

ORDINANCE NO. 2016-04

AN ORDINANCE OF THE CITY OF GRAND MARAIS, MINNESOTA, AMENDING GRAND MARAIS ZONING CLARIFYING RULES REGARDING NONCONFORMITIES

THE CITY COUNCIL OF THE CITY OF GRAND MARAIS DOES ORDAIN (deleted material is lined out; new material is underlined; subsections which are not being amended are omitted):

Section 1. That Chapter 19 of the City Code of Grand Marais, Minnesota, which chapter is entitled "Zoning Ordinance (Revised 2008)", be amended as follows:

19.02 - DEFINITIONS

Subdivision 2. Definitions

For the purpose of this chapter, certain words are defined as follows:

~~Non-Conforming Use — A use lawfully in existence on August 5, 1971, the effective date of this chapter or upon any subsequent amendment, and not conforming to the regulations for the district in which it is situated, except that such a use is not non-conforming if it would be authorized under a conditional use permit where located.~~

19.16 NONCONFORMITIES ~~NON-CONFORMING USES~~

Subdivision 1. ~~Non-conforming Junk Vehicles~~

~~No junk yard may continue as a non-conforming use for more than five (5) years after August 5, 1971, except that a junk yard may continue as a non-conforming use in a Commercial or Industrial District if, within that period, it is completely enclosed within a building, fence, screen planting or other device of such height and density as to screen completely the operations of the junk yard. Plans of such a building or device shall be approved by the Planning Commission and the Council before it is erected or put into place.~~

Subdivision 2. ~~Discontinuance~~

- ~~1. — In the event that a non-conforming use of any building or premises is discontinued or its normal operation stopped for a period of one (1) year, the use of the same shall thereafter conform to the regulations of the District in which it is located.~~
- ~~2. — In the event that the use of a non-conforming advertising sign structure is discontinued or its normal operation stopped for a period of six (6) months, said structure shall be removed by the owner or lessor at the request of the Council.~~

Subdivision 3. ~~Alterations~~

~~The lawful use of a building existing on August 5, 1971, may be continued, although such use does not conform with the provisions hereof. If no structural alterations are made, a non-conforming use of a building may be changed to another non-conforming use of the same or more restricted classification. The foregoing provisions shall also apply to non-conforming uses in districts hereafter changed. Whenever a non-conforming use of a building has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.~~

Subdivision 4. ~~Residential Alterations~~

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~~Alterations may be made to a residential building containing non-conforming residential units when they will improve the livability of such units, provided, however, that they do not increase the number of dwelling units in the building.~~

~~Subdivision 5.—Restoration~~

~~No building which has been damaged by fire, explosion, act of God, or the public enemy to the extent of more than fifty (50) percent of its value shall be restored, except with a conditional use permit or in the conformity with the regulations of this chapter.~~

~~Subdivision 6.—Normal Maintenance~~

~~Maintenance of a building or other structure containing or used by a non-conforming use will be permitted when it includes necessary, non-structural repairs and incidental alterations which do not extend or intensify the non-conforming building or use. Nothing in this chapter shall prevent the placing of a structure in safe condition when said structure is declared unsafe by the Zoning Administrator.~~

Subdivision 1 Purpose and Intent.

It is the purpose and intent of this section to:

- (1) allow nonconforming structures, uses, site characteristics and lots to continue to exist and be put to reasonable and productive use;
- (2) encourage such nonconformities to be brought into compliance when reasonable to do so;
- (3) establish the requirements under which nonconformities may be operated and maintained;
- (4) diminish the impacts of nonconformities on adjacent properties by limiting the expansion of nonconformities; and
- (5) comply with Minnesota Statutes Section 462.357, Subd. 1e, as amended from time to time.

Subdivision 2 Definitions

The following terms and accompanying definitions are used in the context of nonconformities. Where the terms are used elsewhere in the code outside of the context of nonconformities, their meaning may have an alternate definition as otherwise defined in their respective section of the code.

- (1) Discontinued. For the purposes of nonconformities, the cessation of a use, or removal of a structure or site characteristic for a continuous period of more than one year.
- (2) Expansion. For the purposes of nonconformities, expansion includes, but is not limited to, intensification of the use, expansion of the use to a portion of the property not previously used, or increased structure dimension(s).
- (3) Improvement. Where a nonconformity is made more compatible with the use of adjacent properties, efficient, and/or more aesthetically pleasing. For the purposes of nonconformities, an improvement does not include an expansion.
- (4) Maintenance. Normal repair, restoration, and improvement including cosmetic changes. For the purposes of nonconformities, maintenance does not include new construction or expansion of a use or structure.
- (5) Nonconforming Lot. A lot lawfully established prior to the effective date of the city code, or subsequent amendments to it, which fails to meet requirements for lot area, and/or width, depth, lot frontage or other requirement of the existing city code.

