

ARTICLE XIII

NONCONFORMING BUILDINGS STRUCTURE, AND USES

1301 Purpose

This ordinance established separate districts, each of which is an appropriate area for the location of the uses which are permitted in that district. Within such established districts as well as those which may be established by future amendments, there are and will be lots, uses of land, structures and uses of structures and land in combination which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments. Since such non conformities are deemed incompatible with the districts in which they are located, it is the intent of this article to specify those circumstances and conditions under which such non conformities shall be permitted to continue, but not to encourage their survival. Rather, it is the intent of this ordinance to encourage either for the conversion of non conforming uses as soon as reasonably possible or for their eventual and equitable elimination.

1302 Restrictions on Nonconforming Building, Structures and Uses

1302.01 General

Any nonconforming building, structure or use which existed lawfully at the time of the adaption of this ordinance and which remains nonconforming, as well as any which shall become nonconforming upon any subsequent amendments thereto, may be continued but shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district. No additional signs intended to be seen from off the premises shall be utilized in conjunction with nonconforming uses of land or structures shall be permitted upon passage of this ordinance.

1302.02 Single Non Conforming Lots of Record

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance, notwithstanding limitations imposed by other provisions of this ordinance. Such lots must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variances of requirements listed in Articles 9 and 10 of this ordinance other than lot area or lot width shall be obtained only through action of the Board of Zoning Appeals as provided in Sections 1504 through 1509.

1302.03 Non Conforming Lots of Record in Combination

If two or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance and if all or part of the lots with no buildings do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot widths and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with a width or area below the requirements stated in this ordinance.

1302.04 Non conforming Uses of Land

Where, at the time of adoption of this ordinance, lawful uses of land exist which would not be permitted by the regulations imposed by this ordinance the uses may be continued so long as they remain otherwise lawful, provided:

- A. No such non conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.
- B. No such non conforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this ordinance.
- C. If any such non conforming uses of land are discontinued or abandoned for more than six (6) months (except when government action impeded access to the premises), any subsequent use of such land shall conform to the regulations specified by this ordinance for the 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.

1302.05 Non Conforming Structures

Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restriction on area, lot coverage, height, yards, its location on the lot, bulk, or other requirements concerning the structure, 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 it's non conformity, but any structure or portion thereof may be altered to decrease its non conformity.
- B. Should such non conforming structure or non conforming portion of structure be destroyed by any means, it shall not be reconstructed except in conformity with the provisions of the ordinance.
- C. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

1302.06 Non Conforming Uses of Structures or of Structures and Land in Combination

If a lawful use involving individual structures, or of a structure and land in combination, exists at the effective date of adoption or amendment 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 district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- B. Any non conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building.

- C. If no structural alterations are made, any non conforming use of a structure or structure and land may, upon appeal to the Board of Appeals, be changed to another non conforming use provided that the Board of Appeals shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non conforming use. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accord with other provisions of this ordinance.
- D. Any structure, or structure and land in combination, in or on which a non conforming use is superceded by a permitted use, shall thereafter conform to the regulations for the district, and the non conforming use may not thereafter be resumed.
- E. When a non conforming use of a structure, or structure and land in combination is discontinued or abandoned for more than two (2) years (except when government action impedes access to the premises), the structure or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
- F. Where non conforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the non conforming status of the land.

1302.07 Relocation of Building or Structure

No building or structure shall be moved in whole or in part to any other location on the same or any other lot unless every portion of such building or structure which is moved, and the use thereof, is made to conform to all of the regulations of the district in which it is to be located.

1302.08 Displacement

No non conforming use shall displace a conforming use.

1302.09 Change in Use

A non conforming use may be changed to another non conforming use provided that the Board of Appeals determines that the proposed non conforming use is less in conflict with the character and intent of the zoning district than the existing non conforming use.

1302.10 Non Conforming Conditional Uses

Uses existing prior to the enactment of this ordinance which are listed as conditional uses in the district in which they are located will be considered as non conforming uses until a conditional zoning certificate has been applied for and issued for said use.

1302.11 Repairs and Maintenance

On any non conforming structure or portion of a structure containing a non conforming use, work may be done on ordinary repairs, or on a repair or replacement of nonbearing walls, fixtures, wiring, or plumbing provided that the cubic content existing when it became non conforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

1302.12 Restoration

Whenever a building, the use of which does not conform to the provisions of this ordinance is damaged by fire, explosion, or act of God to the extent of sixty (60) percent or more of its assessed value, it shall not be restored except in conformity with the district regulations of the district in which it is located.

1302.13 Discontinuance and Abandonment

Whenever a non conforming use has been discontinued for a period of six (6) months or more, such discontinuance shall be considered legal abandonment of the non conforming use. At the end of that six month period, the non conforming use shall not be reestablished, and any further use shall be in conformity with the provisions of this ordinance.

1302.14 Elimination of Non Conforming Signs

Any sign which is non conforming as to type, location, zoning district, size, setback, or for any other reason (except those signs that are a adjunct to the use of any valid non conforming building or structure, in which case they shall be regulated by the provisions applicable to such structure (shall be altered, moved, converted, or removed) within five (5) years of the date of adoption of this ordinance.

1303 Avoidance of Undue Hardships

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried out diligently within a period of 90 days.

