

Local Law I of 2022

A Local Law amending Chapter 140 of the Code of the Town of Rochester

Article VI Non-Conforming Uses and Structures
§ 140-39, § 140-40, § 140-41, § 140-42, § 140-43, § 140-44

Section 1. § 140-39, Definitions

A new subsection **§ 140-39, Definitions** shall be added as follows.

§ 140-39, Definitions

A. All definitions defined in this section shall apply to all subsections of Article VI of Chapter 140.

ALTERATION

Changes made such as adding or removing windows or doors, interior renovations that do not structurally alter buildings, add living areas, or result in extended or increased non-conforming use of a building, lot, or structure.

DAMAGE(D)

Injury to real property by negligence, willful destruction, or by an act of nature.

EXISTING BUILDING OR STRUCTURE

See §140-4 Specific Definitions.

EXISTING USE

See §140-4 Specific Definitions.

EXPANSION

An extension of a pre-existing nonconforming use in conformance with current applicable codes, or a pre-existing non-conforming building/structure increasing beyond its original footprint not to exceed twenty-five percent (25%)

NONCONFORMING BUILDING OR STRUCTURE

See §140-4 Specific Definitions.

NONCONFORMING USE

See §140-4 Specific Definitions.

RE-ESTABLISHMENT

The continuation of abandoned use, building, structure, or lot within required time frame as per §140-43 (B).

REPLACEMENT

The removal of pre-existing non-conforming building/structure followed by new building/structure constructed upon same or smaller footprint.

REPLACEMENT WITH EXPANSION

Removal of pre-existing non-conforming building or structure followed by a complete rebuilding of building/structure with expansion outside its original footprint but within current zoning district setbacks. This expansion shall not exceed twenty- five percent (25%) of original ground-based footprint except that vertical expansion shall be limited by height restriction for the underlying zoning district.

RESTORATION

Bringing a damaged pre-existing nonconforming building/structure up to original, pre-damage conditions.

Section 2. § 140-39.1, Rights to Continue Non-Conforming Uses **Change in Numbering**

Subsection **§ 140-39, Rights to Continue Non-Conforming Uses** shall move in entirety and be renamed **§ 140-39.1, Rights to Continue Non-Conforming Uses**

§ 140-39.1 Rights to continue nonconforming uses.

- A. A use, building or structure lawfully in existence as of the effective date of this chapter and nonconforming with it or any subsequent amendment may be continued, except as otherwise provided herein with respect to specific uses. Upon request, the Building Inspector may issue certificates of nonconformance to owners or operators of bona fide nonconforming uses, buildings or structures who desire confirmation of their rights hereunder.
- B. It is the purpose of this article to limit the injurious impact of nonconforming uses, buildings, lots and structures on other adjacent properties within a particular district and the community as a whole, while recognizing that alterations, continuations and extensions of nonconforming uses, buildings or structures may not be contrary to the public interest or the general purpose of this chapter, when failure to allow such alteration, continuation or extension would itself lead to neighborhood or district deterioration.
- C. It is further the purpose of this article to set forth those standards which are to be applied by the Town in determining the reasonableness of proposals to alter, continue or extend a nonconforming use and to establish when Town review and approval shall be required for such actions.
- D. The protections extended by this article to existing nonconforming uses, buildings, lots, or structures, commonly known as "grandfathering," shall not extend to any nonconforming activity occurring subsequent to the effective date of this chapter, as amended.

Section 3. § 140-40, Normal Maintenance and Repair

Subsection § 140-40, Normal Maintenance and Repair shall be amended as follows.

- A. Normal maintenance and repair activities, such as painting, ~~replacing a roof~~ or fixing gutters, shall be permitted by right. Also permitted are alterations, such as adding or removing windows, and interior renovations that do not structurally alter buildings, add living areas, or result in extended or increased nonconforming use of a building, lot, or structure.
- B. ~~Alterations such as roof replacement or interior renovations that structurally alter buildings, add living areas, or result in extended or increased nonconforming use of a structure and/or lot shall require a permit.~~
- C. Increases in outside storage or display of retail or wholesale inventory, which in the ordinary course of business would be sold within one year, shall be permitted, provided they do not eliminate parking spaces, unoccupied open spaces or accesses required by this chapter. Notwithstanding this provision, however, the Planning Board, in reviewing any special use application for expansion or upon determining, with respect to any present use, that a condition exists which requires remedies, may establish limits on such storage or display or require removal of inventory (altogether or to another location on the site) to preserve adequate sight distances and residential buffers or otherwise protect public health, safety and welfare.

Section 4. § 140-41, Restoration, Reconstruction, or Re-establishment

Subsection § 140-41, Restoration, Reconstruction, or Re-establishment shall be deleted in its entirety.

