

## CHAPTER 3 NONCONFORMITIES

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### Section 1 Non-Conforming Structures and Uses Allowed to Continue

Non-conforming uses and non-conforming structures are uses and structures lawfully in existence prior to the adoption of this Ordinance that do not meet the requirements of this Ordinance for the zoning district in which they are located. Non-conforming uses and structures shall be allowed to continue if they comply with the provisions in this Chapter.

- A. **Exemption.** Structures found to be non-conforming only because of height, yard or area requirements shall be exempt from the provisions of this Chapter.
- B. **Conformity encouraged.** All non-conforming uses and non-conforming structures are encouraged to convert to conformity whenever possible.
- C. **Change of title no effect.** Change of title or change of right to possession shall not affect the allowed continuation of a non-conforming use.

### Section 2 Discontinuance

- A. **Non-conforming use.** If a non-conforming use of any building or premises is discontinued or its normal operation stopped for one (1) year, the use shall thereafter conform to the regulations of the district in which it is located.
- B. **Non-conforming sign.** If the use of a non-conforming advertising sign structure is discontinued or its normal operation stopped for six (6) months, the structure shall be moved by the owner or lessor.

### Section 3 Change of Use

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 also shall apply to non-conforming uses in districts hereafter changed. Whenever a non-conforming use has been changed to a more restricted use or to a conforming use, such use shall not later be changed to a less restricted use.

### Section 4 Residential Alterations

Alterations may be made to a residential building containing non-conforming residential units if they will improve the livability of the units and if they do not increase the number of dwelling units in the building.

## **Section 5      Restoration**

No building that has been damaged by fire, explosion, act of God or the public enemy to the extent of more than fifty percent (50%) of its market value shall be restored except in conformity with this Ordinance.

## **Section 6      Normal Maintenance**

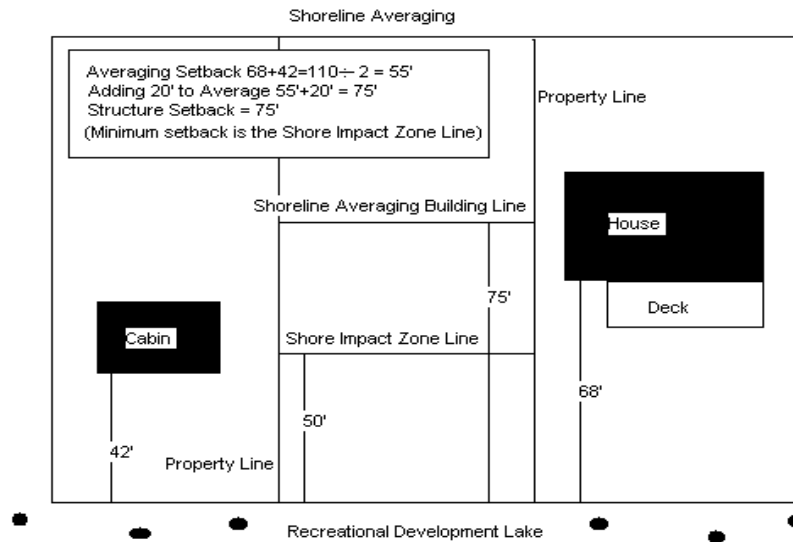
Routine upkeep of a structure that does not involve the replacement of the main structural frame or walls, or changes in exterior dimensions of a structure is permitted. Routine upkeep includes, but is not limited to: work performed on the interior of the structure; painting; replacement of siding, windows, doors, soffit, fascia, shingles, additional doors or windows; new floorboards to decks. Under no conditions shall repairs and maintenance constitute replacement of the main structural frame, walls, or changes in the exterior dimensions. Removal of the structure or any part of a structure, and rebuilding on an existing slab or foundation constitutes new construction. Replacement of an existing slab, foundation, or floor constitutes new construction, whether done by removal or raising of the structure

## **Section 7      Lots of Record**

A lot that was a buildable lot before the enactment of this ordinance is a lot of record. A lot of record is a buildable lot though it does not meet the requirements of this Ordinance but is subject to the requirements in paragraphs A through C, immediately below. The use of a lot of record shall conform to the requirements of this Ordinance.

