

ARTICLE XII

NONCONFORMITIES

12-101 GENERAL PROVISIONS

- A. Purposes. This Article XII regulates and limits the continued existence of uses, structures, lots, signs, and fences established prior to the effective date of this Code that do not conform to the regulations of this Code applicable in the zoning districts in which such uses, structures, lots, signs and fences are located.

The zoning districts established by this Code are designed to guide the future use of land within the Village by encouraging the development or maintenance of desirable residential, business, office, and industrial areas with appropriate groupings of compatible and related uses and thus to promote and protect the public health, safety, and general welfare. The continued existence of nonconformities is frequently inconsistent with the purposes for which such districts are established and thus the gradual elimination of such nonconformities is generally desirable.

- B. General Scope and Scheme of Regulation. Separate restrictions are established for nonconforming uses of land and nonconforming uses of structures designed for a permitted use, nonconforming uses of structures not designed for a permitted use, nonconforming structures, nonconforming lots of record, nonconforming signs, and nonconforming fences. The degree of restriction made applicable to each category of nonconformity is generally related to the degree of incompatibility with permitted uses and the amount of investment typically associated with nonconformities of that type. Pursuant to Section 14-303 of this Code, provision is made for relief from some of the restrictions of this Article XII when practical difficulties exist.

In the case of nonconforming signs, the degree of incompatibility is frequently great, the investment is comparatively small, and the economic life is short. In this case, therefore, elimination of the nonconformity is required after a relatively short, but reasonable, amortization period. In the other cases of nonconformity, the degree of incompatibility is also frequently great, but so too is the investment and economic life of the structure. While the regulations of this Article XII related to such other nonconformities allow such nonconformities to continue without specific limitation of time, the regulations restrict further investments that would make the nonconformity more permanent, and the eventual elimination of the nonconformity is intended.

- C. Exception for Repairs Pursuant to Public Order. Nothing in this Article XII shall be deemed to prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition, provided such restoration is not otherwise in violation of the various provisions of this Article XII prohibiting the repair or restoration of partially damaged or destroyed structures, signs, or fences.
- D. Nonconforming Accessory Uses and Structures. No use, structure, sign, or fence that is accessory to a principal nonconforming use or structure shall continue after such principle use or structure shall have been terminated, unless it shall thereafter conform to all the regulations of the zoning district in which it is located.
- E. Burden of Owner to Establish Legality of Nonconformity. The burden of establishing that any nonconformity is lawfully existing under the provisions of this Article XII shall, in all cases, be upon the owner of such nonconformity and not upon the Village.

12-102 NONCONFORMING USES OF LAND NONCONFORMING USES IN
STRUCTURES DESIGNED FOR A PERMITTED USE

- A. Authority to Continue. Except as provided in Subsection I of this Section, any lawfully existing nonconforming use not involving the use of a structure, or involving only a structure that is accessory to a nonconforming use of land, or located in a structure designed for a use permitted in the district in which it is located may be continued so long as it remains otherwise lawful, subject to the regulations contained in Subsections B through H of this Section and in Subsections D and E of Section 12-101 of this Code.

For purposes of this Section, any structure that is used in connection with a nonconforming use of land and that has an assessed value of less than \$5,000 on the effective date of this Code or any amendment hereto creating such nonconformity shall be considered to be a structure accessory to a nonconforming use of land.

- 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 structure that is accessory to a nonconforming use of land or that is designed for a permitted use but devoted in whole or in part to a nonconforming use; provided, however, that this Subsection shall not be deemed to authorize any violation of Subsections C through I of this Section.
- C. Structural Alteration. No structure that is accessory to a nonconforming use of land or that is designed for a permitted use and devoted in whole or in part to a nonconforming use shall be structurally altered unless the use thereof shall thereafter conform to the use regulations of the zoning district in which it is located. No such alteration shall create a new

Rev. 02/12/2018

parking, loading, bulk, yard, or space nonconformity or increase the degree of any existing parking, loading, bulk, yard, or space nonconformity of such structure. For the purposes of this Subsection, the vertical or horizontal extension of a structure shall be considered to increase the degree of an existing nonconformity related to a required yard or setback. In determining whether a parking or loading nonconformity has been created or increased, the provisions of Paragraphs 10-101B1 and 10-102B1 of this Code shall control.

