

# CHAPTER 9. NON-CONFORMING USES, LOTS AND STRUCTURES

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### 📖 Section 900 - Purpose

**900.01 Purpose.** It is the purpose of this chapter to provide for the regulation any nonconformity, including non-conforming uses, lots and structures and to specify the requirements, circumstances and conditions under which nonconforming uses, lots and structures may be continued or expanded or cease to be allowed and maintained.

(Am. Ord. 2014-14, passed 12-15-2014)

### 📖 Section 905 – Non-Conforming Use

**905.01.** In general, except as otherwise provided in this Zoning Code, any non-conforming use may be continued and may be expanded if a permit is obtained for such continuation or expansion pursuant to Section 905.04 and Section 920.

**905.02 Certain Mobile Homes.** The following shall govern the continued use of mobile homes which, prior to January 19, 1981:

**905.02.1.** Were not located in a mobile home park;

**905.02.2.** Were located on a parcel of land on which the only dwelling was such mobile home and the title to said land was in the same name as the owner of the mobile home; or

**905.02.3.** Were not located on such property under the so-called “parent’s policy.”

**905.02.3.1.** Such mobile homes shall be deemed non-conforming uses.

**905.02.3.2.** If such mobile home ceases to be used as a dwelling and such cessation of use continues uninterrupted for a period of one (1) year, then such mobile home cannot continue to be used as a dwelling and must be removed from the property on which it is located unless the location of a mobile home on such property is authorized by the regulations governing the zone district in which such home is located.

**905.02.3.3.** If such mobile home is damaged or destroyed by fire or other peril to an extent of more than 50% of its estimated market value, as indicated in the records of the County Assessor at the time of change, and no building permit has been applied for within one hundred eighty (180) days of when the mobile home was damaged, then such mobile home cannot be repaired and continue to be used as a dwelling or be replaced by another mobile home unless the location of a mobile home on such property is authorized by the regulations governing the zone district in which such mobile home is located.

**905.02.3.4.** Any such mobile home to which [905.02.3.2.](#) and [905.02.3.3.](#) hereof are not applicable may be replaced with another mobile home as that term is defined in this Code.

**905.02.3.5.** Any subsequent use or occupancy of the land or premises on which a mobile home is required to be removed under Section [905.02.3.2.](#) or prohibited from being replaced or repaired under Section [905.02.3.3.](#) should be a conforming use or occupancy.

**905.03 Other.** Any other non-conforming use is subject to the following provisions:

**905.03.1.** If a non-conforming use is changed to a conforming use it shall not thereafter be changed to a non-conforming use;

**905.03.2.** Whenever a non-conforming use is discontinued and such cessation of use continues uninterrupted for a period of one (1) year, any future use of such land shall be made to conform with all of the regulations specified in the City Code for the zone district in which such use is located;

**905.03.3.** Non-conforming uses which are or become nuisances shall not be entitled to continue as non-conforming uses;

**905.04 Continuation of Use.** Notwithstanding the foregoing provisions of this Section 905, a non-conforming use that would otherwise be required to cease may be continued if a permit for the continuation of such use is applied for and obtained pursuant to the procedures set forth in Section 920 hereof.

(Am. Ord. 2014-14, passed 12-15-2014)

## **Section 910 – Non-Conforming Lots**

**910.01** In a shoreland, a non-conforming lot located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

**910.01.1.** All structure and septic system setback distance requirements are met;

**910.01.2.** A Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer;

**910.01.3.** The impervious surface coverage does not exceed 25 percent of the lot;

**910.01.4.** In a group of two or more contiguous lots of record under a common ownership, an individual lot is considered as a separate parcel of land for the purposed of sale of development, if it meets the following requirements:

**910.01.4.1.** The lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

**910.01.4.2.** The lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and local government controls;

**910.01.4.3.** Impervious surface coverage must not exceed 25 percent of each lot; and

**910.01.4.4.** Development of the lot must be consistent with the adopted comprehensive plan.

**910.01.4.5.** A lot subject to Section [910.01.4.](#) not meeting the requirements of Section [910.01.4.](#) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

**910.01.5.** Notwithstanding Section [910.01.4.](#), contiguous nonconforming lots of record in shoreland areas under a common ownership may be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of Section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

**910.01.6.** In evaluating any application for an expansion or continuation permit for a non-conforming lot in a shoreland, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

**910.01.7.** A portion of a conforming lot in a shoreland may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage treatment

requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

**910.02 Flood Plan.** In a flood plan, no non-conforming lot may be allowed as a building site unless the use or structure proposed to be made of or constructed on such non-conforming lot is eligible for inclusion in the National Flood Insurance Program and does not increase flood damage potential or increase the degree of obstruction to flood plains in the floodway.

**910.03 Other.** A non-conforming lot in any other zone district may continue to be allowed as a building site subject to the following:

**910.03.1.** Such lot is a lot of record within the meaning of Section [200.01.57](#) of the Hermantown Zoning Code;

**910.03.2.** Such lot is in separate ownership from abutting lands;

**910.03.3.** The lot is approved by the St. Louis County Health Department for a private sewage system if not sewered by public sewer; and

**910.03.4.** The dimensional requirements of the zone district within which it is located are complied with insofar as practicable.