- A. **Side yards.** Side yard requirements on a lot of record shall conform as nearly as possible to the requirements of this Ordinance. If compliance is not possible the side yard shall not be less than five (5) feet or ten percent (10%) of the lot width at the building line whichever is larger. The eave of the structure cannot encroach more than two (2) feet toward the side property line.
- B. **Setback averaging.** Setback averaging is the horizontal distance of a proposed structure obtained by adding the horizontal distance, as measured from the ordinary high water mark of the lake, of the like structures on the adjacent lots and dividing that sum by two (2).
  - 1. If structures exist on the adjoining lots on both sides of a proposed building site, the required setbacks shall be that of the average horizontal distance of the like structures plus twenty (20) feet, not to exceed the required lake setback. (Example: deck to deck, house to house)
  - 2. If a building on one side of a lot does not comply with the setback requirements of this ordinance and if the lot on the other side is vacant, or if the structure exceeds the required setback, the setback for the lot shall be equal to one half (1/2) the sum of the horizontal distance as measured from the ordinary high water mark of the lake to the like structure and the setback required by this ordinance plus twenty (20) feet, not to exceed the required lake setback
  - 3. Notwithstanding the above, a building site shall not be located in whole or in part within a shore impact zone or a bluff impact zone.
  - 4. Whenever the setback averaging method is allowed to establish a lakeside structure setback and the property is a substandard size property, as provided for in subsections B1 and B 2, above, the deficiency area between the setback determined by the setback averaging and the setback required by this Ordinance must be mitigated by the installation of a shoreline vegetative buffer. The criteria and provisions for the shoreline vegetative buffer contained in Chapter 3, Section 10, Mitigation Requirements for Nonconformities in Shoreland Areas, are applicable.
  - 5. If a dwelling unit is used for the lakeshore averaging, the dwelling must be of average livable condition.

4. Adjacent like structures used for the setback averaging must be located within the width and area of a standard lot size.



- C. **In shoreland areas.** In shoreland areas, the lot shall be in separate ownership from contiguous lands and all sanitary and dimensional requirements of the Ordinance are complied with insofar as practical.
1. **Same ownership requires combination of lots.** If, in a group of two or more contiguous lots under the same ownership, any individual lot that is not a buildable lot shall not be considered as a separate parcel of land for the purposes of sale or development, the lot shall be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements for building. When adjacent substandard parcels are in the same ownership, they shall be joined into one parcel and shall no longer be allowed as individual building sites.

## Section 8 Non-Conforming Signs

- A. **Continuation of non-conforming signs.** Business signs on the premises of a non-conforming building or use may be continued, but shall not be increased in number, area, height or illumination.
- B. **New signs may be allowed.** New signs may be erected only upon the complete removal of all other signs existing on the effective date of this Ordinance. These signs may be illuminated, but no flashing, rotating or moving signs shall be permitted.
- C. **Change requires compliance.** No sign erected before the passage of this Ordinance shall be rebuilt, altered or moved to a new location without being brought into compliance with the requirements of this Ordinance.

## Section 9 Non-Conforming Junk Yards

- A. **Discontinuance required; Exception.** No junk yard may continue as a non-conforming use after the effective date of this Ordinance, except that a junk yard may continue as a non-conforming use in the General Agriculture (GA), Commercial (C) or Industry District (I), if it is completely enclosed within a building, fence, screen planting or other device that completely screens the operations of the junk yard.

- B. **Screening requirements.** Screening required in paragraph A, immediately above, shall meet the following provisions:
1. **Approval.** Plans for the screening device shall be approved by the County Planning Commission and the Board of County Commissioners before it is erected or put into place.
  2. **Conditional use.** Upon installation of such approved plans and device, the junk yard shall be considered a legal conditional use and shall be subject to conditions, reviews and all procedures in Chapter 8 Section 10, for conditional use permits.

## **Section 10 Mitigation Requirements for Nonconformities in Shoreland Areas**

This Section establishes procedures for the placement of structures on nonconforming lots that do not meet the minimum lot size standards in Chapter 5, Section 2. The development or redevelopment of nonconforming lots, including but not limited to nonconforming setback regulations, shall require mitigation actions such as restoring shoreline vegetative buffers, reestablishing shoreline berms, management of roof drainage on-site, using porous paver systems and removal of impervious surface in the shore impact zone.

