

CHAPTER 7

NONCONFORMING USES, LOTS AND STRUCTURES

9-7-1: Intent:

Within the Zoning Districts established by this Title, and/or general amendments that may later be adopted, there exists:

Lots and Land Parcels,

Buildings and Structures, and

Uses or Characteristics of Use,

that lawfully existed prior to the adoption of this Title, but do not conform to the regulations of restrictions of this Title or zoning district in which they exist. It is the intent of this Chapter to provide for the regulation of these nonconformities and to specify the circumstances and conditions under which such nonconformities shall be permitted to continue.

9-7-2: General Provisions

9-7-2-1: Legal nonconformities shall be encouraged to convert to conforming condition, where possible.

9-7-2-2: Nothing in this Title shall be deemed to require any change in the plans, construction or designated use of any building or structure if a building permit for such building or other structure was lawfully issued prior to the effective date of this Title and:

1. Actual construction pursuant to such permit was begun prior to the effective date of this Title and has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent positions, or fastening in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun prefatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that the work shall be carried on diligently;
2. All health, well and septic requirements shall be met.

3. All use of land and/or structure lawful when established; and any lot or parcel which met the lot area, frontage, and other dimensions for the Zoning District in which it was located at the time it was recorded; and all lawfully constructed structures existing at the date of passage of this Title or subsequent general amendment(s) thereto and located in a Zoning District in which it would not be permitted as a new use or structure under the terms of this Title; are hereby declared to be a legal nonconformance.

9-7-2-3: Nonconforming Lots or Parcels of Record: A legal nonconforming recorded lot or parcel shall be subject to the following provisions:

1. In the Agricultural, Estate and Residential zones,
 - A. A legal nonconforming recorded lot or parcel may be used for a single family dwelling and accessory uses permitted in this Title.
 - B. Required side yard and front setbacks shall be measured from the overhang.
 - C. On interior lots or parcels one side yard must be a minimum of ten (10) feet and the other must be ten (10) percent of the width of the lot, but need not exceed ten (10) feet.
 - D. On a corner lot, the side yard abutting a secondary street shall have a setback of twenty (20) feet.
 - E. Setback shall conform to Table 2 or follow existing setback of other buildings in that block.
2. In all zoning districts construction of new buildings or repair of existing buildings that are being used for permitted uses, but are located on legal nonconforming lots, shall be allowed to the extent permitted by this Title. If any building is damaged or destroyed, it may be rebuilt to the extent that a new building would be allowed.

9-7-2-4: Nonconforming Buildings and Structures: A nonconforming building or structure shall be subject to the following regulations:

1. If any nonconforming building or structure is destroyed by any means to an extent of more than fifty (50) percent of the replacement cost of that portion of the principal and accessory buildings which are above the average ground elevation, such building or structure shall not be rebuilt or reoccupied for any use except in accordance with the zoning district regulations of the zoning district in which it is located.

However, the barns, stables, shelters and other structures for hooved animals may be rebuilt after a calamity such as a fire, tornado, etc. to allow for the non-conforming use of the land to continue but only to the extent of its original development;

2. Damage to an extent less than that of the above paragraph shall be repaired in a manner as nearly conforming as possible;
3. Normal maintenance and repairs shall be permitted to the extent allowed in the Building Code of the Village of Holiday Hills (Title 7 of this Code);
4. Nothing in this Chapter shall prohibit an addition to a residential building, provided that it meets other applicable ordinances and shall not encroach upon the side yard, rear yard or front setback requirements as listed in Table 2.

9-7-3: Nonconforming Uses

Any land, building or structure containing or being used for nonconforming use, shall be subject to the following regulations:

1. If any building or structure being used for a nonconforming use is destroyed by any means to an extent of more than fifty (50) percent of the replacement cost of that portion of the principal and accessory buildings which are above the average ground elevation, such building or structure shall not be rebuilt or reoccupied for any use except in accordance with the zoning regulations of the zoning district in which it is located;
2. Damage to an extent of less than that set forth in the above paragraph shall be repaired in a manner as nearly conforming as possible; and
3. A nonconforming use shall not be enlarged; however, nothing herein shall be construed as prohibiting additions to any dwelling located in the Estate or Residential Districts nor shall anything herein be construed as prohibiting the construction of a garage as an accessory use to any dwelling unit located in the Estate or Residential District. Nonconforming uses shall not be changed to another more intensive nonconforming type of use.

9-7-4: Continuation of Nonconforming Uses and Structures

Nonconforming uses and structures may continue to exist until such time that any of the following conditions occur:

1. The structure housing the nonconforming use or the nonconforming structure is destroyed or damaged to more than fifty (50) percent of the replacement cost of the structure. However, barns, stables, shelters, and other structures for hooved animals may be rebuilt after a calamity such as fire, tornado, etc. to allow for the nonconforming use of land to continue but only to the extent of its original development.

2. The use is discontinued for a period of more than twelve (12) consecutive months. This shall constitute abandonment of the nonconforming use, except, in the following cases:
 - A. Where government action impedes access to the premises;
 - B. Where the property owner files notice of the suspension of such nonconforming use with the Zoning Enforcement Officer at least ten (10) days prior to suspension of the nonconforming use. Failure to file such notice shall be deemed as intent to abandon such nonconforming use.
3. Any use or structure which is nonconforming with respect to this Title and was for any reason unlawful and/or was in violation of the provisions of the then applicable provisions of the McHenry County Zoning Ordinance at the time it was installed, constructed or established shall cease immediately upon the effective date of this Title.