- D. Enlargement of Structure. No structure that is accessory to a nonconforming use of land or that is designed for a permitted use and devoted in whole or in part to a nonconforming use shall be enlarged or added to any manner, including the interior addition of floor area, unless the use of such structure shall thereafter conform to the use regulations of the district in which it is located. No such enlargement shall create any new parking, loading, bulk, yard, or space nonconformity or increase the degree of any existing parking, loading, bulk, yard, or space nonconformity of such structure. For the purposes of this Subsection, the vertical or horizontal extension of a structure shall be considered to increase the degree of an existing nonconformity related to a required yard or setback. In determining whether a parking or loading nonconformity has been created or increased, the provisions of Paragraphs 10-101B1 and 10-102B1 of this Code shall control.
- E. Extension of Use. A nonconforming use of land or of a structure that is accessory to a nonconforming use of land or a nonconforming use in a structure designed for a permitted use shall not be extended, expanded, enlarged, or increased in intensity. Such prohibited activity shall include, without being limited to:
1. An extension of such use, including its accessory uses, to any structure or land area other than that occupied by such nonconforming use on the effective date of this Code or any amendment

hereto that causes such use to become nonconforming; and

2. An extension of such use, including its accessory uses, within a building or other structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of this Code or any amendment hereto that causes such use to become nonconforming; and
3. An extension of the hours of operation of such use beyond the normal hours of operation on the effective date of this Code or any amendment hereto that causes such use to become nonconforming.

F. Moving. No structure that is accessory to a nonconforming use of land or that is designed for a permitted use and devoted in whole or in part to a nonconforming use shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot, unless the entire structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. No nonconforming use of land shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot, unless such use shall thereafter conform to all regulations of the zoning district in which it is located after being so moved.

G. Change in Use. A nonconforming use of land not involving a structure or involving only a structure that is accessory to the nonconforming use of land or a nonconforming use in a structure designed for a use permitted in the district in which it is located shall not be changed to any use other than a use permitted in the zoning district in which the use or structure is located. When such a nonconforming use has been changed to a permitted use, it shall not thereafter be changed back to any nonpermitted use. For purposes of this Subsection G, a use shall be deemed to have been so changed when an existing nonconforming use shall

Rev. 02/12/2018

have been terminated and a permitted use shall have commenced and continued for a period of five days. Any change of use in violation of this Subsection shall be deemed to be an abandonment of the lawfully existing nonconforming use.

- H. Damage or Destruction. Any structure that is accessory to a nonconforming use of land or that is designed for a permitted use and devoted in whole or in part to a nonconforming use and that is damaged or destroyed, by any means, to the extent of more than 25 percent of the cost of replacement of such structure new shall not be restored unless the use of such structure shall thereafter conform to the use regulations of the zoning district in which it is located and unless such restoration is accomplished without creating any new parking, loading, bulk, yard, or space nonconformity or increasing the degree of any parking, loading, bulk, yard, or space nonconformity has been created or increased, the provisions of Paragraphs 10-101B1 and 10-102B1 of this Code shall control.

When any such structure is damaged or destroyed by any means not within the control of the owner thereof to the extent of 25 percent or less of the cost of replacement of the structure new, repair or restoration of such structure may be made; provided, however, that no repairs or restorations shall be made that would create any new parking, loading, bulk, yard or space nonconformity or increase the degree of any parking, loading, bulk, yard, or space nonconformity existing prior to such damage or destruction, nor shall any repairs or restoration except in conformity with the applicable zoning district regulations be made unless a Certificate of Zoning Compliance is obtained and restoration is actually begun within one year after the date of such partial damage or destruction and diligently pursued to completion.

