

**SECTION 1029 – NON-CONFORMING BUILDINGS, STRUCTURES AND USES**

SECTION

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**1029.01: NON-CONFORMING BUILDINGS, STRUCTURES AND USES:** It is the purpose of this Section to provide for the regulation of non-conforming buildings, structures and uses and to specify those requirements, circumstances and conditions under which non-conforming buildings, structures and uses may be operated and maintained. The Zoning Ordinance establishes separate districts, each of which is an appropriate area for the location of uses, which are permitted in that district. It is necessary and consistent with the establishment of these districts that non-conforming buildings, structures and uses not be permitted to continue without restriction. Furthermore, it is the intent of this Section that all non-conforming uses shall be eventually brought into conformity with this Ordinance.

**Subd. 1.** Grandfather Clause. Any structure or use lawfully existing on July 20, 2002 (effective date of Ordinance) shall not be enlarged, but may be continued at the size and in the manner of operation existing upon such date except as hereinafter specified or, subsequently amended.

**Subd. 2.** Remedial Work. Nothing in this Ordinance shall prevent the placing of a structure in safe condition when said structure is declared unsafe by the Building Official providing the necessary repairs shall not constitute more than fifty (50) percent of fair market value of such structure. The Sherburne County Assessor will determine said fair market value.

**Subd. 3.** Normal Maintenance. Maintenance of a building or other structure containing or used by a non-conforming use will be permitted when it includes necessary non-structural repair and incidental alterations, which do not extend or intensify the non-conforming building or use. Repairs shall be considered structural if they relate to foundations, walls, rafters, joists, headers, beams, timbers, structural sheathing, structural siding, or similar items.

**Subd. 4.** Reversal of Non-Conformity. When any lawful non-conforming use of any structure or land in any district has been changed to a conforming use, it shall not thereafter be changed to any non-conforming use.

**Subd. 5.** Reduction of Non-Conformity. A lawful non-conforming use of a structure or parcel of land may be changed to lessen the non-conformity of use. Once a non-conforming structure or parcel of land has been changed, it shall not thereafter be so altered as to increase the non-conformity.

**Subd. 6.** Restoration and Alteration.

1. Restoration. No lawful non-conforming building or structure which has been damaged by fire, explosion, rot, decay, act of God or the public enemy, to the extent of more than fifty (50) percent of its value, as determined by the Sherburne County Assessor, shall be restored, except in conformity with the regulations of this Ordinance.
2. Alterations to lawful non-conforming structures. Alteration and normal maintenance to a lawful non-conforming building or structure may be made provided:
  - a. The alterations do not expand the building size.
  - b. The alterations do not change the building occupancy capacity or parking demand.
  - c. The alteration does not increase the number of bedrooms in any dwelling unit.

**Subd. 7.** Discontinuance. Whenever a lawful non-conforming use of a structure or land is discontinued for a period of one (1) year, following written notice from an authorized agent of the City, any future use of said structure or land shall be made to conform to the provisions of this Ordinance.

**Subd. 8.** Threats to General Welfare. Non-conforming buildings, structures, and/or uses, which based upon documented study and evidence, pose a danger and/or threat to the health, safety, and general welfare of the community, shall:

1. Be legally described a nuisance by the City Council.
2. Upon being identified by the City Council and upon the owner being notified in writing by the Zoning Administrator, the owner shall provide to the City Council a documented time schedule and program, which will result in the termination or correction of the non-conformity.
  - a. The termination/correction time schedule shall be based upon, but not be limited to, factors such as the initial investment and the degree of threat or danger being posed.
  - b. The acceptability of the time schedule shall be determined by the City Council with right of appeal.
  - c. In no case shall a time schedule exceed two (2) years.

**1029:02: NON-CONFORMING JUNK YARDS:** Junk yards that are annexed into the City may continue as a non-conforming use for up to five (5) years following the date of annexation. Upon annexation, the owner of a junk yard shall file an interim use permit application with the City identifying the terms of operation and setting forth a program and performance securities if required by the City Council, to bring the site into compliance with the underlying Zoning District by the end of the five (5) year term.

**Subd. 1.** Minimum Requirements. The junk yard may continue operation from the date of annexation to five years following the date of annexation provided the site is located within a Business or Industrial Zoning District, and further provided that it is completely enclosed within a building, fence, screen planting or other device of such height as to completely screen the operations of the junkyard. Plans for a building or screening shall be approved by the City Council before it is erected or put into place.

**1029.03: FLOODPLAIN DISTRICT NON-CONFORMING USES**

**Subd. 1.** A structure or the use of a structure or premises which was lawful before the passage or amendment of this Chapter but which is not in conformity with the provisions of this Chapter may be continued subject to the following conditions. Historic structures, as defined in Section 1001 of this Chapter, shall be subject to the provisions Section 1029.03, Subd. 2., through Subd. 6., of this Chapter.

**Subd. 2.** No such use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.

**Subd. 3.** Any structural alteration or addition to a nonconforming structure or nonconforming use which would result in increasing the flood damage potential of that structure or use shall be protected to the Regulatory Flood Protection Elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e., FP-1 through FP-4 flood proofing classifications) allowable in the State Building Code, except as further restricted in Section 1029.03, Subd. 4. And 1029.03, Subd. 7. (Ord. 2011-05, 09-14-11)

**Subd. 4.** The cost of any structural alterations or additions to any nonconforming structure over the life of the structure shall not exceed fifty (50) percent of the market value of the structure unless the conditions of this Section are satisfied. The cost of all structural alterations and additions constructed since the adoption of the Community's initial floodplain controls must be calculated into today's current cost which will include all costs such as construction materials and a reasonable cost placed on all manpower or labor. If the cost of all previous and proposed alterations and additions exceeds fifty (50) percent of the market value of the structure, then the structure must meet the standards of Section 1064.04 or 1064.05 of this Chapter for new structures depending upon whether the structure is in the Floodway or Flood Fringe, respectively.

**Subd. 5.** If any nonconforming use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this Chapter. The assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses which have been discontinued for a period of twelve (12) months.

**Subd. 6.** If any nonconforming use or structure is substantially damaged, as defined in Section 1001.02 of the Chapter, it shall not be reconstructed except in conformity with the provisions of this Chapter. The applicable provisions for establishing new uses or new structures in Sections 1064.04 and 1064.05 will apply depending upon whether the use or structure is in the Floodway, or Flood Fringe District, respectively. (Ord. 2011-05, 09-14-11)

**Subd. 7.** If a substantial improvement occurs, as defined in Section 1001 of this Chapter, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition (as required by Subd. 3., above) and the existing nonconforming building must meet the requirements of section 1064.04 or 1064.05 of this Chapter for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively. (Ord. 2004-09, 4/14/04).