

ROSELLE ZONING UPDATE:

CHAPTER 7 NONCONFORMING USE REGULATIONS

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7-1 - HOW TO USE THIS SECTION

When properties are first established as part of a subdivision or otherwise created, they must meet the zoning standards (mainly their lot size) in place at that time. Similarly, the structures built on those properties must meet “bulk standards” related to setback and height. Finally, the uses of those properties (whether residential, business, industrial or other) must meet the standards of the zoning ordinance (as spelled out for each zoning district).

Over time it is possible that changes made to the zoning ordinance will make a property no longer in compliance with the zoning standards – this is known as becoming “nonconforming”. It is also possible that a property can change (perhaps a part of the property is acquired by the state or county for additional road right of way. In general, the intent of the zoning code is to allow nonconforming uses, properties, or structures to remain and be used as when they were established. It is also possible to maintain and even expand some aspects of the use or building, so long as the nonconformity is not expanded. This section spells out the details of these situations.

7-2 - STATEMENT OF PURPOSE; DETERMINATION OF NONCONFORMING STATUS

7-2-A. The purpose of this section is to provide for the regulation of nonconforming buildings, structures, lots, and uses thereof, and to specify those circumstances and conditions under which those nonconforming lots shall be used and those nonconforming buildings, structures, and uses shall be gradually eliminated upon reaching the end of their respective normal useful life, in accordance with the authority, set forth in Section 11-13-17 of the Illinois Municipal Code, 65 ILCS 5/11-13-17, as may be amended from time to time.

7-2-B. In accordance with the provisions of this Section, it is hereby declared to be the intent of the village to eliminate nonconforming buildings, structures, uses, and wherever possible, nonconforming lots of record.

7-2-C. The burden of proving that a nonconformity exists, as opposed to a violation of this ordinance, rests entirely with the property owner. However, the zoning administrator will

maintain a current inventory of all known nonconforming lots, buildings, structures, and uses within the village, including those created after the adoption of any partial or comprehensive amendment to this ordinance.

7-2-D. The zoning administrator is authorized to determine whether adequate proof of nonconforming status has been provided by the property owner.

7-2-E. Building permits, lawfully recorded plats, aerial photography owned by the village and other official government records that indicated lawful establishment of the lot, building, structure or use constitute conclusive evidence of nonconforming status. If such forms of conclusive evidence are not available, the community development manager is authorized to consider whether other forms of evidence provided by the property owner are reliable and adequate to document nonconforming status. Examples of evidence that may be considered include, but are not limited to:

1. Professional registrations or licenses;
2. Utility billing records
3. Leasing records.

7-3 - NONCONFORMING LOTS OF RECORD

7-3-A. Contiguous lots in single ownership. When two (2) or more contiguous lots, or a combination of contiguous lots and portions of lots, are under single ownership, and if all or part of the lots do not meet the requirements for lot width and area for the zoning district in which they are located, the land involved shall be considered to be an undivided parcel for the purpose of this ordinance. No portion of this undivided parcel will be used or sold which does not meet lot width and area requirements for the zoning district in which the undivided parcel is located, nor shall any division of the undivided parcel be made which creates any lot width or area below the requirements for the zoning district in which they are located.

7-3-B. Single lots or parcel of land. When any single lot or parcel of land does not meet the requirements for lot width and area for the zoning district in which it is located, it shall be used only in accordance with the following requirements.

1. In any district in which single-family, two-family or three-family dwellings are permitted, said buildings or structures and permitted accessory buildings may be erected on a nonconforming lot. However, lot area, widths, and yard requirements shall be not less than eighty (80) percent of the minimum required dimensions for the zoning district in which the single lot or parcel is located. Any greater reduction than twenty (20) percent shall be obtained only through action by the Planning and Zoning Commission.
2. In any district in which multiple-family dwellings or nonresidential buildings or structures are permitted, these buildings or structures and permitted accessory buildings may be erected on a nonconforming lot. However, lot area, width, and yard requirements shall be not less than ninety (90) percent of the minimum required dimensions for the zoning district in which the single lot or parcel is located. Any greater reduction than ten (10) percent shall be obtained only through action by the Planning and Zoning Commission.

7-3-C. Use district changes. The provisions in this Section 5.02 shall also apply to any lots made nonconforming by any change in the boundary of a zoning district.

7-4 - CONTINUANCE OF NONCONFORMING BUILDINGS, STRUCTURES AND USES

Any nonconforming building, structure, or use which existed lawfully at the time of the adoption of this ordinance and which remains nonconforming and any building, structure, or use which shall become nonconforming upon the adoption of this ordinance or of any subsequent amendment to this Code, may be continued, some indefinitely, others for specified and respective periods of time, subject to the following regulations:

7-4-A. Exempted Buildings, Structures, and Uses. No building, structure, or use lawfully established on the effective date of this ordinance shall be subject to the amortization provisions of this section solely by reason of being nonconforming with respect to the bulk and other standards prescribed in this ordinance for any of the following:

1. Floor area ratio;
2. Yards, front, side, rear, or transitional;
3. Lot area per dwelling unit;
4. Lot width;
5. Ground floor area per dwelling;
6. Gross floor area;
7. Building height;
8. Off-street parking or off-street loading spaces; or
9. Performance standards.