In no event shall any damage or destruction to such a structure by means within the control of the owner be

repaired or restored except in accordance with Subsections B, C, and D of this Section.

- I. Termination by Discontinuance or Abandonment. When a nonconforming use of land not involving a structure or involving only a structure that is accessory to the nonconforming use of land or when a nonconforming use of a part or all of a structure that was designed for a use that is permitted in the zoning district in which such structure is located is discontinued or abandoned for a period of three consecutive months, regardless of any intent to resume or not to abandon such use, such use shall not thereafter be reestablished or resumed. Any subsequent use or occupancy of such land or structure shall comply with the use regulations of the zoning district in which such land or structure is located.

Any period of such discontinuance caused by government action, strikes, material shortages, or acts of God, and without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for purposes of this Subsection.

12-103 NONCONFORMING USES IN STRUCTURES NOT DESIGNED FOR A PERMITTED USE

- A. Authority to Continue. Except as provided in Subsection I of this Section, any lawfully existing nonconforming use located in a structure not designed or intended for any use permitted in the district in which it is located may be continued so long as it remains otherwise lawful, subject to the regulations contained in Subsections B through H of this Section and in Subsections D and E of Section 12-101 of this Code.
- 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

Rev. 02/12/2018

performed on any structure devoted in whole or in part to a nonconforming use and not designed or intended for any use permitted in the district in which such structure is located; provided, however, that this Subsection shall not be deemed to authorize any violation of Subsections C through I of this Section.

- C. Structural Alteration. No structure devoted in whole or in part to a nonconforming use and not designed or intended for any use permitted in the district in which such structure is located shall be structurally altered unless the entire structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located. No such alteration shall create a new parking, loading, bulk, yard, or space nonconformity or increase the degree of any existing parking, loading, bulk, yard, or space nonconformity of such structure. For the purposes of this Subsection, the vertical or horizontal extension of a structure shall be considered to increase the degree of an existing nonconformity related to a required yard or setback. In determining whether a parking or loading nonconformity has been created or increased, the provisions of Paragraphs 10-101B1 and 10-102B1 of this Code shall control.
- D. Enlargement of Structure. No structure devoted in whole or in part to a nonconforming use and not designed or intended for any use permitted in the district in which such structure is located shall be enlarged or added to in any manner, including the interior addition of floor area, unless the entire structure and the use thereof shall thereafter conform to all the regulations of the district in which it is located. No such alteration shall create a new parking, loading, bulk, yard, or space nonconformity or increase the degree of any existing parking, loading, bulk, yard, or space nonconformity of such structure. For the purposes of a structure shall be considered to increase the degree of an existing nonconformity related to a required yard setback. In determining whether a parking or loading nonconformity has been created or increased, the provisions of

Paragraphs 10-101B1 and 10-102B1 of this Code shall control.

E. Extension of Use.

1. Prohibited Extensions. A nonconforming use in a structure not designed or intended for any use permitted in the district in which such structure is located shall not be extended, expanded, enlarged, or increased in intensity by:

(a) An extension of such use to any structure or land area other than that occupied by such nonconforming use on the effective date of this Code or any amendment to it that causes such use to become nonconforming; or

(b) An extension of the hours of operation of such use beyond the normal hours of operation on the effective date of this Code or any amendment to it that causes such use to become nonconforming.

2. Permitted Extensions. A nonconforming use in a structure not designed or intended for any use permitted in the district in which such structure is located may be extended throughout any part of such structure lawfully existing on the effective date of this Code or any amendment to it that causes such use to become nonconforming; provided, however, that such extension can be, and are, provided in accordance with the requirements and restrictions of Sections 10-101 and 10-102 of this Code. No such extension shall be deemed to affect the duty to terminate such use pursuant to Subsection I of this Section.

F. Moving. No structure devoted in whole or in part to a nonconforming use and not designed or intended for any use permitted in the district in which such structure is located shall be moved, in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure and

the use thereof shall thereafter conform to all regulations of the zoning district in which it is located after being so moved.

