

## **SECTION 4 NONCONFORMING USES**

### **1. CENTRAL BUSINESS DISTRICT**

Nonconforming uses or structures are those which have been so designated by the Zoning Board of Appeals, after application, by the person having interest in the property or the Zoning Administrator. Nonconforming uses or structures are identified; it is the intent of this Ordinance to provide for their continuance so long as they fulfill the requirements in this section.

The continuance of all nonconforming uses and structures within the village shall be subject to the conditions and requirements set forth in this section.

### **2. PROCEDURES FOR OBTAINING NONCONFORMING USE DESIGNATION**

Any application for a designation for a nonconforming use permit for any land or structure use permitted under this section shall be submitted and processed under the following procedure:

- a. A written application shall be filed with the Zoning Board of Appeals setting forth the name and address of the applicant, giving a legal description of the property to which the application pertains and including such other information as may be necessary to enable the Board of Appeals to make a determination of the matter.
- b. The Zoning Board of Appeals may require the furnishing of such additional information as it considers necessary.
- c. A notice of hearing, and subsequent hearing procedures, shall be given in accordance with the procedures outlined in Section 10.

### **3. REGULATIONS PERTAINING TO NONCONFORMING USES AND STRUCTURES.**

It is the purpose of this Ordinance to eliminate nonconforming uses and structures as rapidly as permitted by law without payment of compensation. Nonconforming uses or structure shall not be repaired, restored, extended, enlarged or substituted for except in accord with the following requirements:

- a. Minor repairs or maintenance of a nonconforming use or structure, in order to keep it structurally safe and sound, is permitted. A nonconforming use or structure shall not be repaired, improved, or remodeled when such repair or improvement exceeds twenty-five (25%) of the structure's value as calculated using twice the buildings assessed value. If the property owner disagrees with the assessed value, they may use the assessment of a qualified appraiser. If a nonconforming use or structure is changed to conform to this Ordinance, the limitations on repairs or improvements shall not apply.
- b. Any nonconforming use or structure damaged by fire, explosion, flood, erosion or other means shall not be rebuilt, repaired, or reconstructed if damaged in excess of fifty (50%) percent of the structures pre-catastrophe value except when the use or structure would fully comply with the requirements of this Ordinance.
- c. No nonconforming use or structure shall be enlarged, extended, or structurally altered.

- d. A nonconforming use may be changed to a substantially different nonconforming use; by the Zoning Board of Appeals as long as the ZBA finds that the new use is as conforming as or more conforming than the current use.
- e. No nonconforming use or structure shall be permitted to continue in existence if the nonconforming use or structure was unlawful at the time it was established.
- f. A nonconforming use or structure may be substituted with a conforming use or structure, or by a use or structure which meets the requirements of a nonconforming use, when the Zoning Board of Appeals determines that the substitution would not increase the nonconformity of the use or structure or be contrary to the public health, safety and welfare and the intent of this Ordinance.

#### **4. DETERMINATION OF REPLACEMENT COST**

The replacement cost of repairing, restoring, or improving a nonconforming use or structure, excluding contents damaged by fire, explosion, flood, erosion, or other means shall be made on the basis of an appraisal by a qualified individual designated by the Zoning Board of Appeals. The following costs of such determinations shall be the responsibility of the Village.

- a. Receiving an estimate of the structural damage from the Mayville Fire Chief.
- b. Receiving an amount representing the difference between the pre-catastrophe market value of the structure and the post-catastrophe value as determined by the assessing officer of Fremont Township.
- c. Dividing the sum of figures derived in (a) from the Fire Chief, and (b) from the Assessing officer, by two (2).

#### **5. NONCONFORMING LOTS OF RECORD**

Any nonconforming lot of record or nonconforming lot described in a deed or land contract executed and delivered prior to the effective date of this Ordinance, or an amendment thereto shall be used only for a use permitted in this Ordinance. If the use of a nonconforming lot requires a variation of the setback or yard requirements of this Ordinance in excess of fifteen (15%) percent of the requirements, then such use shall be permitted if a variance is granted by the Zoning Board of Appeals under the terms of this Ordinance. The reduction by fifteen (15%) percent or less of dimensional requirement for lawful nonconforming lots may be granted by the Zoning Administrator. When the minimum dimensional requirements of this Ordinance can be met by the combination of two or more nonconforming contiguous lots owned by the same person, said lots may be combined for use and no variance is necessary.

#### **6. DISCONTINUANCE OR ABANDONMENT**

Whenever a nonconforming use has been discontinued for twelve (12) consecutive months or for eighteen (18) months during any three (3) years period, such discontinuance shall be considered conclusive evidence of an intention to abandon. The nonconforming use shall not be reestablished, and any further use shall be in conformity with the provisions of this Ordinance.

**7. CHANGING USES**

If no structural alterations are made, the Board of Appeals may, upon an appeal, authorize a change from one nonconforming use to another nonconforming use, provided the proposed use would be more suitable to the zoning district in which it is located than the nonconforming use being replaced. Whenever a nonconforming use has been changed to a more nearly conforming use or to a conforming use, such use shall not revert or be changed back to a nonconforming or less conforming use.

**8. PRIOR CONSTRUCTION APPROVAL**

Nothing in this Ordinance shall prohibit the completion of construction and use of a nonconforming building for which a building permit has been issued prior to the effective date of this Ordinance, provided that construction is commenced within ninety (90) days after the date of issuance of the permit and that the entire building shall have been completed according to plans filed with the permit application within one (1) year after the issuance of the building permit.

**9. ILLEGAL NONCONFORMING USES**

Nonconforming uses of a building or land existing at the effective date of this Ordinance established without a building permit or a nonconforming use which cannot be proved conclusively as existing prior to the effective date of this Ordinance shall be declared illegal. Nonconforming uses, and shall be discontinued within a period of three (3) years following the effective date of this Ordinance, subject to the review and approval of the Planning Commission.

**10. DISTRICT CHANGES**

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to a district of another classification, the provision of this section shall also apply to any existing use that has become nonconforming as a result of the boundary changes.

**11. CHANGE OF TENANCY OR OWNERSHIP**

As long as there is no change in the character or nature of the nonconforming use, a change of tenancy or ownership is allowed.

**12. ELIMINATION OF NONCONFORMING USES**

The Village may eliminate any and all nonconforming uses it deems in the best interest of the Village by whatever means are provided by law in such cases.