

## **CHAPTER 6: NONCONFORMITIES**

### **SECTION 6.1 PURPOSE**

Within the primary and overlay districts established in this Ordinance or amendments that may later be adopted, certain situations may occur in which an existing lawful use, structure or lot does not comply with the requirements contained in this Ordinance. Except as provided for in Section 6.2, any nonconformity, including the lawful use or occupation of land or premises existing at the time of adoption of the Dodge County Zoning Ordinance, may be continued, although the nonconformity does not conform to the Ordinance. However, it is the intent of this Chapter to regulate and control, reduce the number or extent of and provide for the gradual elimination of these nonconformities. It is necessary and consistent with the establishment of zoning districts that nonconformities not be permitted to continue without restriction.

Additional standards for nonconformities located in the Shoreland and Flood Plain Overlay are listed in Chapter 14 and Chapter 15, respectively. The standards and processes imposed for nonconformities in the Overlay Districts shall be superimposed over, and in addition to, the standards and administration process for nonconformities identified in this Chapter. In the event the standards or processes of Chapters 14 and 15 of this Ordinance conflict with the standards of this Chapter, the more restrictive shall apply.

### **SECTION 6.2 PUBLIC NUISANCES & DETRIMENTAL NONCONFORMITIES**

- 6.2.1 PUBLIC NUISANCE PROHIBITED. Legal nonconformities which are declared to be a public nuisance shall not be allowed to continue.
- 6.2.2 DETRIMENTAL NONCONFORMITIES. A nonconformity that is determined by the County Board to be detrimental to the achievement of the goals and objectives of the comprehensive plan may be acquired by the Board by purchase. Acquisition by purchase does not apply to nonconformities determined to be a "public nuisance" which is prohibited under Section 6.2.1.
- 6.2.3 COMPENSATION FOR REMOVAL OF LEGAL NONCONFORMING USE, STRUCTURE OR LOT. Notwithstanding any law to the contrary, an ordinance or regulation of a political subdivision of the state or local zoning authority that requires the removal of a legal nonconforming use, structure or lot as a condition or prerequisite for the issuance of a permit, license, or other approval for any use, structure, lot development, or activity constitutes a taking and is prohibited without the payment of just

compensation. This section does not apply if the permit, license, or other approval is requested for the construction of a building or structure that cannot be built, or a conforming use that cannot be legally established without physically moving the existing nonconforming structure. Compensation shall not be provided for a legal nonconforming use, structure or lot that has been determined by the County to be a "public nuisance".

## **SECTION 6.3 NONCONFORMING USES**

### **6.3.1 STANDARDS**

Unless otherwise provided for in this Ordinance, any lawful use existing on the effective date of this Ordinance which is not in conformity with the standards contained in this Ordinance shall only be allowed to continue subject to the following conditions:

- A. **EXPANSION PROHIBITED.** No such use shall be expanded, enlarged or altered, including any increase in volume, intensity or frequency of use of the property where a nonconforming use exists.
- B. **EXPANSIONS TO STRUCTURES DEVOTED TO A NONCONFORMING USE.** Any expansion to the dimension of a structure devoted in whole or part to a nonconforming use is considered to be an expansion of a nonconforming use and is prohibited under Section 6.3.1.A.
- C. **MAINTENANCE.** Normal maintenance and upkeep of a structure devoted in whole or part to a nonconforming use, including non-structural maintenance and repair work is allowed. *Check to see if a Zoning Permit is required.*
- D. **NON-SUBSTANTIAL DAMAGE (LESS THAN 50%).** If a structure devoted to a nonconforming use is damaged by fire or other peril to an extent that is less than fifty percent (50%) of the market value of the structure at the time the use was made nonconforming, as determined by the Dodge County Assessor's Office, the structure may be repaired to its original dimensions (length, width, and height) with issuance of a Zoning Permit.
- E. **SUBSTANTIAL DAMAGE OR DESTRUCTION (50% OR GREATER).** If a structure devoted to a nonconforming use is destroyed by fire or other peril to the extent of fifty percent (50%) of its market value as determined by the Dodge

County Assessor's Office, any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.