- G. Change in Use. A nonconforming use in a structure not designed or intended for a use permitted in the district in which such structure is located shall not be changed to any use other than a nonconforming use of a more restricted classification or a use permitted in the zoning district in which the structure is located. When a nonconforming use has been changed to a more restricted nonconforming use or to a permitted use, it shall not thereafter be changed back to a less restricted nonconforming use. For purposes of this Subsection G, a use shall be deemed to have been so changed when an existing nonconforming use shall have been terminated and a more restricted nonconforming use or a permitted use shall have commenced and continued for a period of five days. Any change of use in violation of this Subsection shall be deemed to be an abandonment of the lawfully existing nonconforming use.

- H. Damage or Destruction.

1. Any structure devoted in whole or in part to a nonconforming use and not designed or intended for any use permitted in the district in which that structure is located that is damaged or destroyed by any means within the control of the owner thereof to the extent of 50 percent or more of the cost of replacement of that structure shall not be restored unless (a) that structure and the use of it shall thereafter conform to all regulations of the zoning district in which it is located, (b) the restoration is accomplished without creating a new parking, loading, bulk, yard, or space nonconformity or increasing the degree of any existing parking, loading, bulk, yard, or space nonconformity of such structure existing prior to such damage or destruction, and (c) the restoration complies with the limitation set forth in Paragraph 3 of this Subsection H.

Rev. 02/12/2018

In determining whether a parking or loading nonconformity has been created or increased, the provisions of Paragraphs 10-101B1 and 10-102B1 of this Code shall control.

2. If any such structure is damaged or destroyed either (a) by any means within the control of the owner thereof to any extent less than 50 percent of the cost of replacement of that structure new or (b) by any means not within the control of the owner thereof to any extent, then restoration of that structure may be made, subject to the next two sentences of this paragraph. No restoration may create any new parking, loading, bulk, yard, or space nonconformity or increase the degree of any parking, loading, bulk, yard, or space nonconformity that existed prior to the damage or destruction. And no restoration may be undertaken except (a) in conformity with the applicable zoning district regulations, (b) after approval of the Community Development Department, (c) the restoration is actually begun within one year after the date of the damage or destruction and are diligently pursued to completion, and (d) the restoration complies with the limitation set forth in Paragraph 3 of this Subsection H.
3. No damage or destruction to any such structure by means within the control of the owner may be repaired or restored except in accordance with Subsections B, C, and D of this Section.

I. Termination by Discontinuance or Abandonment.

Subject to the exceptions stated in the next paragraph of this Subsection I, when a nonconforming use of a part or all of a structure that was not designed or intended for any use permitted in the zoning district in which such structure is located is discontinued or abandoned for a period of six consecutive months,

Rev. 02/12/2018

regardless of any intent to resume or not to abandon such use, that use shall not thereafter be reestablished or resumed. Any subsequent use or occupancy of that structure shall comply with the use regulations of the district in which that structure is located.

The following circumstances shall not be considered in calculating the length of discontinuance for purposes of this Subsection I: (a) a period of discontinuance caused by government actions, strikes, material shortages, or acts of God, and without any contributing fault by the nonconforming user and (b) a period of vacancy of a space resulting from the departure of a nonconforming use and the inability of the owner of the structure to lease the vacant space despite the owner's diligent and continuous efforts to do so.

12-104 NONCONFORMING STRUCTURES

- A. Authority to Continue. Any nonconforming structure that is devoted to a use that is permitted in the zoning district in which it is located may be continued so long as it remains otherwise lawful, subject to the restrictions in Subsections B through D of this Section and Subsection D of Section 12-101 of this Code.

- B. Repair, Maintenance, Alterations, and Enlargement. Any nonconforming structure may be repaired, maintained, altered, or enlarged; provided, however, that no such repair, maintenance, alteration, or enlargement shall either create any additional nonconformity or increase the degree of the existing nonconformity of all or any part of such structure. The vertical or horizontal extension of an existing exterior wall of a single family detached dwelling that is nonconforming with respect to a minimum required side or rear yard will not be considered to increase the degree of that nonconformity so long as

the extension does not encroach further into the required side or rear yard.

