

SECTION 15. NONCONFORMITIES

- 15.1 PURPOSE
 - 15.2 GENERAL STANDARDS OF APPLICABILITY
 - 15.3 NONCONFORMING USE
 - 15.4 NONCONFORMING STRUCTURES
 - 15.5 NONCONFORMING LOTS OF RECORD
 - 15.6 NONCONFORMING SIGNS
-

15.1 PURPOSE

The purpose of this Section is to provide for the regulation of nonconforming buildings, structures, lots or uses, and to specify those circumstances and conditions under which nonconforming buildings, structures and uses shall be eliminated.

15.2 GENERAL STANDARDS OF APPLICABILITY

A. Authority to Continue

Any structure, lot, or use that existed as a lawful nonconformity at the time of the adoption of this Ordinance, and any building, structure, lot or use that has been made nonconforming because of the terms of this Ordinance or its subsequent amendments, may continue subject to the provisions of this Section so long as it remains otherwise lawful. A structure or use that is illegal at the time of the adoption of this Ordinance, remains illegal if it does not conform with each and every requirement of this Ordinance, as described in Section 1.5.A (Existing Illegal Uses and Structures)

B. Burden on Property Owner to Establish Legality

In all cases, the burden of establishing the legality of a nonconformity under the provisions of this Ordinance shall be upon the property owner of the nonconforming parcel, structure or use.

C. Safety Regulations

All police power regulations enacted to promote public health, safety, convenience, comfort and general welfare including, but not limited to, all building, fire and health codes shall apply to nonconforming structures.

15.3 NONCONFORMING USE (Ordinance 2009-80, 11/16/2009)

A. Ordinary Repairs and Maintenance

Normal maintenance and incidental repair may be performed on any structure that is devoted in whole or in part to a nonconforming use, provided it will not create any new nonconformity, increase the degree of nonconformity or increase the bulk of the structure in any manner.

B. Structural Alterations

No structural alterations shall be performed on any structure devoted to a nonconforming use, except in the following situations:

1. When the alteration is required by law or is necessary to restore the building or structure to a safe condition upon the order of any official charged with protecting the public safety.

2. When the alteration is for the purpose of bringing about a conforming use.
3. When the alteration will not create any new nonconformity, increase the degree of any existing nonconformity or increase the bulk of the structure in any manner.

C. Expansion of Use

A nonconforming use of land or a structure shall not be expanded, extended, enlarged or increased in intensity. Such prohibited activity shall include, without limitation:

1. Expansion of any structure devoted entirely to a nonconforming use.
2. An expansion, extension or relocation of a use or its accessory uses to any land area or structure not currently occupied by such nonconforming use.
3. An expansion, extension or relocation of such use, including its accessory uses, within a structure, to any portion of the floor area that was not occupied by such nonconforming use.

D. Relocation

A nonconforming use of land or a structure shall not be relocated, in whole or in part, to any other location on the same lot or parcel. The nonconforming use may only be relocated to another lot or parcel if the use conforms to all regulations of the zoning district in which it is relocated including all use regulations.

E. Change of Use

A nonconforming use shall not be changed to any use other than one permitted within the zoning district in which it is located. When such a nonconforming use has been changed, in whole or in part, to a permitted use, the whole or part which has been made to conform may not be changed back to a use that is not permitted. A change of use shall be deemed to occur when an existing nonconforming use has been terminated and another use has commenced. Any change in use in violation of this Ordinance shall be deemed an abandonment of the previously existing lawful nonconforming use.

F. Discontinuation or Abandonment

If a nonconforming use is discontinued, or the structure that it occupies becomes vacant, and remains unoccupied for a continuous period of one hundred eighty (180) days, such use shall be deemed to be abandoned and shall not be reestablished or resumed regardless of the intent to resume or to continue the use. Any subsequent use or occupancy of such land or structure shall comply with all regulations of the zoning district in which such land or structure is located. The period of such discontinuance caused by government action, acts of God, or other acts without any contributing fault by the user, shall not be included in calculating the length of discontinuance for this Section.

G. Damage or Destruction

1. In the event that any structure that is devoted in whole or in part to a nonconforming use is structurally damaged or destroyed by means within the control of the property owner or tenant, the structure and/or property and any subsequent use shall comply with all requirements of this Ordinance.
2. In the event that any structure and/or property that is devoted in whole or in part to a nonconforming use, is damaged or destroyed, by any means not within the control of the

property owner or tenant, to the extent of fifty percent (50%) or more of its replacement value at that time, then the nonconforming use cannot be continued unless the structure, including foundation is made to conform to all regulations of the zoning district in which it is located.

3. In the event that any structure and/or property that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means not within the control of the property owner or tenant, to the extent of less than fifty percent (50%) of the replacement value at that time, the structure and/or property may be repaired, reconstructed or restored and the nonconforming use continued, provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit shall be obtained for such rebuilding, restoration, repair or reconstruction within one (1) year of the date of damage or destruction, and construction shall be completed within one (1) year of issuance of the building permit.
4. The replacement value of the structure and/or property, which is devoted in whole or in part to a nonconforming use, shall be based on: 1) the sale of that structure and/or property within the previous year or, if that is not applicable; 2) an appraisal within the last two (2) years or, if that is not available; 3) the amount for which structure and/or property was insured prior to the date of damage or destruction or; 4) an alternative method determined acceptable by the City.
5. In the event that the permit is not obtained within one (1) year, or that repairs or restoration are not completed within one (1) year of the issuance of the building permit, then the nonconforming use shall not be continued.