- A. **Development worksheet required.** On forms supplied by the Zoning Administrator, applications for the placement of structures or other impervious surfaces on nonconforming lots in shoreland areas shall include a completed development worksheet calculating the number of mitigation units required as specified in subsection B, below. The application shall also include the applicant's planned mitigation actions meeting the requirements in subsection C, below.
- B. **Calculation of mitigation requirement units.** The calculation of required mitigation units shall be based on the following provisions.
1. **Nonconforming lake setback.** The minimum requirement that must be met for structure setbacks from lake shoreline is determined by a stringline measurement or the most restrictive adjacent property building setback. The structure setback applies to all structures, including but not limited to: decks, patios, landings, and stairs. In all cases, structures must be outside the shore impact zone. Setback deficiency from the minimum setback is allowed with offsetting mitigation. Each foot of setback deficiency represents one (1) mitigation requirement unit.
  2. **Nonconforming impervious surface.** Impervious surface is not allowed to exceed twenty-five percent (25%) coverage. Impervious surfaces include, but are not limited to: streets, roofs, sidewalks, driveways, parking lots, and similar facilities and areas covered with gravel, concrete, bituminous, compacted sand, lime rock, clay or other surfaces that substantially reduce or prevent the infiltration of water. Surface coverage between fifteen percent (15%) and twenty-five percent (25%) is allowed with offsetting mitigation. Each percentage point of impervious surface greater than fifteen percent (15%) represents five (5) mitigation requirement units.
    - a. **Pervious decks.** Decks shall be considered pervious if all of the following conditions are met:
      - (1) Maximum material (board) width is eight inches (8");
      - (2) Minimum spacing between material (boards) is one-quarter inch (1/4"); and
      - (3) The area under the deck is pervious material.Decks not meeting these requirements shall be considered as impervious.
  3. **Nonconformities within the shore impact zone.** Structures and other impervious surfaces are not allowed in the shore impact zone, with the exception of landings, stairs and other uses meeting the requirements of Chapter 6, Sections 3 and 4, and limited to a total of thirty-two (32)

square feet. Existing structures and existing impervious surfaces may be removed and mitigation credits are allowed for shore impact zone removals.

- C. **Options for meeting mitigation requirements.** The following options are available to the applicant in order to satisfy the required mitigation units for nonconformities in shoreland areas.
1. **Mitigation options for nonconforming lake setback.** Deficiencies in lake setback requirements must be mitigated by the following options:
    - a. **Increasing structure setback from the lake.** One (1) mitigation unit credit is allowed for each one foot (1') closer structures are located to the standard setback line.
    - b. **Approved vegetative buffer.** Establishing an approved vegetative buffer adjacent to the ordinary high water level and parallel to the shoreline is a mitigation option for deficiencies in lake setbacks. The minimum vegetative buffer required to earn mitigation units is a twenty feet (20') linear by fifteen feet (15') deep buffer. Ten (10) mitigation unit credits are allowed for establishing the minimum vegetative buffer. An additional ten (10) mitigation unit credits is provided for each ten feet (10') linear by fifteen feet (15') deep shoreline buffer increment. An additional ten (10) mitigation unit credits are also allowed for each ten-foot (10') linear segment of the buffer that is expanded to twenty-five feet (25') deep.
    - c. **Removal of nonconformities in shore impact zone.** Five (5) mitigation unit credits are allowed for the removal of each fifty (50) square feet of structures or other impervious surfaces from the shore impact zone.
  2. **Mitigation options for nonconforming impervious surface.** Nonconforming impervious surface deficiencies must be mitigated by the following options:
    - a. **Reduction of impervious surface.** Reducing impervious surface that exceeds the fifteen percent (15%) threshold in subsection B.2, above. Five (5) mitigation unit credits are allowed for each percentage point reduction between twenty-five percent (25%) and fifteen percent (15%).
    - b. **On-site stormwater management.** Divert water runoff from structures or other impervious surfaces to an approved stormwater management system. Ten (10) mitigation unit credits are allowed for each three hundred and fifty (350) square feet of surface area from which runoff will be contained on the property through discharge to the stormwater system.
    - c. **Shoreline protection berm.** Establish a berm not less than twelve inches (12") above grade and parallel to the shoreline to contain or control stormwater runoff. Ten (10) mitigation unit credits are allowed for each twenty-five feet (25') of protected shoreline. This mitigation option is only available to properties with less than eight percent (8%) grade to the lake.
    - d. **Removal of nonconformities in shore impact zone.** Five (5) mitigation unit credits are allowed for the removal of each fifty (50) square feet of structures or other impervious surfaces from the shore impact zone.
- D. **Approval of site plan and storm water plan required.** The applicant's planned mitigation activities meeting the requirements of this Section shall be documented by a site plan and storm water plan approved by the Zoning Administrator and filed with the approved development permit.
- E. **Installation and maintenance required.** The mitigation activities satisfying the requirements of this Section that are approved as part of a development permit shall be installed and maintained as a condition of occupancy. The property shall be subject to inspection as necessary by the governing authority of Becker County.

- F. **Recorded on deed.** Mitigation requirements approved under this Section shall be recorded with the deed of the permitted property and shall remain with the property deed through subsequent ownerships.