- C. Moving. No nonconforming structure shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.
- D. Damage or Destruction. Any nonconforming structure that is damaged or destroyed, by any means not within the control of the owner thereof, to any extent, may be repaired or restored; provided, however, that no repair or restoration shall be made that would create any new nonconformity not existing prior to such damage or destruction nor shall any repair or restoration except in conformity with the applicable district regulations be made unless a Certificate of Zoning Compliance is obtained and restoration is actually begun within one year after the date of such damage or destruction and is diligently pursued to completion.

In no event shall any damage or destruction to such a structure by means within the control of the owner be repaired or restored except in accordance with Subsection B of this Section.

- E. Limited Horizontal and Vertical Extensions of Single Family Detached Dwellings.
1. Limited Horizontal Extensions. Any portion of a single family detached dwelling that is nonconforming with respect to permitted height or maximum height may be extended horizontally at a height in excess of the permitted height or maximum height; provided, however, that the top of the roof of such extension shall not exceed the top of the roof of the existing structure.
 2. Limited Vertical Extensions. Any portion of a single family detached dwelling that is

nonconforming with respect to permitted height or maximum height and that is a nonconforming structure solely due to the nonconforming height or maximum height may be extended (a) horizontally at a height in excess of the existing nonconformity but not in excess of the roof line of the existing structure or (b) vertically at a height in excess of the existing nonconformity but not in excess of the roof line of the existing structure.

12-105 NONCONFORMING LOTS OF RECORD

- A. Authority to Utilize for Dwellings. In any district in which dwellings are a permitted use, notwithstanding the regulations imposed by any other provisions of this Code, a dwelling of this type permitted in the district in which the lot is located and that complies with the restrictions of Subsection B of this Section may be erected on a legal nonconforming lot of record that has a total lot area equal to at least 70 percent of the total lot area required in the district in which such lot is located.
- B. Regulations for Single Family Use of Nonconforming Lots. A legal nonconforming lot of record authorized to be used pursuant to Subsection A of this Section may be used for a dwelling of the type permitted in the district in which the lot is located and permitted accessory structures, but for no other structure. Construction of such dwelling and accessory structures shall comply with all the regulations applicable to dwellings and accessory structures in the zoning district in which the lot in question is located, except that the following lot area requirements shall apply in place of the lot area requirements otherwise applicable:
1. Total lot area shall equal at least 70 percent of the district requirement for the type of dwelling; and

2. Lot area per unit shall equal or exceed the district requirement, except that one detached single family dwelling may be constructed with only 70 percent of the required lot area per unit.
- C. Other Uses of Nonconforming Lots. In any zoning district in which dwellings are not permitted, a legal nonconforming lot of record may be used for any use permitted in the district in which it is located if, but only if, the development of such lot meets all requirements of the district in which it is located, including floor area ratio and yard requirements, except lot area, width, and depth requirements.

12-106 NONCONFORMING SIGNS

- A. Authority to Continue. Except as provided in Subsection F of this Section, any lawfully existing nonconforming sign may be continued so long as it otherwise remains lawful, subject to the regulations contained in Subsections B through E of this Section and in Subsections D and E of Section 12-101 of this Code.
- B. Ordinary Repair and Maintenance. Normal maintenance and incidental repair or replacement of nonbearing sign elements and electrical wiring and fixtures may be performed on any sign; provided, however, that any repair or replacement shall, whenever possible, eliminate or reduce any nonconformity in the element being repaired or replaced and provided further, however, that this Subsection B shall not be deemed to authorize any violation of Subsections C through F of this Section.
- C. Alteration; Enlargement; Moving. No nonconforming sign shall be changed or altered in any manner that would increase the degree of its nonconformity, be enlarged or expanded, be structurally altered to prolong its useful life, or be moved in whole or in

part to any other location where it would remain nonconforming.

