

### **10.3 NONCONFORMING BUILDINGS AND STRUCTURES**

#### **A. Authority to Continue**

Any existing nonconforming building (see definition in Chapter 2) or structure that is devoted to a use that is permitted in the zoning district in which such building or structure is located may be continued so long as it remains otherwise lawful, subject to the provisions of this Chapter.

#### **B. Enlargement, Repair and Alterations**

1. Any existing nonconforming building or structure may be enlarged, maintained, repaired or altered provided, however, that no such enlargement, maintenance, repair or alteration shall create either an additional nonconformity or increase the degree of the existing nonconformity of all, or any part, of such building or structure, except if

the existing structure was legally constructed under a previously approved Zoning Ordinance with a side yard, front yard or rear yard which is less than is now required, an addition to such structure which constitutes an extension of the existing side, front or rear wall in, within, and/or inside of the same plane as the existing side, front or rear wall, whether in, within, and/or inside of a horizontal and/or vertical extension of the plane, shall be permitted, provided that:

- a. Such additional or alteration complies with all other provisions of the applicable Zoning District.
  - b. Expansion in, within, and/or inside of the same plane as the existing side, front or rear wall, whether horizontal and/or vertical, may extend up to an additional one foot (1') beyond the already existing encroachment if the side, front or rear plane of the structure is not exactly parallel to the side, front or rear property line or if new siding material is greater in depth than the existing materials.
2. A new or existing deck or porch may be extended in the same plane as the existing nonconforming wall.
  3. A new or existing front porch may repaired or extended in the same horizontal plane as the existing front porch, but not beyond such horizontal plane, provided such extension complies with all other provisions of the applicable Zoning District.

#### **C. Relocation**

No nonconforming building or structure shall be relocated in whole, or in part, to any other location on the same or any other lot unless the entire building or structure shall thereafter conform to all the regulations of the zoning district in which such building or structure is located after being so relocated.

#### **D. Damage or Destruction**

In the event that any nonconforming building or structure is damaged or destroyed, by any means, to the extent of fifty (50) percent or more of the fair market value of such building or structure immediately prior to such damage, such building or structure shall not be restored unless it shall thereafter conform to all regulation of the zoning district in which such building or structure is located. When such damage or destruction is less than (50) fifty percent of the fair market value of such building or structure immediately prior to such damage, such building or structure may be repaired and reconstructed, provided that such repair or reconstruction is completed within twelve (12) months of the date of damage or destruction.

### **10.4 NONCONFORMING SIGNS AND LANDSCAPING**

Regulations governing nonconforming signs are established in Chapter 4, Part IV of this Ordinance. Regulations governing nonconforming landscaping are established in Chapter 4, Part III of this Ordinance.