15.4 NONCONFORMING STRUCTURES

A. Ordinary Repairs and Maintenance

Normal maintenance and incidental repair may be performed on any nonconforming structure. No repairs or reconstruction shall be made that would create any new nonconformity, increase the degree of any previously existing nonconformity, or increase the bulk of the structure in any manner.

B. Structural Alterations

No structural alterations shall be performed on any nonconforming structure, except in the following situations:

1. When the alteration is required by law or is necessary to restore the structure to a safe condition upon the order of any official charged with protecting the public safety.
2. When the alteration will result in eliminating the nonconformity.
3. When the alteration will not create any new nonconformity or increase the degree of any existing nonconformity. The only exception shall be any structural alteration of a single-family or two-family dwelling unit in a residential district shall be permitted provided that the proposed structural alteration meets all current applicable building height, setback and lot coverage requirements.

C. Additions and Enlargements

A structure that is nonconforming with respect to its bulk shall not be added to or enlarged.

D. Relocation

A nonconforming structure shall not be relocated, in whole or in part, to any other location on the same zoning lot or parcel. A nonconforming structure may be relocated to another zoning lot or parcel if the structure conforms to all regulations of the zoning district in which it is relocated.

E. Damage or Destruction

1. In the event that any nonconforming structure is structurally damaged or destroyed by means within the control of the property owner or tenant, the structure, as restored or repaired, shall comply with all requirements of this Ordinance.
2. In the event that any nonconforming structure is damaged or destroyed, by any means not within the control of the property owner or tenant, to the extent of fifty percent (50%) or more of its replacement value at that time, then the structure may not be restored or rebuilt unless the structure, including foundation is made to conform to all regulations of the zoning district in which it is located.
3. When such a structure is damaged or destroyed, by any means not within the control of the property owner or tenant, to the extent of less than fifty percent (50%) of the replacement value at that time, it may be repaired and reconstructed provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit shall be obtained for such rebuilding, restoration, repair or reconstruction within one (1) year of the date of damage or destruction, and the construction shall be completed within one (1) year of issuance of the building permit.
4. The replacement value of the structure shall be based on: 1) the sale of that structure within the previous year or, if that is not applicable; 2) an appraisal within the last two (2) years or, if that is not available; 3) the amount for which the structure or property was insured prior to the date of the damage or destruction or; 4) an alternative method determined acceptable by the City.
5. In the event that the building permit is not obtained within one (1) year, or that repairs are not completed within one (1) year of the issuance of the building permit, then the structure shall not be restored unless it conforms to all regulations of the district in which it is located.

15.5 NONCONFORMING LOTS OF RECORD

This section regulates lots of record which at one time were conforming, but which no longer conform to the lot area requirements of the zoning district in which they are located.

A. LOTS OF RECORD HELD IN COMMON OWNERSHIP (ANY DISTRICT) (Ordinance 2008-65, 9/2/2008)

1. If there are two (2) or more lots of record with contiguous frontage in common ownership, and one (1) or more of the lots does not meet the requirements for lot width or lot area as established by this Ordinance, the land so involved shall be considered to be a single undivided parcel for the purposes of this Ordinance. No portion of the parcel shall be used, transferred or conveyed which does not meet the lot width and lot area requirements established by this Ordinance. No division of the parcel shall be made which leaves the remaining lot(s) with lot width or lot area below the requirements of this Ordinance. No building permit shall be issued for the use of any lot, or portion of a lot, transferred or conveyed in violation of this Section.

2. If there are two (2) or more lots of record with contiguous frontage in common ownership, and together the lots meet the bulk requirements as established by this Ordinance, the land so involved shall be considered to be a single undivided parcel for the purposes of this Ordinance. No portion of the parcel shall be used, transferred or conveyed which creates a violation of the bulk requirements of this Ordinance. No division of the parcel shall be made which leaves the remaining lot(s) in violation of the bulk requirements of this Ordinance. No building permit shall be issued for the use of any lot, or portion of a lot, transferred or conveyed in violation of this Section.

B. Exceptions for Individual Lots of Record

1. A nonconforming lot may not be improved. The only exception shall be:
 - a. In all residential districts, except for the R-1 District, a single-family dwelling may be erected on a single nonconforming lot of record that is at least six-thousand one-hundred fifty (6,150) square feet in lot area, provided that the lot meets all other zoning district bulk requirements, and that it was a lot of record as of September 2, 1975.
 - b. In the R-1 District every parcel which existed at the time the R-1 District was established on September 2, 1975, and which is reflected on a document filed with the Office of the Recorder of Deeds of Cook County, Illinois, that does not meet the minimum requirements for lot width of seventy (70) feet and lot area of ten thousand (10,000) feet according to the requirements of the R-1 District may be used for a permitted use, provided that all other requirements of the R-1 District are met and that the parcel has a lot area of at least sixty five hundred (6,500) square feet and lot width of at least fifty (50) feet.
2. If an existing nonconforming lot of record in a residential district does not meet the requirements of Paragraph 1 or 2 above, whichever is applicable, it is unbuildable unless an administrative or major variance, whichever is applicable as determined by Section 4.4 (Zoning Variance), is approved.

15.6 NONCONFORMING SIGNS

The provisions for nonconforming signs are contained within Section 14.12 (Nonconforming Signs).