Section 5. § 140-41, Restoration, Replacement, or Replacement with Expansion

A new subsection § 140-41, Restoration, Replacement, or Replacement with Expansion shall be added as follows.

§ 140-41, Restoration, Replacement, or Replacement with Expansion

If any nonconforming use, building, or structure is damaged,

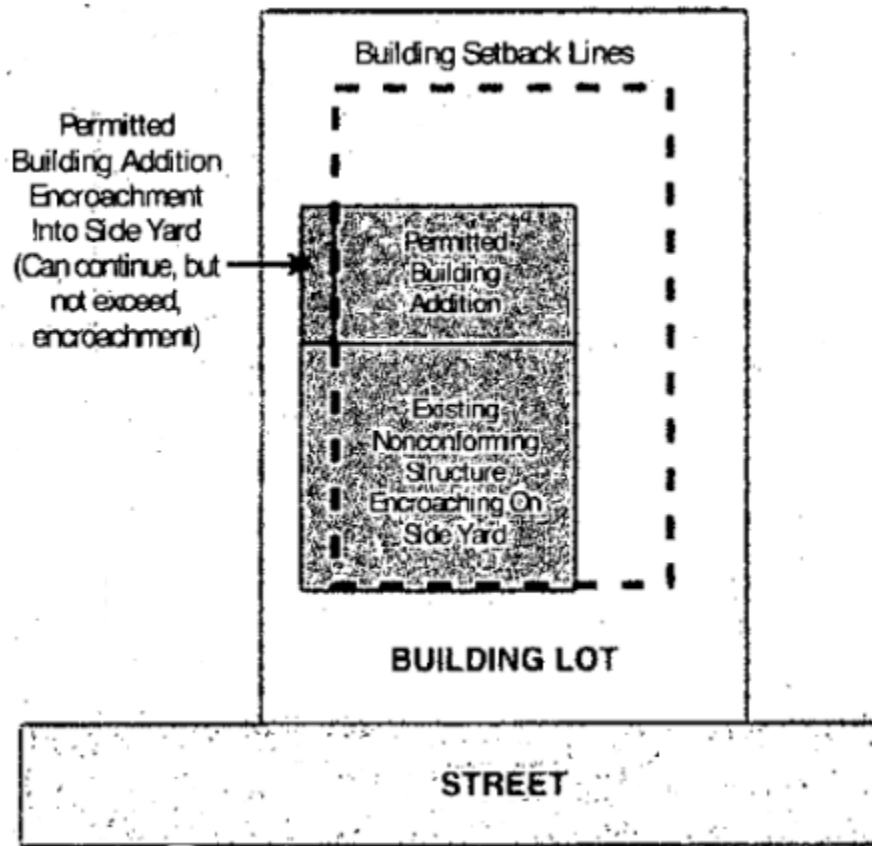
- A. Restoration of buildings or structures is permitted by obtaining a building permit within 18 months of the date of damage. Permits requested after 18 months of the damage will be treated as reconstructions (see §140-41 B).
- B. Replacement of buildings or structures shall be permitted by obtaining a building permit.
- C. Replacement with Expansion, as defined herein, of building or structure shall be permitted by Special Use permit.

Section 6. § 140-42, Changes, Additions, and Expansions.

Subsection § 140-42, Changes, Additions, and Expansions, shall be amended as follows.

Excepting for ~~by right~~ activities provided for in 140-40, ~~above~~, single- and two-family residential uses, and accessory uses ~~and alterations~~; all changes, additions, and expansions to nonconforming uses shall be considered special uses. ~~No change, addition, or expansion shall result in a more intensive category of use. A nonconforming retail enterprise could be converted to a barber shop, for example, but not to an industrial use.~~ Permits for changes in use, reconstructions, additions, or expansions shall be granted only after a determination by the Planning Board ~~under special use review~~ that the following conditions have been, or will be, satisfied.

- A. There shall be no expansion in the amount of land area outside a nonconforming facility (outdoor area) used for storage of materials, supplies and/or products, except as provided herein.
- B. Where the nonconforming activity is one which necessarily results in the storage of large quantities of material, supplies or products outside (such as a lumberyard), the Planning Board may require dense evergreen screening sufficient to shield all such materials from the view of adjacent landowners and/or the traveling public.
- C. No addition, change or expansion of a nonconforming use shall further violate setback and/or height regulations of the district in which it is located; however, a nonconforming single- or two-family residential use shall be granted an exception from this requirement upon receipt of an area variance from the Zoning Board of Appeals.



