

**SECTION 6
NON-CONFORMING BUILDINGS AND USES**

6.1 GENERAL PROVISIONS:

This Section 6 regulates and limits the continued existence of uses, structures and lots established prior to the effective date of this Zoning Code that do not conform to the applicable regulations of this Zoning Code.

The continued existence of nonconformities is frequently inconsistent with the purposes for which the zoning districts of this Zoning Code are established and thus, the gradual elimination of such nonconformities is generally desirable.

6.2 CONTINUANCE OF USE:

6.2-1 Any lawfully established use of a building or land, at the effective date of this Zoning Code, or of amendments hereto, that does not conform to the use regulations for the district in which it is located shall be deemed to be a legal nonconforming use and may be continued, except as otherwise provided herein.

6.2-2 Any legal non-conforming building or structure may be continued in use provided there is no physical change other than necessary maintenance and repair, except as otherwise permitted herein.

6.2-3 Any building for which a permit has been lawfully granted prior to the effective date of this Zoning Code, or of amendments hereto, may be completed in accordance with the approved plans; provided that construction is started within six months and diligently prosecuted to completion. Such building shall thereafter be a lawfully established building.

6.3 DISCONTINUANCE OF USE:

6.3-1 Whenever any part of a building, structure or land considered a non-conforming use is changed to or replaced by a use conforming to the provisions of this Zoning Code, such premises shall not thereafter be used or occupied in a manner in accordance with the previously existing non-conforming use, notwithstanding a circumstance where such building may have been originally designed and constructed for the prior non-conforming use.

6.3-2 Whenever a non-conforming use of a building or structure, or part thereof, has been discontinued for a period of six consecutive months, or for a consecutive period of 12 months if the building was originally designed and constructed for a non-residential use, or whenever there is evidence of an intent by the owner to abandon a nonconforming use, such use shall not, after being discontinued or abandoned, be reestablished; the use of the premises thereafter shall be in conformity with the regulations of the district.

6.3-3 Where no enclosed building is involved, discontinuance of a nonconforming use for a period of six months shall constitute abandonment.

6.3-4 A nonconforming use not authorized by the provisions of the Village zoning ordinance in effect at the time this Zoning Code becomes effective shall be discontinued and not reestablished, except when the provisions of this Zoning Code provide that such use conforms to the regulations of the district in which it is then located.

6.4 CHANGE OF USE:

6.4-1 A nonconforming use of a building or structure, or part thereof; may be changed to a use of the same or of a more restricted character, but may not thereafter be changed to any less restricted use;

6.4-2 Any part of a building, structure or land occupied by a nonconforming use which is changed or replaced by a use conforming to the provisions of this Zoning Code shall not thereafter be used or occupied by a non-conforming use.

6.5 TERMINATION AND REMOVAL OF NON-CONFORMING USES:

6.5-1 The period of time during which the following nonconforming uses of buildings, structures or land may continue or remain shall be limited to two years from the effective date of this Zoning Code, or of any amendments hereto, which cause the use to be non-conforming. Every such non-conforming use shall be completely removed from the premises upon the expiration of the two-year period.

6.5-1.1 Any nonconforming building or structure having an assessed valuation not in excess of \$1,000.00 on the effective date of this Zoning Code.

6.5-1.2 Any non-conforming use of land where no enclosed building is involved, or the only buildings employed are accessory or incidental to such use, or where such use is maintained in connection with a conforming building;

6.5-1.3 Any nonconforming parabolic dish-type antenna.

6.6 REPAIRS AND ALTERATIONS:

6.6-1 Normal maintenance of a building or other structure constituting a nonconforming use is permitted, including necessary non-structural repairs and incidental alterations which do not extend or intensify the non-conforming use.

6.6-2 No structural alterations shall be made in a building or other structure constituting a non-conforming use, except in the following situations:

A. When the alteration is required by law; or

B. When the alteration will result in eliminating the non-conforming use.

6.7 DAMAGE AND DESTRUCTION:

If a building or other structure containing a non-conforming use is damaged or destroyed by natural disaster, to the extent of 50 percent or more of its replacement value at the time, the use can be rebuilt thereafter so long as the restoration remains within the original footprint and is done so in the time allotted below.

In the event the damage or destruction is less than 50 percent of its replacement value, based upon prevailing costs, the occupancy or use of such building which existed at the time of such partial destruction may be continued.

In either event, restoration or repair of the building or other structure must be started within a period of one year from the date of damage and construction completed before the building permit expires.

6.8 ADDITIONS AND ENLARGEMENTS:

- 6.8-1 A non-conforming building may be enlarged or extended only if the entire building is thereafter devoted to a conforming use, and is made to conform to the regulations of the district in which it is located.
- 6.8-2 No building partially occupied by a non-conforming use shall be altered in such a way as to permit the enlargement or expansion of the space occupied by such nonconforming use.
- 6.8-3 No non-conforming building in any residential district shall be so altered as to increase the number of dwelling units therein.
- 6.8-4 No non-conforming use may be enlarged or extended in such a way as to occupy any required usable open space, or any land beyond the boundaries of the zoning lot as it existed at the effective date of this Zoning Code, or to displace any conforming use in the same building or on the same parcel.

6.9 EXCEPTIONS:

Wherever a lawfully existing building or other structure otherwise conforms to the use regulations of this Ordinance, but is nonconforming only in the particular manner hereinafter specified, the building and use thereof shall be exempt from the requirements of subsections 6.6 and 6.7.

- A. In any residential zoning district where a dwelling is non-conforming only as to the number of dwelling units it contains, provided no such building shall be altered in any way so as to increase the number of dwelling units therein.

6.10 BURDEN OF PROOF:

In the event that a property owner claims that a use or structure that is not in compliance with the regulations of this Zoning Code is a legal, nonconforming use or structure, as the case may be, it shall be such property owner's burden, by demonstrating through clear and convincing evidence, that such use or structure is a legal, nonconforming use or structure.