CHAPTER 3  NONCONFORMITIES

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    Additions/expansions of a principal structure on a nonconforming lot.
Additions/expansions of a principal structure on a nonconforming lot may be allowed one time without a variance provided all of the following criteria will be met. However, the Zoning administrator may refer to the Board of Adjustment for variance consideration any application presenting extraordinary circumstances.

1. The property does not have a previously approved variance and there have been no prior additions to the existing structure.
2. The addition/expansion will not decrease the setback of the existing structure from the ordinary high water level,
3. The addition/expansion will not exceed fifty (50) percent of the total living area of the existing structure and the completed structure cannot be larger than 1500 square feet in lot area coverage.
4. The existing structure may be expanded vertically, but limited to twenty-four (24) feet total structure height and limited to 1500 square feet in total structure living space and no increase in the lot area coverage.
5. The existing structure must be located outside the shore impact zone,
6. The completed project is subject to the protection zone criteria specified in Chapter 6, Section 10, Paragraph E,
7. Impervious surface coverage of the parcel or lot shall not exceed 25 percent.
8. The existing structure and proposed addition/expansion must meet all other setback distance requirements of this Ordinance.

Section 8    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. Any legal access established prior to 1971 and which has continuously existed shall constitute legal access for the purposes of this section. 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 B2, 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 1, 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.

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

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C. **Existing nonconforming lots in shoreland areas.** This subdivision applies to shoreland lots of record in the office of the county recorder on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width. The county shall regulate the use of nonconforming lots of record and the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in shoreland areas according to this subdivision.
1. A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:
   a. all structure and septic system setback distance requirements can be met;
   b. a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, or successor rules, can be installed or the lot is connected to a public sewer; and
   c. the impervious surface coverage does not exceed 25 percent of the lot.

2. In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:
   a. the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification;
   b. 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, or successor rules, and local government controls;
   c. impervious surface coverage must not exceed 25 percent of each lot; and
   d. development of the lot must be consistent with an adopted comprehensive plan.

3. A lot subject to paragraph (c) not meeting the requirements of paragraph (c) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

4. Notwithstanding paragraph (c), contiguous nonconforming lots of record in shoreland areas under a common ownership must 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, or successor rules, and Minnesota Rules, chapter 7080, or successor rules, or connected to a public sewer.

5. In evaluating all variances, zoning and building permit applications, or conditional use requests, the County 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.

6. A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage system requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

7. Natural environment lots subdivided prior to 2016 shall be deemed conforming lots with verification of a dated survey, allowing them to be sold separately.

Section 9 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 10 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 11, for conditional use permits.

**Section 11 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, 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 setback average plus twenty (20) feet 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.