(Am. Ord. 2014-14, passed 12-15-2014)

## **Section 915 – Non-Conforming Structures**

**915.01 In Floodplain District.** See [Chapter 15](#), Floodplain Management Regulations, of these Zoning Regulations. The provisions of Chapter 15 shall apply to non-conforming structures in a Floodplain District. If there is any inconsistency between the provisions of this Chapter and the provisions of Chapter 15, the more restrictive provisions of Chapter 15 shall apply.

**915.02 Other.** Except as provided in Section [915.04](#), any non-conforming structure may be continued, including through repair, replacement, restoration, maintenance or improvement, but not including expansion, in any zone district subject to the following:

**915.02.1.** Except as provided in Section 920 hereof, no non-conforming structure shall be expanded unless such expansion eliminates the non-conformity.

**915.02.2.** No non-conforming structure shall be moved to another lot or to any other parcel of land unless such movement will bring it into conformity with the requirements of these Zoning Regulations.

**915.02.3.** Except as provided in Section 920, if at any time a non-conforming structure shall be destroyed to the extent of more than 50% of its estimated fair market value, as indicated in the records of the St. Louis County Assessor at the time of the damage and no building permit has been applied for within one hundred eight (180) days of when the structure is damaged, such

structure shall, from and after the date of such destruction, be subject to all the regulations specified by these Zoning Regulations for the district in which said land and structure is located.

**915.02.4.** Whenever a non-conforming structure ceases to be used and such cessation of use continues uninterrupted for a period of one (1) year, then such structure may not be used unless the non-conformity is eliminated or unless a permit to continue to use such structure is applied for and approved pursuant to Section 920 hereof.

**915.02.5.** Changing a non-conforming sign by repainting, posting or rotating sign faces shall not constitute an expansion of such non-conformity for purposes of these Zoning Regulations. Reposting a sign constitutes an expansion of a non-conformity.

(Am. Ord. 2014-14, passed 12-14-2014)

## **Section 920 – Non-Conforming Use or Structure Expansion or Continuation Permit**

**920.01. Application.** Application for a non-conforming use or structure expansion or continuation permit must be made to the Zoning Administrator. The application must be on a form provided by the City and must be accompanied by the following:

**920.01.1.** A survey of the property prepared by a Minnesota registered surveyor which shows, at a minimum, all lot line, existing and proposed structures, driveways and parking areas, significant topographical features and mature trees;

**920.01.2.** An owners and encumbrances report, certified to current date, evidencing the ownership or an interest in the property;

**920.01.3.** The required fee; and

**920.01.4.** Such other information as may be required by the City.

**920.02. Public Hearing.** Upon receipt of a complete application, a date will be set for a public hearing before the planning commission. The public hearing will be held only after notice has been sent by mail to the owners of all properties situated wholly or partially within 350 feet of the property for which an expansion or continuation permit is sought, as reflected in the records of the St. Louis County Auditor.

**920.03. Decisions.**

**920.03.1.** An expansion or continuation permit for a non-conforming use or structure may be granted, but is not mandated, when the applicant meets the burden of proving that:

**920.03.1.1.** The proposed expansion or continuation is a reasonable use of the property, considering such things as:

**920.03.1.1.1.** Functional and aesthetic justifications for the expansion or continuation;

**920.03.1.1.2.** Adequacy of off-street parking for the expansion or continuation;

**920.03.1.1.3.** Absence of adverse off-site impacts from such things as traffic, noise, dust, odors, and parking; and

**920.03.1.1.4.** Improvement to the appearance and stability of the property and neighborhood.

**920.03.1.1.5.** The use or structure is not a nuisance as defined in Hermantown City Code Section 770.

**920.03.1.2.** The circumstances justifying the expansion or continuation are unique to the property, are not caused by the landowner, are not solely for the landowner's convenience, and are not solely because of economic considerations; and

**920.03.1.3.** The expansion or continuation would not adversely affect or alter the essential character of the neighborhood.

**920.03.2.** The planning commission may grant an expansion or continuation permit only upon an affirmative vote of at least a majority of its full membership. The planning commission may impose conditions in granting an expansion or continuation permit to effect the intent of this ordinance and to protect adjacent properties. The planning commission must accompany its decision to deny an expansion or continuation permit with a statement of its findings and must serve a copy of its decision upon the applicant by mail. The planning commission action will be final action subject to the right of appeal pursuant to the provisions of Section 355 of the Hermantown Zoning Code, except if the expansion or continuation permit is an integral part of another land use application that requires city council action in which case it must be approved by the City Council in conjunction with the other application. In those circumstances, the planning commission action will be a recommendation to the city council, which may approve an expansion or continuation permit by an affirmative vote of at least a majority of the city council's full membership.

**920.04. Term of Expansion Permit.** An expansion or continuation permit granted by the City will run with the land and will be perpetual unless no building permit has been issued or substantial work performed on the expansion or the use of the land is not recommenced prior to December 31 of the year following the year of approval, in which case the permit will be null and void. The planning commission or the city council, as the case may be, may extend the period for construction of the construction or commencement of the continuation of the use upon finding that the interest of the owners of neighboring properties will not be adversely affected by such extension. If the expansion or continuation permit is part of an approved site and building plan, extension of the time period for construction of the expansion or commencement of the continuation of the use will be contingent upon a similar extension of the time period for the site

and building plan by the planning commission or the city council, as the case may be. Once the construction of the expansion or commencement of the continuation of the use is completed as approved, the expansion or continuation permit becomes perpetual, but the use or structure, remains a non-conforming use or structure as the case may be.

(Am. Ord. 2014-14, passed 12-15-14)