7-4-B. No dwelling lawfully existing on the effective date of this ordinance shall be subject to the amortization provisions of this section 5.03.

7-4-C. No building, structure or use located in a Business Zoning District shall be subject to the amortization provisions of this ordinance if it is a permitted building, structure or use in any Business Zoning District, except as provided for elsewhere in this ordinance.

7-4-D. No building, structure or use lawfully established on the effective date of this ordinance and located in any Industrial Zoning District shall be subject to the amortization provisions of this section.

7-4-E. For the purposes of this section a building or structure lawfully constructed or established on the effective date of this ordinance shall be deemed to include any building or structure for which a building permit has been lawfully issued, and on which construction is begun within the required period of time allowed by the unexpired building permit then in effect.

7-5 - RESTRICTIONS ON NONCONFORMING BUILDINGS AND STRUCTURES, AND ON USES THEREOF

Any lawfully existing building or structure which does not conform with the regulations of the district in which it is located shall be subject to the following regulations:

7-5-A. Repairs and alterations.

1. Ordinary repairs and alterations may be made to a nonconforming building or structure. However, no structural alterations except those required by law shall be made in or to such building or structure, all or substantially all of which is designed or intended for a use not permitted in the district in which it is located. Structural alterations may be made in order to make the building or structure and use thereof conform to the regulations of the district in which it is located. For the purpose of this section, ordinary repairs shall include the replacement of storage tanks where the safety of operation of the installation requires such replacement.

2. A nonconforming building in a Residence District which contains residential uses may be altered in any way to improve livability provided no structural alterations shall be made which would increase the number of dwelling units or the bulk of the building.

7-5-B. Additions and enlargements. A building or structure which is nonconforming as to bulk, or all or substantially all of which is designed or intended for a use not permitted in the district in which it is located, shall not be added to or enlarged in any manner unless such nonconforming building or structure and use thereof, including all additions and enlargements thereto, are made to conform to all the regulations of the zoning district in which it is located.

7-5-C. Moving of nonconforming building or structure. No building or structure which does not conform to all of the regulations of the district in which it is located shall be moved in whole or in part to any other location unless every portion of such building or structure is moved. The elevation of the ground at the original site shall be restored to the natural grade of the lot. The use of the building or structure at the new site shall be made to conform to all regulations of the district into which it is moved.

7-5-D. Restoration of damaged nonconforming building or structure. A nonconforming building or structure which is destroyed or damaged by fire or other casualty or act of nature to the extent that the cost of restoration to the condition in which it was immediately before the occurrence will exceed fifty (50) percent of the cost of restoration of the entire building or structure, as established by the most current assessment data from the Schaumburg Township Assessor's Office or Bloomingdale Township Assessor's Office, as appropriate, shall not be restored unless said building or structure and use thereof shall conform to all regulations of the zoning district in which it is located. In the event that such damage or destruction is less than fifty (50) percent of the cost of restoration of the entire building or structure, as established by the most current appropriate assessment data, no repairs or reconstruction shall be made unless such restoration is started within one year from the date of the partial destruction and is diligently prosecuted to completion.

7-5-E. Discontinuance of use of nonconforming building or structure. A nonconforming building, structure, or portion thereof, which is vacant on the effective date of this ordinance or thereafter becomes vacant and remains unoccupied, and is not used for a continuous period of six (6) months, shall not thereafter be occupied or used except by a use which conforms to the use regulations of the district in which it is located.

7-5-F. Expansion of a conforming use in a nonconforming building or structure. The conforming use of a part of a nonconforming building or structure, may be expanded within the building or structure in which the use is presently located. However, no changes or structural alterations shall be made unless these changes or structural alterations and their

use conform to all the regulations of the zoning district in which the building or structure is located.

7-5-G. Change of a conforming use in nonconforming building or structure. The conforming use of a nonconforming building or structure may be changed to another use permitted in the zoning district in which the building or structure is located. However, no change shall extend or otherwise modify any provision made in this ordinance for elimination of such nonconforming building or structure and the use thereof.

7-6 - CONDEMNATION OF NONCONFORMING BUILDINGS AND STRUCTURES

7-6-A. The village, at any time and from time to time, by ordinance duly enacted and in pursuant to the provisions set forth in Section 11-13-17 of the Illinois Municipal Code, 65 ILCS 5/11-13-17, as may be amended from time to time, may:

1. Remove or demolish all such buildings and structures so acquired;
2. Hold and use any remaining property for public purposes; and
3. Sell, lease, or exchange such property as is not required for public purposes, subject to the provisions of this ordinance or any amendment to this ordinance.

7-6-B. No such acquisition by condemnation shall be made until such time as the planning and zoning commission, at the request of the corporate authorities, or upon its own initiative, shall have made a study of the area within which the nonconforming building or structure is located and shall have filed a written report on such study with the corporate authorities.

