

Section 6
NON-CONFORMING BUILDINGS AND USES

- 6.1 Continuance of Use
- 6.2 Discontinuance of Use
- 6.3 Change of Use
- 6.4 Termination and Removal of Non-Conforming Uses
- 6.5 Repairs and Alterations
- 6.6 Damage and Destructions
- 6.7 Additions and Enlargements
- 6.8 Exceptions

6.1 CONTINUANCE OF USE:

6.1-1 Any lawfully established use of a building or land at the effective date of this Zoning Code, or of amendments hereto, that does not conform to the use regulations for the district in which it is located, shall be deemed to be a legal non-conforming use and may be continued, except as otherwise provided herein.

6.1-2 Any legal non-conforming building or structure may be continued in use provided there is no physical change other than necessary maintenance and repair, except as otherwise permitted herein.

6.1-3 Any building for which a permit has been lawfully granted prior to the effective date of this Zoning Code or of amendments hereto, may be completed in accordance with the approved plans; provided construction is started within six months and diligently prosecuted to completion. Such building shall thereafter be deemed a lawfully established building.

6.2 DISCONTINUANCE OF USE:

6.2-1 Whenever any part of a building, structure or land occupied by a non-conforming use is changed to or replaced by a use conforming to the provisions of this Zoning Code, such premises shall not thereafter be used or occupied by any non-conforming use, even though the building may have been originally designed and constructed for the prior non-conforming use.

6.2-2 Whenever a non-conforming use of a building or structure, or part thereof, has been discontinued for a period of six consecutive months, or for a continuous period of 12 months if the building was originally designed and constructed for a non-residential use, or whenever there is evident a clear intent on the part of the owner to abandon a non-conforming use, such use shall not after being discontinued or abandoned, be re-established and the use of the premises thereafter shall be in conformity with the regulations of the district.

6.2-3 Where no enclosed building is involved, discontinuance of a non-conforming use for a period of six months shall constitute abandonment.

6.2-4 A non-conforming use not authorized by the provisions of the Village of Lakewood Ordinance in effect at the time this Zoning Code becomes effective shall be discontinued and not re-established, except when the provisions of this Zoning Code find the use to be conforming to the district in which it is then located.

6.3 CHANGE OF USE:

6.3-1 A non-conforming use of a building or structure, or part thereof, may be changed to a use of the same or of a more restricted character, but may not thereafter be changed to any less restricted use.

6.3-2 Any part of a building, structure or land occupied by a non-conforming use which is changed to or replaced by a use conforming to the provisions of this Zoning Code shall not thereafter be used or occupied by a non-conforming use.

6.4 TERMINATION AND REMOVAL OF NON-CONFORMING USES:

6.4-1 The period of time during which the following non-conforming uses of building, structures or land may continue or remain shall be limited to two years from the effective date of this Zoning Code or of any amendments hereto which causes the use to be non-conforming. Every such nonconforming use shall be completely removed from the premises at the expiration of the two year period.

A. Any non-conforming building or structure having an assessed valuation not in excess of \$1,000.00 on the effective date of this Zoning Code.

B. All non-conforming signs, billboards and outdoor advertising structures.

C. Any non-conforming use of land where no enclosed building is involved, or where the only buildings employed are accessory or incidental to such use, or where such use is maintained in connection with a conforming building.

6.5 REPAIRS AND ALTERATIONS:

6.5-1 Normal maintenance of a building or other structure containing a non-conforming use is permitted, including necessary non-structural repairs and incidental alterations which do not extend or intensify the non-conforming use.

6.5-2 No structural alterations shall be made in a building or other structure containing a nonconforming use, except in the following situations:

A. When the alteration is required by law.

- B. When the alteration will actually result in eliminating the non-conforming use.
- C. When a building containing residential nonconforming uses may be altered in any way to improve livability, provided no structural alteration shall be made which would increase the number of dwelling units or the bulk of the building.
- D. When a building has been constructed with a 15 foot building setback line as allowed in Subsection 6.8-2.

6.6 DAMAGE AND DESTRUCTIONS:

If a building or other structure containing a non-conforming use is damaged or destroyed by any means to the extent of 50 percent or more of its replacement value at the time, the building or other structure can be rebuilt or used thereafter only for a conforming use and in compliance with the provisions of the district. In the event the damage or destruction is less than 50 percent of its replacement value, based upon prevailing costs, the occupancy or use of such building may be continued which existed at the time of such partial destruction.

In either event, restoration or repair of the building or other structure must be started within a period of one year and diligently prosecuted to completion.

6.7 ADDITIONS AND ENLARGEMENTS:

6.7-1 A non-conforming use may be enlarged or extended only if the entire building is thereafter devoted to a conforming use, and is made to conform to all the regulations of the district in which it is located.

6.7-2 No building partially occupied by a nonconforming use shall be altered in such a way as to permit the enlargement or expansion of the space occupied by such non-conforming use.

6.7-3 No non-conforming building in any Residential District shall be so altered as to increase the number of dwelling units therein.

6.7-4 No non-conforming use may be enlarged or extended in such a way as to occupy any required usable open space, or any land beyond the boundaries of the zoning lot as it existed at the effective date of this Zoning Code, or to displace any conforming use in the same building or on the same parcel.

6.8 EXCEPTIONS:

6.8-1 Wherever a lawfully existing building or other structure otherwise conforms to the use regulations of this Zoning Code, but is nonconforming only in the particular

manner hereinafter specified, the buildings and use thereof shall be exempt from the requirements of Subsections 6.4 and 6.5.

- A. In any R District where a dwelling is nonconforming only as to the number of dwelling units it contains, provided no such building shall be altered in any way so as to increase the number of dwelling units therein.
- B. In any B-1 District where the use is less distant from an R District than that specified in the regulations for the district in which it is located.

6.8-2 In any R-1 or R-2 District where a lawfully existing building or other structure otherwise conforms to the use regulations of this Zoning Code but is non-conforming only in the respect that it does not meet the front yard setback requirements (and/or side yard setback requirements if the lot is a reverse corner lot) of the R-1 or R-2 District, the building and use thereof shall be exempt from the requirements of Subsections 6.2-6.7, 10.2-5.1 and 10.3-5.1 herein and may be altered or enlarged, provided the front yard setback requirement (and/or side yard setback requirement if the lot is a reverse corner lot) are not affected, restored, repaired, conveyed and used as if the structure was conforming.

6.8-3 Notwithstanding any other inconsistent or contrary provision in this section, in the event that a portion of a residence which is a non-conforming building or use on a lot with R-2 zoning encroaches into the required front yard, side yard and/or rear yard setback of such lot, and that such encroachment is the only portion of such residence which does not conform to the requirements of this Zoning Code, such encroachment may be re-built not to exceed such encroachment's previous height, subject to all other applicable ordinances, provided that such encroachment into the required front yard, side yard or rear yard setback is not increased in terms of its existing footprint.

Notwithstanding any other inconsistent or contrary provision in this section, with respect to a dwelling where a portion of same is non-conforming because such portion encroaches into the required setback area of the lot on which it is situated, the remainder of the residence may be increased in size or height provided that such increase in size or height conforms to all other applicable ordinances including but not limited to the setback and height requirements for the R-2 zoning district.

A nonconforming part of a building, along with the conforming part of a building, may be razed completely without the pretense of saving a portion of the structure, provided reconstruction commences within 30 days and continues thereafter in compliance with the building permit issued for the project.