

## **ARTICLE VII - REGULATIONS GOVERNING NON-CONFORMITIES**

### **CHAPTER 701**

#### **Regulations Governing Non-conforming Uses and Non-conforming Site conditions**

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##### **SECTION 701.1 PURPOSE AND INTENT**

The lawful use of any dwelling or structure on any land or premises existing and lawful at the time of the enactment of this Ordinance, or amendment thereto, may continue according to the provisions of this Section, although such use does not conform with the provisions of this Ordinance, or amendments. It is also recognized that existing non-conforming lot, structure, or site characteristics do not achieve the objectives of this Ordinance. Therefore, it is the intention of this Ordinance to eliminate non-conforming use and conditions, and, yet, in the short term, to provide conditions under which they may continue without reasonable conflict with the purpose, intent and objections of this Ordinance.

##### **SECTION 701.2 REGULATIONS AND CONDITIONS FOR NON-CONFORMITIES**

- a. Whenever the use of any dwelling, building or structure and/or site condition becomes non-conforming through an amendment of this Ordinance, such use may continue and if no structural alterations are made, it may be changed to another non-conforming use of the same or a more restricted classification. Whenever a non-conforming use 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.
- b. No existing building or premises devoted to a use not permitted by this Ordinance in the district in which such building or premises is located, except when required to do so by law or order, shall be enlarged, extended, reconstructed or structurally altered, unless the use thereof is changed to a use permitted in the district in which such building or premises is located or unless an enlargement is approved as a conditional use by the Planning Commission, pursuant to Subsection 801.3d when the Commission determines that the expansion or alteration reduces the level of non-conformity.
- c. In the event that a non-conforming use of a dwelling, building or structure and/or of any land or premises is voluntarily discontinued for a period of one (1) year or more, any future use of said land, building or structure shall be in conformity with the provisions of this Ordinance.
- d. When a building, the use of which does not conform to the provisions of this Ordinance, is damaged or destroyed by any means, to the extent of more than sixty (60) percent of its replacement value at the time of destruction or damage, it shall not be restored except in conformity with the regulations of the district in which the building is situated.

## ARTICLE VIII - ADMINISTRATIVE PROVISIONS

### CHAPTER 801

#### Administrative Authority, Powers and Duties

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##### SECTION 801.1 PURPOSE

In order to accomplish the purposes for which this Ordinance is adopted, it is essential that all of the regulations contained herein be soundly and consistently applied and enforced.

The purpose of the administrative provisions are as follows:

- a. To establish procedures for the administration and enforcement of this Ordinance.
- b. To establish procedures for considering and acting upon applications for site plan approval, zoning permits and certificates of occupancy, appeals from administrative actions, requests for variances and for the amendment of this Ordinance.

##### SECTION 801.2 ZONING INSPECTOR

a. Appointment

The Zoning Inspector shall be appointed by the Mayor with the approval of the Village Council.

b. Powers and Duties

The Zoning Inspector shall have the following powers and duties in accordance with the procedures contained in this Section.

1. To receive all applications for site plan review, zoning permits and certificates of occupancy, and collect all fees under the Zoning Ordinance. The Zoning Inspector shall promptly review each application submitted to determine compliance with applicable district regulations and submission requirements. If the application is deemed insufficient, the Zoning Inspector shall promptly notify the applicant of necessary changes. If the application is deemed sufficient and the application fee has been paid, the Zoning Inspector shall officially accept the application on that date for consideration of the action(s) requested.
2. To issue Zoning Permits and Certificates of Occupancy upon final approval of applications.
3. To maintain a record of all administrative and legislative proceedings under this Ordinance with respect to site plan approval, zoning permits, certificates of occupancy, appeals, variances and zoning amendments.

4. To enforce the regulations of this Ordinance. To make inspections as necessary to determine whether any provisions of this Ordinance are being violated. Upon discovery of violations, the Zoning Inspector shall give notice of violations.

## SECTION 801.3 PLANNING COMMISSION

### a. Organization

The Planning Commission shall be composed of five members consisting of the Mayor, one member of the Village Council and three citizens of the Village to be appointed by the Mayor for terms of six years each except that the term of one of the members of the first commission shall be for four years and one for two years. All such members shall serve without compensation.

