

Section 19.08.01: Purpose

ARTICLE VIII: NONCONFORMING SITUATIONS**Section 19.08.01: Purpose**

The purpose of this Article is to establish regulations for the following nonconforming situations created legally prior to the effective date of this Section: nonconforming uses, nonconforming and substandard lots, nonconforming structures, and other nonconforming sites.

Section 19.08.02: Nonconforming Uses

- A. Definition. A nonconforming use is an active and actual use of land or structures, or both; legally established prior to the effective date of this Section or subsequent applicable amendments thereto which has continued the same use to the present, and which would not be permitted under the current terms of this Section.
- B. Continuance of a Nonconforming Use.
 - 1. Any nonconforming use lawfully existing upon the effective date of this Section may be continued at the size and in a manner of operation existing upon such date, except as specified in this Subsection.
 - 2. Any legal use under the previous Zoning Ordinance which is made nonconforming by this Section may apply for a conditional use permit to be granted legal conforming status.
 - 3. If a parcel or lot contains an existing nonconforming use, the addition of a new conforming use on that parcel or lot shall require a conditional use permit, and subject to the Village's standards, criteria, and procedures in order to ensure compatibility with the existing nonconforming use. Whether uses are compatible shall be determined by the Community Development Director, or designee.
 - 4. In the absence of a conditional use permit granting it legal conforming status, a nonconforming use shall be discontinued before a new conforming use may be added to the parcel.
- C. Modification of a Nonconforming Use. A structure containing a nonconforming use shall not be enlarged or increased to occupy a greater area of lot, parcel, site, and/or structure than was occupied at the time of the effective date of this Section.
- D. No nonconforming use of a premise shall be moved in whole or in part to any other portion of the lot, parcel, site and/ or structure than was occupied upon the effective date of this Section.
- E. Discontinuance of a Nonconforming Use.
 - 1. When any nonconforming use of any structure or land is discontinued for a period of 365 days, or is changed into a conforming use, any future use of said structure or land shall be in complete conformity with the provisions of this Section.
 - a. A nonconforming use that has been discontinued for a period of 365 days or more may be reestablished through the granting of a conditional use permit, provided that the nonconforming use is permitted by right in a zoning district

Section 19.08.03: Nonconforming and Substandard Lots.

- that is less intensive than the zoning district of the subject property, as determined by the Plan Commission.
2. The property owner has the burden to prove that the nonconforming use has been continuously maintained over time. Potential forms of documentation include but are not limited to utility bills; tax records; business licenses; listing in telephone, business, or village directories; advertisements in dated publications; building, land use, or development permits; insurance policies; leases; dated aerial photos; insurance maps that identify use or development such as Sanborn Maps; or land use and development inventories prepared by a government agency.
- F. Ordinary Maintenance and Repairs of a Structure and Land Containing a Nonconforming Use.
1. The ordinary maintenance and repairs made to a structure or land containing or related to a nonconforming use is permitted. Ordinary maintenance and repairs are defined as follows:
 - a. The repair or replacement of doors, windows, nonbearing walls, fixtures, heating and air conditioning components, wiring, plumbing, siding, roofing, or other nonstructural components.
 - b. Overlaying an off-street parking and/ or loading lot, which shall mean adding a layer of asphalt or concrete to an existing off-street parking and/ or loading lot.
 - c. Resurfacing the asphalt or concrete of the off-street parking, loading facilities, and/or access drives without exposing the base course and overlaying such area.
 2. In no instance shall said maintenance and repairs exceed, over the life of the structure, 50% of the present equalized assessed value of said structure or property prior to said repairs, in accordance with Wis. Stats. 62.23(7)(h) as amended.

Section 19.08.03: Nonconforming and Substandard Lots.

- A. Definition. A nonconforming or substandard lot is a lot legally established prior to the effective date of this Section or subsequent applicable amendments thereto which would not be permitted under the current terms of this Section.
- B. Applicability: The following Subsection shall apply to all lots in the Village except in the following circumstances:
 1. The lot did not legally exist as of the effective date of this Section.
 2. The lot is subject to a court order to the contrary of this Subsection.
- C. Blanket Conforming Status.
 1. Blanket conforming status for any and all requirements of this Section is hereby automatically granted to all nonconforming or substandard lots in their configuration existing or as finally approved as of the effective date of this Section. This Subsection ensures that lots approved and created prior to the adoption of this Section do not encounter difficulty because the lots would otherwise be considered nonconforming or substandard.

Section 19.08.04: Nonconforming Structures.

2. After the effective date of this Section, no lot shall be created which does not meet the density, intensity, and bulk requirements of the zoning district, except any lot located within a subdivision platted prior to the effective date of this Section may return to its originally-platted dimensions and configurations.
- D. New Development: A lot of record existing upon the effective date of this Section in any zoning district, which does not meet the minimum lot area, width, and frontage requirements for the zoning district, may be utilized only for one single family dwelling unit or a permitted nonresidential use, provided that such development complies with all of the density, intensity, and bulk regulations for that zoning district.

Section 19.08.04: Nonconforming Structures.