- F. CHANGE PROHIBITED. A change from one nonconforming use to another nonconforming use is prohibited.
- G. USE OF LAND EXTENSION PROHIBITED. A nonconforming use of a parcel of land may not be extended to cover more land than was occupied by that use when it became nonconforming.
- H. RELOCATION PROHIBITED. A nonconforming use or structure devoted to a non-conforming use shall not be moved to any other part of its parcel.
- I. DISCONTINUATION OF USE. A nonconforming use that has been discontinued for a period of twelve (12) consecutive months shall not be re-established, and any further use shall be in conformity with this Ordinance, except as provided in Minnesota Statutes, Section 116.0711; or successor statutes.

**SECTION 6.4 NONCONFORMING STRUCTURES**

**6.4.1 STANDARDS**

Unless otherwise provided for in this Ordinance, any lawful structure existing on the effective date of this Ordinance which is not in conformity with the setback, size or height requirements contained in this Ordinance is a nonconforming structure and may be allowed to continue subject to the following conditions: a nonconforming structure with a conforming use may be continued through repair, replacement, restoration, maintenance, or improvement, but not including expansion under the provisions and procedures below:

- A. NO INCREASE IN NONCONFORMITY. Unless otherwise provided for in this Ordinance, no nonconforming structure may be relocated and/or modified in any way which increases its nonconformity with the setback, size, height or any other requirements or performance standards of the primary or overlay district in which it is located.
- B. EXPANSION PROHIBITED. Any expansion to the

dimension of a lawful nonconforming structure devoted to a conforming use is prohibited.

- C. MAINTENANCE OR NON-STRUCTURAL REPAIR  
Normal maintenance of a nonconforming structure, including non-structural maintenance and repair work is allowed.
- D. LIMITATIONS ON RESTORATION, STRUCTURAL REPAIR OR OTHER IMPROVEMENT- EXCLUDING FIRE AND OTHER PERIL

The cost of all improvements over the life of a nonconforming structure with a conforming use shall not exceed fifty percent (50%) of the market value at the time it became nonconforming as determined by the Dodge County Assessor's records, unless the entire structure is made conforming. The determination of all structural alterations and additions must include all costs of materials and labor. A Zoning Permit is required to restore, repair or improve a non-conforming structure to ensure compliance with this requirement. The term "improvement" does not include:

- I. Any project for improvement of a structure to correct existing violation of state or local health, sanitary, or safety code specifications which have been identified by Dodge County and which are the minimum necessary to assure safe living conditions.
- II. Any alteration of an "historic structure" provided that the alteration will not preclude the structure's continued designation as an "historic structure." For the purpose of this Ordinance, "historic structure" shall be defined in 44 Code of Federal Regulations, Part 59.1, or successor.

- E. NON-SUBSTANTIAL DAMAGE (LESS THAN 50%). If a lawful nonconforming structure devoted to a conforming use is destroyed by fire or other peril to less than fifty percent (50%) of the market value of the structure at the time the structure was made nonconforming, as determined by the Dodge County Assessor's Office, and the:

- I. STRUCTURE IS REPAIRED WITHIN 12 MONTHS  
Damaged nonconforming structures can be *repaired* with issuance of a Zoning Permit to pre-damaged dimensions. The Dodge County Assessor's Office shall verify that

damage is less than fifty percent (50%). Restoration shall begin within twelve months or the entire structure shall be made conforming.

II. STRUCTURE IS NOT REPAIRED WITHIN 12 MONTHS

The existing structure must conform to all provisions of the Dodge County Zoning Ordinance for new construction, the performance standards for the use, and all applicable setbacks of the district in which it is located.

F. SUBSTANTIAL DAMAGE OR DESTRUCTION (50% OR GREATER) If a nonconforming structure devoted to a conforming use is destroyed by fire or other peril to the extent of fifty percent (50%) or greater of the market value of the structure at the time the structure was made nonconforming, as determined by the Dodge County Assessor's Office, and the:

I. PERMIT IS APPLIED FOR WITHIN 180 DAYS

Structure can be *repaired* or *replaced* with the issuance of a Zoning Permit to pre-damaged dimensions provided the reconstruction does not increase the nonconformity of the structure. Reasonable conditions may be imposed upon a Zoning Permit in order to mitigate any newly created impact on adjacent property or water body.

II. PERMIT IS NOT APPLIED FOR WITHIN 180 DAYS

The existing structure or any new structure must conform to all provisions of the Dodge County Zoning Ordinance for new construction, the performance standards for the use, and all applicable setbacks of the district in which it is located.