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- (6) Nonconforming Site. A site lawfully established prior to the effective date of the city code, or subsequent amendments to it, which fails to meet requirements of the existing city code.
- (7) Nonconforming Site Characteristics. A site characteristic lawfully established prior to the effective date of the code, or subsequent amendments to it, which fails to meet requirements of the existing city code. For the purposes of nonconformities, Site Characteristics are physical improvements to the site beyond structures, and may include, but are not limited to: impervious surface coverage, storm water facilities, parking and parking lots, driveway surfaces, screening, fences, landscaping, sidewalks, patios, human-made water features such as ponds or swimming pools and similar features.
- (8) Nonconforming Structure. A structure that was legally conforming at the time it was constructed but which does not comply with the current city code.
- (9) Nonconforming Use. A use that was legally conforming at the time it was established but which does not comply with the current city code.
- (10) Nonconformity. Any use, structure, site characteristic or parcel of land which existed lawfully at the effective date of a zoning ordinance or subdivision ordinance, has been continued since that time but which would not have been permitted to become established under the terms of the city code as now written.
- (11) Nonconformity Agreement. A recordable agreement between the City and the property owner of a nonconformity, which imposes reasonable regulations or conditions upon nonconformities to prevent and abate nuisances and to protect the public health, safety, or welfare. Such agreement may only be approved by the City Council following review thereof by the planning commission.
- (12) Nonconformity, Legal. A nonconformity that was legally conforming at the time it was established and received all required approvals.
- (13) Nonconformity, Illegal. A nonconformity that was not legal at the time it was established or did not receive all required approvals.
- (14) Repair. For the purposes of nonconformities, repair means to restore to good condition by replacing or reassembling broken, worn out or malfunctioning components. Repair does not include expansion.
- (15) Replacement. Construction that provides a substitute substantially equivalent to the preexisting conditions that preceded damage or destruction.
- (16) Restoration. For the purposes of nonconformities, restoration means to restore or repair to good condition by replacing or reassembling broken, worn out or malfunctioning components. Restoration does not include expansion.

Subdivision 3 Continuation Rights.

Pursuant to Minnesota Statutes Section 462.357, Subd. 1e, any legal nonconformity, including, the lawful use or occupation of land or premises existing at the time a City Zoning Ordinance amendment created the nonconformity may be continued with any necessary approvals, including through repair, replacement, restoration, maintenance, and improvement, but not including expansion, unless authorized by this Section.

Subdivision 4 Termination of Rights.

A legal nonconformity must not resume where:

- (1) The nonconformity or occupancy is discontinued for a period of more than one year unless the owner shows intent to continue the use or occupancy through an overt act expressing that intent.
- (2) A structural alteration increases usable floor area.
- (3) Any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value, and no building permit has been applied for within 180 days of when the property is damaged. The assessed market value (including buildings and land) must be determined by the most recent valuation of the County Assessor.

Subdivision 5 Expansion.

Nonconformities may not be expanded, unless expressly permitted as discussed below. For purposes of this section, expansion of a nonconformity shall include:

- (1) An increase in: structure dimension(s), size, area, height, width, usable floor area, and/or the land area of use;
- (2) Addition of a structure or part thereof;
- (3) Addition of equipment. This shall not apply to new equipment which constitutes merely an improvement over the previous method and does not constitute a change in the nature and purpose of the original use of a property.
- (4) Relocation of the nonconforming use to a new location on the property not previously used unless the relocation reduces or eliminates the nonconformity;

Nonconformities may be expanded as follows:

- (1) Nonconformities may expand upon issuance of a conditional use permit only when listed as a conditional use within the applicable zoning district.
- (2) Nonconformities not listed as a conditional use may only expand if changed to a conforming use.

Subdivision 6 Substitution.

Nonconforming uses may be substituted for another similar nonconforming use when both uses fall under the same category of use as defined in the current City Zoning Ordinance.

For structures containing a mix of conforming and non conforming uses at the time the nonconformity is established, substitution of conforming uses for nonconforming uses shall not constitute an expansion where the resulting use:

- a) does not create any new adverse impacts on adjacent property; and,
- b) is substantially equivalent to the conditions that existed before the substitution, including structural dimensions such as height, width, and useable floor area.

Nonconforming uses may be substituted for another similar nonconforming use if granted a conditional use permit. The city may grant a conditional use permit if the substitution does not:

- a) increase the overall, site-wide degree of nonconformity,
- b) impede implementation of goals and policies of the Comprehensive Plan;
- c) have undue adverse impacts on neighboring residential properties;
- d) have undue adverse impacts on the public health, safety or welfare.

Subdivision 7 Reasonable Regulations or Conditions.

Pursuant to Minnesota Statutes, Section 462.357, Subd. 1e, the City may impose upon any nonconformity reasonable regulations or conditions to prevent and abate nuisances and to protect the public health, safety or welfare. Reasonable regulations or conditions may be imposed by the

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City on a nonconformity through a recordable instrument approved by the City Council, including a nonconformity agreement, or otherwise by permit or order of the City Council.

Section 2. That this ordinance shall take effect from and after its passage and publication.

Passed by the City Council of the City of Grand Marais this 28th day of December, 2016.

Jay Arrowsmith DeCoux, Mayor

Attest: _____
Michael Roth
City Administrator