

§ 9.2.23 NON-CONFORMING USES AND STRUCTURES

(A) **PURPOSE AND INTENT.** The purpose of this Section is to provide interpretation and relief to land use issues that were created and maintained legally prior to October 27, 2003.

(B) **LAND USE.** The lawful use of land existing at the time the applicable Zoning Code became effective, and such use did not conform, may be continued provided no physical enlargement or addition to such use is made.

(C) **BUILDINGS.** The lawful use of buildings existing at the time the applicable Zoning Code became effective, and such building did not conform with respect to the development regulations, may be continued provided any enlargements, additions or alterations to such building will not increase its degree of nonconformity and will conform in every respect with the development regulations of the zone in which the building is located, except as hereinafter provided by zone variance.

(D) **GENERAL REGULATIONS.**

(1) A discontinuance of a non-conforming use for a continuous period of one hundred eighty (180) days shall be deemed to constitute abandonment of any non-conforming rights existing at the time of the enactment of the Ordinance. Suspension of business operations on a non-conforming use for the purpose of performing required repairs or maintenance shall not constitute abandonment provided such operations resume within three hundred sixty (360) days.

(2) Any change from a non-conforming use of land or buildings to a more restrictive or conforming use shall constitute abandonment of such non-conforming rights.

(3) Repairs, maintenance, and alterations which do not increase the degree of nonconformity of a non-conforming building, structure or improvement, nor increase the size or degree of nonconformity of a use, shall be made.

(4) If any non-conforming building or use be destroyed to the extent of fifty percent (50%) or more of the fair market value, according to the assessment thereof by the County Assessor, for the fiscal year during which the destruction occurs, then and without further action by the Village, the said building and use of the land on which said building was located or maintained shall from and after the date of such destruction shall cease the non-conforming use and the property shall be subject to all the regulations specified by the Zoning Code for the district in which the said building was located.

(5) If a property, that has a non-conforming use which abuts Fourth Street, adds landscaping, signs, lighting, or other types of accessory uses in conformance with Village regulations and this Section, those improvements shall not be deemed an expansion of the use.

(6) If an investigation by the Village reveals that a particular property contains a legal, non-conforming use or structure, a "Notice of Non-conforming Rights," may be recorded with the County of Bernalillo. This notice is designed to provide constructive notice to any successors in interest that non-conforming rights as to the property or structure existed at the time of the recordation of the notice. Nothing in this notice shall permit the continuation of a non-conforming use or structure that was



subsequently expanded, enlarged, abandoned or destroyed which extinguishes the previous non-conforming right.

(7) If a subsequent investigation reveals that a previous non-conforming right as to the property's use or structure has been vacated or abandoned, a cancellation of the Notice of Non-conforming Rights shall be recorded by the Village with the County of Bernalillo.

(E) NON-CONFORMING USES AND STRUCTURES EXEMPTION.

(1) The following are prohibited:

(a) Changes of non-conforming uses to other non-conforming uses, except where the Planning and Zoning Commission finds the new non-conforming use will have no greater adverse impact on surrounding property or resources;

(b) Extension or enlargement of non-conforming uses or non-conforming structures and the construction of new non-conforming accessory structures, unless the Planning and Zoning Commission finds that such extension, enlargement or new accessory structures will not adversely affect surrounding properties and resources. New non-conforming accessory structures shall be allowed provided there is no alternative which is 1) suitable for the construction of such accessory structure and 2) reasonably available to the applicant such that the accessory structure may be constructed so as to conform to applicable regulations;

(c) Resumption of non-conforming uses if such use is discontinued or abandoned for a period of a maximum of one hundred eighty (180) days;

(d) Changes of conforming uses to other similar, conforming uses which involve the utilization of principal structures which have been in existence for five (5) years or more, and which are or will be non-conforming, except where the Planning and Zoning Commission finds the new conforming use will not adversely impact surrounding uses and resources. The Planning and Zoning Commission shall not approve such proposed changes in use where it finds that the intent of such proposals is to avoid the objectives of the statutes or regulations administered by the Village;

(e) Extension or enlargement of conforming uses which involve the utilization of non-conforming structures and the construction of new non-conforming accessory structures, unless the Planning and Zoning Commission finds that such extension, enlargement or new accessory structures will not adversely affect surrounding property and resources. New non-conforming accessory structures shall only be allowed provided there is no alternative site, which is 1) suitable for the construction of such accessory structure and 2) reasonably available to the applicant such that the accessory structure may be constructed so as to conform to applicable regulations.

(2) Any use that was granted after the adoption of this Code shall not be deemed a non-conforming use, but shall be deemed a conforming use in such a district.

(3) Any legally existing non-conforming dwelling unit may be reconstructed if damaged or destroyed, regardless of cause, if reconstructed within a period of two (2) years from the date of such damage or destruction.



(4) Expansions of legally existing non-conforming dwelling units, including but not limited to additional stories, rooms, porches and garages unless the height, setback, lot coverage and parking regulations are met.

(5) Reconstruction and expansion of legally existing non-conforming dwelling units shall comply with the provisions of the governing zone.

