

DIVISION 65: NONCONFORMITIES AND SUBSTANDARD LOTS OF RECORD

The purpose of this division is to provide for the regulation of nonconforming buildings, structures and uses and to specify those requirements, circumstances and conditions under which nonconforming buildings, structures and uses will be operated and maintained. It is the intent of this Ordinance that nonconforming uses shall be encouraged to eventually be brought into conformity. Legally established nonconformities existing as of the date of this Ordinance, or as of the date of an amendment which resulted in the nonconformity, are allowed to be continued, but they will be restricted as to any expansion, additions, or intensification of use.

Section 65-010 Nonconforming Uses and Structures

Any use or structure lawfully existing upon the effective date of this Ordinance that is not located in the Shoreland Overlay District may be continued at the size and in the manner of operation existing upon such date, subject to the following conditions:

- 1) Except as expressly allowed in 65-010 of this Ordinance, a nonconforming use of land or nonconforming structure shall in no way be expanded, enlarged or extended either on the same property or onto an adjoining lot of record if it will increase the area of the nonconformity or create another non-conformity on the parcel.

Prohibited expansion, enlargement or extension shall include anything that increases the intensity of the use, including but not limited to, a change to a more intense nonconforming use or a physical expansion of the existing use that increases the height, volume and/or area dimensions of the nonconforming use.

- 2) Nonconforming principal and accessory structures may be expanded or enlarged upon if the following apply:
 - a. The use of the property conforms to zoning district regulations;
 - b. That all parts of the new expansion or enlargement meets current zoning district regulations;
 - c. The individual subsurface sewage treatment system, where existing, is in full compliance with this Ordinance and all applicable statutes and rules are complied with;
 - d. No other nonconformities are created.

Such expansion or enlargement of a nonconforming principal or accessory structure may be approved by administrative site plan approval in conjunction with a building or land use permit application provided the area of the new improvements does not add to the existing nonconformity nor does it create nonconformity. All additions or alterations which expand or enlarge the total existing structure area on the parcel which cannot meet all other current zoning district regulations may only authorized by a variance in accordance with this Ordinance.

- 3) Routine maintenance of a structure containing or relating to a lawful nonconforming use is permitted, including any necessary nonstructural repairs and incidental alterations which do not extend or intensify the nonconforming use. Nothing in this section will prevent the placing of a structure into a safe condition after it has been declared unsafe by a Certified Building Official.
- 4) Alterations may be made to a building containing nonconforming residential units when the alterations will improve the livability of such units, provided that such alterations do not increase the number of dwelling units in the building. Such alterations must be approved by the Zoning Administrator.
- 5) Whenever a nonconforming structure or use is damaged by fire, collapse, flood, explosion, earthquake, war, riot, act of God or public enemy or to the extent of 50 percent or less of its estimated market value as indicated in the records of the county assessor at the time of damage, it may be reconstructed. The nonconforming structure or use shall not be permitted to be reconstructed if the damage is greater than 50 percent of its estimated market value as indicated in the records of the county assessor at the time of damage and no building permit has been applied for within 180 days of when the property was damaged.

- 6) When any lawful nonconforming use of any structure or land is replaced by another use or structure, the new use or structure must conform to the provisions of this Ordinance and it shall not thereafter be changed to any nonconforming use or structure.
- 7) If the nonconforming use of land is discontinued for a period of twelve (12) months, the subsequent use of land or the structure shall be in conformity with the provision of this Ordinance.
- 8) Nonconforming uses or structures which are declared by the City Council to be public nuisances shall not be allowed to continue as legal nonconforming uses or structures.
- 9) No repair, replacement, maintenance, improvement or expansion of a nonconforming use or structure in a flood prone area shall be allowed if such activity would increase flood damage potential, or would increase the degree of obstruction to flood prone areas adjacent to any public waters.

Section 65-020 Substandard Lots of Record

A lot of record existing upon the effective date of this Ordinance may be used for the erection of a structure without meeting the minimum lot area and lot width requirements provided that:

- 1) The use is permitted in the zoning district;
- 2) The lot has been in separate ownership from abutting lands at all times since it became substandard;
- 3) The lot was created compliant with the official controls in effect at that time;
- 4) The sewage treatment and setback requirements prescribed by this Ordinance are met;
- 5) The lot area and width are within sixty-six (66%) of the minimum requirements of this Ordinance.
- 6) A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a structure or facility to be constructed or placed on a substandard lot that does not meet the setback provisions of this Ordinance; and,
- 7) Appropriate building permit approvals are obtained from the Zoning Administrator and Building Inspector.

Section 65-030 Substandard Lots in Shoreland Overlay District

All lots of record existing as of the date of enactment of this Ordinance that do not meet the minimum lot area and lot width requirements may be allowed as building sites without a variance from lot size requirements provided that:

- 1) All setback requirements are met;
- 2) The use is permitted in the zoning district;
- 3) The lot has been in separate ownership from abutting lands at all times since it became substandard. If, in a group of two or more contiguous lots under the same ownership, any individual lot cannot support development meeting the minimum performance standards outlined above, and the lot or lots do not have an existing principal dwelling, the lot shall not be considered as a separate parcel of land for the purposes of residential building site development or sale. The lot must be combined with one or more contiguous lots so that they equal one or more parcels of land, each capable of meeting the required lot size and width development standards.

- 4) The lot was created compliant with official controls in effect at the time and existing lots of record greater than 10,500 sq. ft. and with a width of at least seventy (70) feet may be developed without a variance for lot size and width, provided all other standard of this Ordinance are met.
- 5) The sewage treatment requirements of this Ordinance are met. If they cannot be met, a variance must be obtained before any use, sewage treatment system, or building permit is issued for a Shoreland lot that does not meet setback requirements. In evaluating the variance, the Board of Adjustment shall consider sewage treatment and water supply capabilities or constraints of the lot, and shall deny the variance if adequate facilities cannot be provided.

Section 65-040 Nonconforming Subsurface Sewage Treatment System (SSTS)

- 1) An individual SSTS that does not meet the requirements specified in Section 60-090 of this Ordinance must be upgraded within one (1) year of the effective date of this Ordinance. A nonconforming sewage treatment system also must be upgraded any time that a variance or permit of any type is required for any improvement on, or use of, the property. If city services are available in an abutting street or alley within 200 feet of the parcel boundary, such resident shall connect to the city sewer and/or water service. For the purpose of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the setback of the sewage treatment system from the parcel boundary line or the ordinary high-water level.
- 2) Before approval, the Zoning Administrator shall cause such inspections which are necessary to determine if the sewage treatment system is in conformance with the criteria as stated in Section 60-090 Sanitation Standards.
- 3) The Nevis City Council has, by formal resolution, notified the Commissioner of its program to identify nonconforming sewage treatment systems. The City of Nevis requires upgrading or replacement of any nonconforming system identified through this program within one (1) year of identification by the Zoning Administrator or Planning Commission. Sewage Treatment systems installed according to the applicable Shoreland management regulations adopted under Minnesota Rules 7080-7083 in effect at the time of such installation, shall be considered as conforming, unless they are determined to be non-compliant following inspection by a certified SSTS Inspector. All systems using cesspools, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above groundwater than required by the Hubbard County Environmental Services Office for design of SSTS shall be considered nonconforming.