7-7 - NONCONFORMING USE OF BUILDINGS OR STRUCTURES

7-7-A. Expansion of nonconforming use. The nonconforming use of a part of a conforming building or structure, shall not be expanded or extended into any other portion of such building or structure.

7-7-B. Discontinuance of a nonconforming use. If a nonconforming use of a conforming building or structure, is discontinued for a period of ninety (90) days, it shall not be renewed. Any subsequent use of the building or structure shall conform to the use regulations of the zoning district in which the premises are located.

7-7-C. Change of a nonconforming use. The nonconforming use of a part of a conforming building or structure shall not be changed to any other nonconforming use.

7-8 - NONCONFORMING USE OF LAND

The nonconforming use of land not involving a building or structure, or in connection with which any building or structure thereon is incidental or accessory to the principal use of the land, may be continued subject to the following provisions:

7-8-A. Expansion. A nonconforming use of land shall not be expanded or extended beyond the area it occupies.

7-8-B. Discontinuance. If a nonconforming use of land is discontinued for a period of six (6) consecutive months, it shall not thereafter be renewed. Any subsequent use of the land shall conform to the regulations of the zoning district in which the land is located.

7-8-C. Change of use. A nonconforming use of land shall not be changed to any other use except to a use permitted in the zoning district in which the land is located.

7-8-D. Elimination of nonconforming use of land. The nonconforming use of land shall be discontinued and cease in accordance with the following, except that in R-1, R-2, R-2A, and R-2B Districts the allowable term shall be reduced by fifty (50) percent.

1. Where no buildings or structures are employed in connection with such use, discontinued within one year.
2. Where the only buildings or structures or other physical improvements employed are accessory or incidental to such use and have an assessed valuation of not more than two thousand dollars (\$2,000.00) on the effective date of this ordinance, discontinued within two (2) years.
3. Where the improvements, underground or substantially at ground level, which comprise all or substantially all of the improvements employed in a nonconforming use of land, and which have an assessed valuation of more than two thousand dollars (\$2,000.00) on the effective date of this ordinance, discontinued within five (5) years.
4. Where a nonconforming use of land is accessory to the nonconforming use of a building or structure, discontinued on the same date on which the nonconforming use of the building or structure is discontinued.

7-9 - LIMITED NONCONFORMITY EXCEPTIONS

7-9-A. Zoning Administrator authority. The zoning administrator may authorize, upon application in specific cases, an exception permitting an increase:

1. in either, or both, the zoning lot area or the gross floor area in a building or structure occupied by a nonconforming use as are necessary and essential to enable the owner of the use to comply with lawful requirements of the federal, state, or village; or
2. in the existing nonconforming use on an existing lot where (a) as a result of a property owner acquiring additional adjoining property or (b) an act of government through vacation of right-of-way that creates additional private land area abutting the existing lot.

7-9-B. Procedure and required findings. All applications for a limited nonconformity exception under this Section 5.08 will be reviewed according to the following procedures:

1. Initiation. The owner or owners of the subject property or the owner's authorized agent may initiate an application for limited nonconformity exception.
2. Pre-application meeting. A pre-application meeting with zoning administrator is optional before submittal of a limited nonconformity exception application. The zoning administrator's opinions or comments made during a pre-application meeting are informational only and do not represent a commitment on behalf of the village regarding

a final decision on the limited nonconformity exception application. However, at the pre-application meeting the zoning administrator may waive application submittal requirements or request that additional information be submitted.

3. Application and Fees:

a. Submittal in writing. All applications for a limited nonconforming exception will be submitted in writing to the zoning administrator. The applicant will pay all required fees at the same time the application is submitted.

b. Concurrent applications. The applicant may submit a limited nonconformity exception application concurrent with the submittal of other applications. In no case, however, shall a building permit be issued until the limited nonconforming exception according to this Section 5.08 is approved.

4. Review, referral and final decision. The zoning administrator may refer the limited nonconforming exception application to other affected or interested state and local agencies, village departments and parties for review and comment, as deemed necessary to make a decision on the application. The zoning administrator will make a final decision to approve, approve with conditions, or deny the application, taking into consideration relevant comments. Wherever higher or more restrictive standards are established by the provisions of this ordinance, the zoning administrator may take these provisions into consideration in making a final decision.

5. Review criteria. The zoning administrator will use the following criteria in making a decision on an application for a limited nonconformity exception application:

a. the application is consistent with all prior approvals for the subject property.

b. the application complies with all other applicable regulations in this ordinance except those specifically the subject of the limited nonconforming exception.

c. the use is a nonconforming use as defined in this ordinance, is in full compliance with all requirements of this ordinance applicable to nonconforming uses, and is not a nonconforming use which is to be terminated by operation of law.

7-9-C. Timing for decisions. Any decision for a limited nonconforming exception will be made by the zoning administrator within 45-days after receipt of a completed application complying with the requirements of this Section unless the property owner and zoning administrator agree in writing to a longer review period. Failure of the zoning administrator to issue his or her written decision with 45-days, or as may be extended by agreement of the property owner and zoning administrator, will be a decision to deny the application.