- D. Change of Sign. A nonconforming sign that has been changed to eliminate its nonconformity or any element of its nonconformity shall not thereafter be changed to restore such nonconformity or nonconforming element.
- E. Damage or Destruction. Any nonconforming sign, or any nonconforming element of a sign capable of change or discontinuance separate from other elements of the sign, damaged or destroyed by any means to the extent of 35 percent or more of its replacement cost new shall not be restored but shall be removed or brought into conformity with the provisions of this Code.
- F. Termination of Certain Signs.
1. Immediate Termination. The following nonconforming signs or sign features shall be terminated immediately by removal of the sign or by alteration of the sign to eliminate the specified feature:
 - (a) Attention-getting devices.
 - (b) Moving or animated signs, except public service signs when expressly permitted by Article XI of this Code.
 - (c) Portable signs.
 - (d) Temporary signs, except as expressly permitted by Article XI of this Code.
 - (e) Any sign that advertises, identifies, or pertains to a business no longer conducted, or a product no longer sold, on the premises where such sign is located.
 - (f) Any sign on a tree or utility pole, whether on public or private property.

- (g) Any sign on public property, except governmental and civic event signs authorized in Article XI of this Code.
 - (h) Any sign that violates any provision or requirement of Subsections 11-105A through 11-105D or 11-105F through 11-105K or 11-105N through 11-105P of this Code.
 - (i) Any sign constructed or erected without a valid permit.
2. Termination by Abandonment. Any nonconforming sign the use of which is discontinued for a period of 60 consecutive days, regardless of any intent to resume or not to abandon such use, shall be deemed to be abandoned and shall not hereafter be reestablished or resumed. Every such sign shall be immediately removed or brought into conformity with the provisions of this Code. Any period of such discontinuance caused by government actions, strikes, material shortages, or acts of God, and without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for purposes of this Paragraph.
 3. Termination by Change of Business. Any nonconforming sign advertising, identifying, or pertaining to a business on the premises on which it is located shall be terminated upon any change in the ownership or control of such business.
 4. Termination by Amortization. Any nonconforming sign or any nonconforming element of a sign capable of change or discontinuance separate from other elements of the sign that has not been terminated pursuant to any other provision of this Code shall be terminated no later than five years after the effective date of this Code.

12-107 NONCONFORMING FENCES

- A. Authority to Continue. Except as provided in Subsection F of this Section, any lawfully existing nonconforming fence may be continued so long as it otherwise remains lawful, subject to the regulations contained in Subsections B through E of this Section and in Subsections D and E of Section 12-101 of this Code.
- B. Ordinary Repair and Maintenance. Normal maintenance and incidental repair may be performed on any fence; provided, however, that any repair or replacement shall, whenever possible, eliminate or reduce any nonconformity in the element being repaired or replaced and provided further, however, that this Subsection B shall not be deemed to authorize any violation of Subsections C through F of this Section.
- C. Alteration; Enlargement; Moving. No nonconforming fence shall be changed or altered in any manner that would increase the degree of its nonconformity, be enlarged or expanded, be structurally altered to prolong its useful life, or be moved in whole or in part to any other location where it would remain nonconforming.
- D. Change of Fence. A nonconforming fence that has been changed to eliminate its nonconformity or any element of its nonconformity shall not thereafter be changed to restore such nonconformity or nonconforming element.
- E. Damage or Destruction. Any nonconforming fence, or any nonconforming element of a fence capable of change or discontinuance separate from other elements of the fence, damaged or destroyed by any means to the extent of 35 percent or more of its replacement cost new shall not be restored but shall be removed or brought into conformity with the provisions of this Code.

- F. Termination of Certain Fences. The following fences shall be removed immediately or altered immediately to eliminate every nonconformity:
1. Barbed Wire and Electrical Fences. All nonconforming barbed wire fences and fences with electrical elements.
 2. Dilapidated Fences. Each nonconforming fence that is dilapidated or deteriorated to the extent that replacement of 50 percent or more of the load bearing elements of the fence is required.
 3. Public Health, Safety, and Welfare. Every nonconforming fence that poses a threat to the health, safety, or welfare of any person or the public.