Conditions may be placed upon any Zoning Permit to mitigate any impacts on adjacent property or the water body

G. VOLUNTARY REPLACEMENT (EXCLUDING FIRE OR OTHER PERIL)

The new structure must conform to all provisions of the Dodge County Zoning Ordinance for new construction the performance standards for the use, and all applicable setbacks of the district in which it is located.

- H. RELOCATION. If a nonconforming structure devoted to a conforming use is moved any distance, for any reason, it shall thereafter conform to all provisions of the Dodge County Zoning Ordinance.
- I. DWELLING/FEEDLOTS. Expansion or alterations to existing dwellings or feedlots that do not conform to the required setback for new structures shall follow the procedures of Section 6.6 of this Chapter

**SECTION 6.5 NONCONFORMING LOTS**

**6.5.1 LOTS OF RECORD**

All lots or tracts, the plat or deed to which has been recorded in the Office of the County Recorder on or before the effective date of March 2nd, 1971 shall be considered a Lot of Record. A Lot of Record shall be a legally buildable parcel without a variance from lot size requirements even though such parcel may not conform to the lot area, lot width or residential density requirements of the applicable primary or overlay district, if the site can sustain itself for the intended purpose all of the following are met:

- A. The use is permitted in the applicable zoning district; and
- B. The lot or tract has been in separate ownership from abutting lands at all times since it became nonconforming; Lots of record that have been combined after the effective date of March 2nd, 1971 are no longer considered "lots of record" and shall meet the criteria for new buildable lots and any performance standards for new development.
- C. The lot was created compliant with the official controls in effect at the time; and
- D. The applicable setback requirements of this Ordinance are met, or relief is granted by the Board of Adjustment through the variance process; and
- E. The sewage treatment system standards contained in Chapter 21 of this ordinance, or successor ordinance are met.

- F. The lot can sustain itself for its intended purpose

#### 6.5.2 NON-BUILDABLE LOTS

A nonconforming lot that does not meet the criteria of 6.5.1 is considered "non-buildable" under the Dodge County Zoning Ordinance.

#### 6.5.3 RESIDUAL PARCELS

A Lot of Record, as defined in 6.5.1 of this Chapter, that is subsequently reduced to a residual parcel because of a taking or dedication for a public purpose or public right of way shall continue to be considered a Lot of Record and shall be considered a legally buildable parcel if the provisions of Section 6.5.1, Items A – F can be met.

#### 6.5.4 STREET VACATION

A Lot of Record, as defined in 6.5.1 of this Chapter, that is subsequently increased due to the formal vacation of a road undertaken by a public road authority shall continue to be considered a Lot of Record and shall be considered a legally buildable parcel if the provisions of Section 6.5.1, Items A – F can be met.

### **SECTION 6.6 NONCONFORMING WITH FEEDLOT SETBACK (RECIPRIICAL PROCESS AND SETBACK SITING)**

#### 6.6.1 FEEDLOTS

When an expansion is proposed to an existing feedlot that does not meet the setback standards defined Section 16.24.4.F, the FAB shall review and recommend an odor reduction plan that meets an odor annoyance free number of 91% based on the Odor From Feedlot Setback Estimation Tool (OFFSET), as amended. The OFFSET calculation shall be used to predict the odor expected from new buildings and manure storage areas that are included in the proposed expansion. With consideration given to terrain, vegetation barriers and history of complaints, OFFSET calculations may include existing feedlot buildings and manure storage. If the odor reduction plan does not meet the odor annoyance free number then the feedlot expansion proposal may not be permitted, unless the applicant obtains a variance from the Board of Adjustment in accordance with Section 18.11 of this Ordinance.

#### 6.6.2 DWELLINGS – OTHER THAN FEEDLOT OWNER OR OPERATOR

Where an expansion is proposed to an existing dwelling that does not meet the setback standards defined in Section 16.24.4.F, an expansion will be permitted without the need for a variance under nonconformity provisions, provided it does not increase the nonconformity of either the feedlot or dwelling by expanding towards the feedlot. An expansion towards the feedlot is viewed as decreasing the feedlot's ability to comply with the 91% annoyance free OFFSET rating and as a result, increasing the feedlot's potential for the need for a variance in the event an expansion is proposed.

This reciprocal intermediate process only applies for dwellings that are nonconforming with feedlot setbacks. If the dwelling is currently nonconforming with other zoning setbacks or the expansion request results in the need for variance relief from other ordinance setbacks, the applicant will be required to obtain a variance from the Board of Adjustment under the provisions of Section 18.11.