- D. There shall be no increase in the amount of stormwater runoff for the site over what was existing prior to the changes, additions, and expansions. ~~as of the date of the enactment of this chapter.~~ A professional engineer or other appropriate professional such as, but not limited to, the U.S.D.A. Soil Conservation Service may be relied upon to determine and recommend appropriate measures to control stormwater runoff. Such measures shall be attached as conditions of approval by the Planning Board.
- E. In no case will a change, addition or extension of a nonconforming use be allowed that would result in a traffic increase that would decrease the level of service for the highway, the diversion of traffic closer to a nearby residence or a reduction of any of the parking and unloading requirements of this chapter where additional parking or loading would otherwise be required due to the change, addition or expansion. If the total number of parking spaces for the site is to be increased more than 25% over those available as of the date of this chapter, the Planning Board may require vegetative screening of the parking area from nearby residential areas.
- F. ~~The use shall not be eligible for expansion or extension onto another property of record. The use may only be expanded or extended onto another property of record if that property is immediately adjacent to the lot on which the original structure or use was located as of the effective date of this chapter or amendments hereto and the use is not one which has been altogether prohibited as a new use under this chapter.~~

- G. Should the use proposed for expansion or extension be one which is specifically prohibited as a new use in the Town or is determined by the Planning Board to be one similar to such a use or of such a nature as to impose health, safety or welfare concerns which cannot be satisfied by the imposition of the conditions permitted under this chapter, the requested expansion or extension shall be denied.

Section 7. § 140-43, Use of Existing Non-Conforming Lots of Record

Subsection § 140-43, Use of Existing Non-Conforming Lots of Record shall be deleted in its entirety.

Section 8. § 140-43, Abandonment and Re-establishment

A new subsection **§ 140-43, Abandonment and Re-establishment** shall be added as follows

§ 140-43, Abandonment and Re-establishment

- A. A non-conforming use, building, or structure shall be considered abandoned under any one of the following circumstances
- 1) The intent of the owner to discontinue the use is made obvious by the posting of signs, boarding up of windows, failure to pay taxes or assessments or other measures which demonstrate the enterprise is going out of business or the use is otherwise ending; or
 - 2) A residential dwelling has not been resided in for 24 months or more and the building shows signs of deterioration as defined in §66-3 Town of Rochester Code; or
 - 3) A commercial building or structure has not been occupied or a use not exercised, or the equipment and furnishings used in furtherance of the non-conforming use have been removed from the premises for 24 months or more; or
 - 4) The non-conforming use has been replaced by a conforming use or changed to another use under permit from the Town.
- B. The Building Inspector, upon determining any of the above circumstances exist, shall, by certified mail, so notify the property owner of record, informing the owner the use, building or structure is considered abandoned ~~and may not be reestablished once a period of 12 additional months has expired.~~ If an owner cannot be reached through the mail, the Building Inspector shall publish the notice once in a newspaper of general circulation in the Town and/or post the property and the owner shall be presumed to have been notified.

- C. An owner may seek to re-establish the use, building, or structure within a period of 6 months after notification of abandonment by sending certified mail to the Code Enforcement Officer.

Section 9. § 140-44, Use of Existing Non-Conforming Lots of Record

A new subsection § 140-44, Use of Existing Non-Conforming Lots of Record shall be added as follows.

§ 140-44, Use of Existing Non-Conforming Lots of Record

- A. A principal structure may be erected on any vacant non-conforming lot of record, existing at the time this chapter is enacted; provided no front yard setback is reduced in size and no side yard setback is reduced to less than 50% of the requirement for the district in which it is located or 20 feet, whichever is greater; and a sewage disposal system meeting New York State standards, including well and septic isolation distances, can be placed on the lot should public facilities be unavailable.
- B. Accessory structures placed on non-conforming lots of record after the effective date of this law shall comply with Section 140-13 of this Law, Accessory Structures and Uses.
- C. Where two or more adjacent lots, one or more of which is nonconforming, are owned by the same owner, and the ownership of the lots is concurrent, such lots shall be combined to create conforming lots, or to lessen the non-conformity if it is not possible to create all conforming lots.
- D. Further nonconformance of pre-existing nonconforming lots by combination, subdivision, conveyance of lands, lot line adjustment, or other land use alterations with adjacent properties with common ownership is prohibited except by granting of an area variance

Section 10. Severability

If any part or provision of this local law is judged invalid by any court of competent jurisdiction, such judgment shall be confined in application to the part or provision directly on which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Law or the application thereof to other persons or circumstances. The Town hereby declares that it would have enacted the remainder of this Law even without such part or provision or application.

Section 3. Effective Date

This local law shall become effective immediately upon the filing in the office of the New York Secretary of State pursuant to Section 27 of the Municipal Home Rule Law