

**ARTICLE X
NONCONFORMITIES**

10.1 PURPOSE

- A. The intent of this section is to provide for the continuation and, within a suitable period of time, elimination of existing uses of property that do not conform to the requirements of this Ordinance or that may not conform to future amendments thereto. The provisions herein are designed to accomplish this intent in a way that:
1. minimizes the nuisance, reduction in neighboring property values, and other adverse effects of properties that do not conform to their environs
 2. allows the property owner or lessee to recover all or a substantial part of his investment in the nonconformity, while also minimizing the time period during which, by virtue of the nonconformity, he or she enjoys a special right not available to other property owners in the same zoning district.

10.2 DEFINITIONS

- A. A nonconformity is any characteristic of a building, structure, or lot or parcel of land, or of the use thereof, which was lawful prior to the date of enactment of this Ordinance or any amendment thereto and that does not conform to the requirements applicable to the zoning district in which it is located.
- B. The lawful issuance of a Building Permit prior to the dates specified above shall be considered to establish the lawfulness of any building or structure.
- C. There are two categories of nonconformities:
1. Use Nonconformities

A Use Nonconformity may apply to either a principal use or an accessory use. There are two categories of use nonconformities:

 - a. Activities Nonconformities
 - (1) Any activities or functions carried on at a premises that are not allowed by the permitted and conditional uses of the zoning district in which the premises is situated, irrespective of the use for which the premises was designed.

- (2) The use of a dwelling now located in a Residence District as the site of a previously legal business is an example of an Activity Nonconformity.
- b. Design Nonconformities
 - (1) The design or intended use of all or substantially all of a premises for any use not allowed by the permitted and conditional uses of the zoning district in which it is located, irrespective of the nature of the activities currently carried on at that premises.
 - (2) A previously legal premises now located in a Residence District that was designed and intended as an automobile service station or an open sales lot, would be an example of a Design Nonconformity, even if no service station or sales business were currently operated on the premises.

2. Standards Nonconformities

All other nonconformities with the requirements of this Ordinance, including nonconformities involving:

- a. yards
- b. building height
- c. lot area or lot area per dwelling unit
- d. lot width
- e. floor area ratio
- f. size of business
- g. off-street parking and loading
- h. signs
- i. buffer planting strips
- j. screening

An undeveloped lot not meeting the minimum width required by its zoning district, or an otherwise conforming business with a sign that does not meet a requirement of the sign regulations, would be examples of Standards Nonconformities.

10.3 RESTORATION OF DAMAGED STRUCTURES

- A. If a structure with a nonconformity is damaged to the extent that the cost of restoration to its previous condition exceeds fifty percent (50%) of the replacement cost as defined herein, any new construction or reconstruction must comply with all zoning district regulations.

- B. The replacement cost shall be computed as the unequalized assessed valuation for property tax purposes of improvements only (excluding the valuation of the land) immediately prior to the occurrence of the damage, divided by the assessment ratio of assessed value to true value expressed as a decimal.
- C. The existing nonconformity may be reestablished only provided that restoration of damage amounting to fifty percent (50%) or less of replacement cost is started within one year and completed within two years from the date the damage occurred. The Village may grant an extension of the two-year period if restoration work has been diligently prosecuted and completion within said period is impossible owing to conditions not the fault of the property owner.

10.4 ADDITIONS, ENLARGEMENTS, AND ALTERATIONS TO STRUCTURES

A. Activity or Design Nonconformity

No addition, enlargement, or structural alteration as defined herein shall be made to any structure having a Design or Activity Nonconformity without the elimination of all such nonconformity.

B. Standards Nonconformity

No addition, enlargement, or structural alteration as defined herein shall be made to any structure having a Standards Nonconformity without both:

1. The conformance of any new addition or enlargement portion of the structure to all requirements of the zoning district
2. The elimination in whole or in part, to the extent the Zoning Administrator determines physically and economically feasible, of Standards Nonconformities existing on the property before the addition or enlargement, particularly where such nonconformities can be reduced or eliminated without relocation of structures, acquisition of additional land, or expenditures disproportionate to the cost of the enlargement.

10.5 EXPANSION

A. Within Structures

1. Activity or Design Nonconformity

Expansion of activities within a structure having an Activity or Design Nonconformity, or both, is permitted only under one of the following conditions:

- a. The structure has a design nonconformity and the expansion involves no structural alteration as defined herein
- b. The property is made conforming to all applicable provisions of this Ordinance.

2. Standards Nonconformity

Expansion within a structure having a standards nonconformity is permitted conditioned upon the elimination in whole or in part, to the extent the Zoning Administrator determines physically and economically feasible, of standards nonconformities existing on the property before expansion, particularly where such nonconformities can be reduced or eliminated without relocation of structures, acquisition of additional land, or expenditures disproportionate to the cost of expansion.

B. Expansion of Land Use

Expansion of the use of land having any nonconformity, whether involving a principal or accessory use, is permitted beyond the land area presently occupied only provided that the property is made conforming to all applicable provisions of this Ordinance.

10.6 MOVING OF STRUCTURES

No structure with any nonconformity shall be moved in whole or in part to any other location on the same or any other lot unless in the new location it will conform to all regulations of the applicable zoning district.

10.7 CONDITIONAL USES NOT CONFORMING

Conditional Uses approved by the Village shall not be considered to have use nonconformities but shall require an additional conditional use permit for any alteration, enlargement, or extension.

10.8 INTERMITTENT USES NONCONFORMING

The casual, intermittent, or temporary use of land or structures shall not be sufficient to establish the existence of a nonconformity.

10.9 CHANGE IN ACTIVITY

No nonconforming activity may be changed to another nonconforming activity.