- A. Definition. A nonconforming structure is a structure legally established prior to the effective date of this Section or subsequent applicable amendments thereto which would not be permitted under the current terms of this Section. Parking, loading, access drives, and other paved areas are included in the definition of structure.
- B. The following Subsection shall apply to all structures in the Village except in the following circumstances:
 1. The structure did not legally exist as of the effective date of this Section.
 2. The structure is subject to a court order to the contrary of this Subsection.
 3. Where there are conflicts between or among regulations within this Subsection and other regulations such as floodplain, wetland, and shoreland regulations, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.
- C. Blanket Conforming Status.
 1. Blanket conforming status for any and all requirements of this Section is hereby automatically granted to any structure lawfully existing upon the effective date of this Section. After said date, structures may not be enlarged, expanded, or extended without bringing the enlargement, expansion, or extension into compliance with the provisions of this Section, or unless a variance is granted by the Zoning Board of Appeals.
 2. This Subsection is intended to eliminate the new and/or continued classification of structures as nonconforming subject to the requirements of this Section. This provision addresses two different situations:
 - a. Any structure erected prior to the original adoption of zoning by the Village of Grafton that does not meet some or all of the bulk or intensity requirements of this Section.
 - b. In some instances, this Section establishes new bulk or intensity requirements that existing legal structures under the previous Zoning Ordinance do not meet.
 3. This Subsection therefore ensures that owners of such structures legally established prior to the effective date of this Section do not encounter difficulty because the structures would otherwise be considered nonconforming.
- D. Continuation. Any structure or building lawfully existing upon the effective date of this Section may be continued at the size and in a manner of operation existing upon such date, except as hereafter specified.

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- E. Unsafe Conditions. Nothing in this Section shall preclude the Building Inspector from remedial or enforcement actions when said structure or building is declared unsafe.
- F. Alterations.
1. For the purposes of this Subsection, alterations shall be defined as being one or more of the following:
 - a. Adding, removing, changing, or rearranging the supporting members of an existing structure, such as load-bearing walls, columns, beams, girders, trusses, or interior partitions.
 - b. Pulverizing and/or removing asphalt or concrete from off-street parking and loading facilities and/ or access drives to the extent of exposing the base course, whether or not repaving of such area occurs.
 - c. Full-depth reclamation and mix and mill in-place processes that pulverize the parking facility surface and blend it on-site with the existing aggregate base.
 - d. For the purposes of this Subsection, 'size' is defined as the site coverage, physical dimension, volume, height, length, width, or gross floor area.
 2. A nonconforming structure may be altered provided that the nonconforming structure does not encroach any further into the established nonconforming yard setbacks or required yard setbacks.
 3. A record shall be kept with lists the nonconforming structure, their assessed value, and the cost of those alterations which have been permitted. Such records shall be cumulative and track the cost of the alterations for the lifetime of the structure.
- G. Additions.
1. An addition shall be defined as anything that increases the size of a building or structure.
 2. Additions made to nonconforming structures shall be permissible in required setbacks subject to the following:
 - a. The addition shall not encroach any further into the established nonconforming yard setbacks or required yard setbacks.
 - b. The addition shall conform to all other requirements of the district in which it is located.
 3. Additions shall meet all other provisions of this Section, including, but not limited to, maximum lot coverage, off-street parking and loading facilities, and landscaping standards.
- H. Relocation.
1. Relocation shall be defined as any repositioning of a structure on its site or moving any structure to another site.
 2. No structure shall be moved in whole or in part to any other location on the same or any other site unless the structure complies with all of the provisions of this Section.
 3. If a structure is relocated to a new site, it shall also comply with all other provisions of this Section, including, but not limited to, maximum lot coverage, off-street parking and loading facilities, and landscaping standards.
- I. Ordinary Maintenance and Repairs.
1. The ordinary maintenance and repairs made to a nonconforming structure is permitted.

Section 19.08.05: Other Nonconforming Sites.

2. Ordinary maintenance and repairs are defined as follows:
 - a. The repair or replacement of doors, windows, nonbearing walls, fixtures, heating and air conditioning components, wiring, plumbing, siding, roofing, or other nonstructural components.
 - b. Overlaying an off-street parking and/or loading lot, which shall mean adding a layer of asphalt or concrete to an existing off-street parking and/ or loading lot.
 - c. Resurfacing the asphalt or concrete of the off-street parking, loading facilities, and/or access drives without exposing the base course and overlaying such area.
- J. Destruction and Reconstruction. A damaged, destroyed, or removed structure may be restored to the size, location, design and use that it had immediately before the damage, destruction, or removal occurred without any limits on the costs of the repair, reconstruction, or improvement if either (1) or (2), below, apply. The burden of proof in regard to the location, dimensions, configuration, and exterior building materials of the damaged or removed structure shall be upon the property owner to demonstrate prior to the issuance of a building permit.
 1. The structure was damaged or destroyed by violent wind, vandalism, fire, flood, ice, snow, mold, infestation, or other act identified by Wis. Stats. 62.23 (7) on or after March 2, 2006.
 2. The structure was damaged, destroyed, removed, or partially removed by other means on or after the effective date of this Section.

Section 19.08.05: Other Nonconforming Sites.

- A. Definition. A nonconforming site is a site legally established prior to the effective date of this Section or subsequent applicable amendments thereto which would not be permitted under the current terms of this Section because it does not meet the building and site design requirements of this Section. Such building and site design components may include one or more of the following:
 1. Bulk, intensity, and density requirements.
 2. Exterior building materials requirements.
 3. Exterior building design requirements.
 4. Number of parking spaces required.
 5. Landscaping requirements.
 6. Buffer yard requirements.
 7. Fencing requirements.
 8. Lighting requirements.
- B. Blanket Conforming Status.
 1. Blanket conforming status for any and all requirements of this Section is hereby automatically granted to all development sites in their configuration existing or as finally approved as of the effective date of this Section.
 2. After the effective date of this Section, additional site development that would result in the enlargement, expansion, or extension of uses, structures or other development per (A)(1) through (8), above, will not be allowed to occur without such additional site development being in full compliance with the provisions of this Section.

Section 19.08.06-19.08.10: Reserved for future use

3. This Subsection is intended to prevent the creation of nonconforming sites related to the building and site design requirements of this Section.
4. This Subsection ensures that sites approved prior to the effective date of this Section do not encounter difficulty because they would otherwise be considered nonconforming.

Section 19.08.06-19.08.10: Reserved for future use