ARTICLE XIV

AMENDMENT

1401 General

Whenever the public necessity, convenience, general welfare of good zoning practices require, Village Council may be ordinance after receipt or recommendation thereon from the Zoning Board, and subject to procedures provided by law, amend, supplement, change or repeal the regulations, restrictions, and boundaries or classifications or property.

1402 Initiation of Zoning Amendments

Amendments of this ordinance may be initiated in one of the following ways:

1. By adoption of a motion by the Zoning Board;
2. By adoption of a resolution by Village Council;
3. by the filing of an application by at least one (1) owner or lessee of property within the area proposed to be changed or affected by said amendment.

1403 Contents of Application

Applications for amendments to the Official Zoning Map adopted as part of this ordinance by Section 301 shall contain at least the following information:

1. Name, address, and phone number of applicant;
2. Present use;
3. Present zoning district;
4. Proposed use;
5. Proposed zoning district;
6. A vicinity map at a scale approved by the Zoning Inspector showing property line, thoroughfares, existing and proposed zoning and such other items as the Zoning Inspector may require;

7. A list of all property owners and their mailing addresses who are within, or within two hundred (200) feet from the parcel(s) proposed to be rezoned and others that may have a substantial interest in the case except that addresses need not be included where more than ten (10) parcels are to be rezoned;
8. Response to all pertinent questions contained within the application form (see Appendix for example);
9. A fee as established by Village Council according to Section 613.

Applications for amendments proposing to amend, supplement, change, or repeal portions of this ordinance, other than the Official Zoning map shall include, in addition to the proposed amending ordinance, approved as to form by the Village Legal Advisor, items (1) (2) (8) and (9) listed above.

1404 Transmittal to Zoning Board

Immediately after the adoption of a resolution by the Village Council or the filing of an application by at least one (1) owner or lessee or property, said resolution or application shall be transmitted to the Zoning Board.

1405 Submission to Director of Transportation

Before any zoning amendment is approved affecting any land within three hundred (300) feet of the centerline of a proposed new highway or highway for which changes are proposed as described in the certification to local officials by the Director of Transportation, or within a radius of five hundred (500) feet from the point of intersection of said center line with any public road or highway, the Zoning Board shall give notice, by registered or certified mail to the Director of Transportation. The Board may proceed as required by law, however, the Village Council shall not approve the amendment for one hundred twenty (120) days from the date the notice is received by the Director of Transportation. If the Director of Transportation notifies the Village that he shall proceed to acquire land needed, then the Village shall refuse to approve the rezoning. If the Director of Transportation notifies the Village that acquisition at this time is not in the public interest or upon the expiration of

the one hundred twenty (120) day period or any extension thereof agreed upon by the Director of Transportation and the property owner, the Village Council shall proceed as required by law.

1406 Recommendation by Zoning Board

Within thirty-five (35) days from the receipt of the proposed amendment, the Zoning Board shall transmit its recommendation to the Village Council. The Zoning Board may recommend that the amendment be granted as requested, or it may recommend a modification of the amendment requested, or it may recommend that the amendment be denied.

1407 Public Hearing By Village Council

Upon receipt of the recommendation from the Zoning Board, Village Council shall schedule a public hearing. Said hearing shall be not more than forty (40) days from the receipt of the recommendation from the Zoning Board.

1408 Notice of Public Hearing in Newspaper

Notice of the public hearing required in Section 1407 shall be given by Village Council by at least one (1) publication in one (1) or more newspapers of general circulation in the Village. Said notice shall be published at least thirty (30) days before the date of the required hearing. The published notice shall set forth the time and place of the public hearing and a summary of the proposed amendment.

1409 Notice to Property Owners By Village Council

If the proposed amendment intends to rezone or redistrict ten or less parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the Clerk of Council, by first class mail, return receipt requested, at least twenty (20) days before the day of the public hearing to all owners of property within, contiguous to, and directly across the street from such area proposed to be rezoned or redistricted to the address of such owners appearing on the County Auditor's current tax list or lists that may be specified by Village Council. The failure to deliver the notification, as provided in this section shall not invalidate any such amendment. The notice shall contain the same information as required of notices published in newspapers as specified in Section 1408.

1410 Action By Village Council

Within thirty (30) days after the public hearing required by Section 1407, the Village Council shall either adopt or deny the recommendation of the Zoning Board or adopt some modification thereof. In the event the Village Council denies or modifies the recommendation of the Zoning Board, it must do so by not less than three-fourths (3/4) of the full membership of the Village Council.

1411 Effective Date and Referendum

Such amendment adopted by Village Council shall become effective thirty (30) days after the date of such adoption unless within thirty (30) days after the passage of the ordinance there is presented to the Village Clerk a petition, signed by a number of qualified voters residing in the Village equal to not less than ten (10) percent of the total vote cast in such area at the last preceding general election at which a Governor was elected, requesting the Village Council to submit the zoning amendment to the electors of the Village for approval or rejection at the next general election.

No amendment for which such referendum vote has been requested shall be put in to effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the Board of Elections that the amendment has been approved by the voters, it shall take immediate effect.

1412 Annexation

All land annexed to the Village subsequent to the adoption of this ordinance shall remain subject to the previous county or township zoning district until such time as the Official Zoning Map is amended according to the provisions of this Article.