10.10 DISCONTINUANCE OF ACTIVITY

If a nonconforming activity is discontinued for a continuous period of one hundred and eighty (180) days, any subsequent activity on the same property shall conform to the permitted and conditional use regulations of the applicable zoning district.

10.11 AMORTIZATION

- A. All nonconformities shall be removed or the uses altered to eliminate, as applicable, the nonconformity within the amortization periods specified, Sections 10.12, 10.13, 10.14, or Section 10.15.
- B. The amortization periods therein were determined based on:
 - 1. the degree of nuisance or other adverse effects each type of nonconformity creates;
 - 2. the size of the investment in the feature that creates the nonconformity and the relative ease and expense with which the nonconformity may be eliminated;
 - 3. the Accelerated Cost Recovery System adopted in 1981 by the US Internal Revenue Service, which provides for a 15-year period during which investors in real property may recover the costs of their investment.
- C. The following types of nonconformities shall not be subject to the amortization provisions herein:
 - 1. Standards nonconformities as defined herein;
 - 2. Design nonconformities of dwelling units;
 - 3. Nonconformities of uses that are located in a Commercial or Office District and are a permitted or conditional use in any Commercial or Office District.

10.12 ADMINISTRATION

- A. A Certificate of Non-Conformance and Amortization Schedule shall be required for the continuation of all nonconformities created by this Ordinance or any amendment thereto.

- B. When the Village Zoning Administrator determines that a property has any nonconformity, he or she shall notify the owner or lessee thereof, in writing, of such nonconformity and of the regulations applicable thereto.
- C. Following receipt of the notice, the owner or lessee shall file with the Zoning Administrator, within three months of the date thereof, either evidence that the property is not nonconforming or a completed application for a Certificate of Non-Conformance and Amortization Schedule.
- D. The application shall require the applicant to submit information as required by the Zoning Administrator to determine the applicable amortization period for the nonconformity. Upon timely receipt of a complete and accurate application therefore, the Zoning Administrator shall, within five (5) working days, issue a Certificate of Non-Conformance and Amortization Schedule for the nonconforming property.
- E. Failure to apply for a Certificate of Non-Conformance and Amortization Schedule within three (3) months of the notice provided for in this Section will require the amortization of the non-conformance within six (6) months of the notice provided for herein.
- F. Non-conforming uses that have obtained a Certificate of Non-Conformance and Amortization Schedule from the Zoning Administrator shall be discontinued within the amortization period specified in Section 10.15 for said use.

10.13 EXTENDED AMORTIZATION PERIODS

- A. An owner or lessee of non-conforming land, a structure, a building or an adult regulated use may, within three (3) months of the notice provided for herein, apply for an Extended Amortization Schedule of up to two (2) additional years. The owner or lessee shall state on the application that it is for an Extended Amortization Period and shall set forth the reasons for pursuing the extended period.
- B. Upon receipt of a complete and accurate application for an Extended Amortization Schedule, the Plan Commission shall schedule and hold not less than fifteen (15) days nor more than forty-five (45) days thereafter, a public hearing. At least fifteen (15) days in advance of the hearing, notice of the time and place of such hearing shall be published at the applicant's expense in a newspaper of general circulation in DuPage County and shall be posted on the road or street frontage of the property for which an application for a Certificate of Non-Conformance has been requested. In addition, notice of the hearing shall be sent to each civic or property owners' organization requesting notices of hearings of non-conformances; however, failure to notify a civic or property owners'

organization so requesting such shall not place any liability whatsoever upon the Village, nor shall such failure invalidate the legality of said hearing.

10.14 STANDARDS FOR EXTENDED AMORTIZATION SCHEDULE

- A. Approval and/or establishment of extended amortization periods and instructions for issuance of Extended Amortization Schedules based on applications therefore shall be granted by the Plan Commission of Appeals only in accordance with the following standards.

- B. No Extended Amortization Schedule shall be approved or established unless the Zoning Board of Appeals shall find:
 - 1. The conditions upon which the application for the Extended Amortization Schedule are based are unique to the property for which the Extended Amortization Schedule is sought and are not applicable, generally, to other property within the same zoning classification.
 - 2. That the period of amortization of the non-conformance will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
 - 3. That the non-conformance during the period of amortization will be not injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the adjacent neighborhood.
 - 4. That the non-conformance during the period of amortization will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
 - 5. That adequate utilities, access roads, drainage, and/or other necessary facilities have been or are being provided.
 - 6. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
 - 7. That the non-conformance will conform to all other applicable regulations of the district in which it is located except those specific requirements directly relating to the non-conformance status of the property.

10.15 AMORTIZATION PERIODS FOR NONCONFORMITIES

Use with Nonconformity	Value	Amortization Period in Years	
		In Residential Districts	In Other Districts
A. ADULT REGULATED USES	--	1	1
B. STRUCTURES & BUILDINGS (other than Adult Regulated Uses)			
As Principal Use:			
With Conforming Design & Nonconforming Activity	--	2.5	5
With Nonconforming Design & Conforming or Nonconforming Activity	--	7.5	15
As Accessory Use:	--	Same for Principal Use	
C. LAND (other than Adult Regulated Uses)			
As Principal Use:			
With No Structures	--	1	2
With Only Accessory Structures:			
3	\$6,000 or less*	1.5	
	Over \$6,000*	2.5	5
As Accessory Use:	--	Same for Principal Use	

Standards Nonconformities are not amortized.

*Value refers to value of improvements only.

Value is unequalized assessed valuation for property tax purposes on the date of passage of the ordinance or the amendment that created the nonconformity divided by the assessment ratio, expressed as a decimal, of assessed value to true value.

All amortization periods start from the date of the notice from the Zoning Administrator to the property owner or lessee that a nonconformity exists.