### b. Powers and Duties

The Planning Commission shall have the following functions, powers and duties, exercisable in accordance with the procedures contained in this Ordinance:

1. To review and approve or disapprove applications for site plan review, zoning permits and certificates of occupancy, including approval of conditional uses for particular zoning lots, subject in certain cases to approval by Council;
2. To review ordinances submitted to it by Council including ordinances to amend the Zoning Ordinance and Map, and to submit to Council the Commission's recommendations with respect to such ordinances;
3. To adopt rules or bylaws for the holding of regular and special meetings, for the transaction and disposition of its business and the exercise of its powers.

### c. Procedures for Site Plan Review

The Planning Commission shall be responsible for review of all sit plans required for proposed developments in all multiple family, community facilities, business and industrial districts according to the following procedures and as provided for in Section 802.3 of this Zoning Ordinance.

### d. Procedures for Conditional Uses

The Planning Commission shall review all applications for conditional use permits according to the following procedures:

#### 1. Submission Requirements

A formal application shall be made to the Planning Commission on a form for that purpose. Each completed application shall be accompanied by the required fee, along with the following submission requirements:

- (a) A site plan of the entire property being considered along with adjacent property within 200 feet, drawn at a reasonable scale and showing the location of all existing streets, the location of all existing and proposed structures, the types of buildings and their uses and calculations of the acreage, density and area involved, including that for parking, topographic features, and surface drainage patterns;
- (b) Preliminary building plans, including floor plans, elevations for the proposed development; and
- (c) An accurate legal description of the real estate involved, which description has been prepared by or certified by a registered surveyor of the State.

2. Review Process

The Planning Commission shall review the application according to standards and criteria listed in Article V and before issuing any conditional use permit must find that the use or uses proposed satisfy the purposes and intent of such criteria.

3. Public Hearing

The Planning Commission shall hold a public hearing upon the application after notice in at least one publication in a local newspaper at least (10) days prior to the date of the hearing. Such notice shall indicate the time, place and subject of the hearing.

4. Decision of Planning Commission

The Planning Commission shall act on the conditional use request upon conclusion of the hearing procedures and may issue a conditional use certificate subject to such conditions as may be reasonably imposed thereon by the Planning Commission in order to effectuate the standards established herein.

5. Denial

The applicant, if denied, shall be permitted to reapply for a conditional use certificate after a period of the year has lapsed from the date of denial by the Planning Commission.

SECTION 801.4 BOARD OF ZONING AND BUILDING APPEALS

a. Organization

- 1. That Council hereby creates a Board of Zoning and Building Appeals (referred to as the Board of Appeals), with duties enumerated under the respective Zoning Ordinance and Building Code Ordinance heretofore enacted by the Council of the Village of Lakemore.
- 2. That the Board of Appeals shall have six members, which shall be appointed by the Mayor and confirmed by Council, two to be appointed for a one year term; two to be appointed for a two year term; and two to be appointed for a three year term. Thereafter, each Board member shall be appointed for a three year term.

3. The Board shall elect one of its members as Secretary. Such member shall take the minutes of all meetings and be responsible for all documents and records of the Board. Such member shall have equal voting rights with the other five members of the Board. It shall take a majority vote to pass any matter presented to the Board.
4. The Board shall organize and adopt such rules and regulations as it may deem necessary to carry into effect the provisions of this Ordinance. Meetings of the Board shall be held at such times as may be necessary. All meetings of the Board shall be public. The presence of three members shall be necessary for a quorum. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question. If a member is absent or fails to vote, the minutes shall indicate such fact. Final disposition of any appeal shall be in the form of a resolution.

b. Powers and Duties

The Board of Appeals shall have the following powers and duties:

1. To hear and decide where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Inspector in the enforcement of this Ordinance or any amendment or supplement adopted pursuant thereto.
2. To authorize, upon appeal, such variation from the terms of the Zoning ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship, and so that the spirit of the Ordinance shall be observed and substantial justice done.
3. To interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the plan, as shown on the maps fixing the several districts accompanying and made a part of this Ordinance, where the street layout actually on the ground varies from the street layout as shown on the map mentioned above.
4. To permit the construction of a building or portion of a building beyond the building line, subject to such conditions or limitations as the Board may deem reasonable and necessary, provided the public health, safety, convenience or general welfare will not thereby be injuriously affected or the appropriate use or development of neighboring property seriously injured.



## ARTICLE VIII - ADMINISTRATIVE PROVISIONS

### CHAPTER 802

#### Procedure for Appeals, Variances, Site Plan Review, and Permits

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##### SECTION 802.1 PROCEDURES FOR APPEALS

Appeals to the Board may be taken by any person aggrieved or by an officer of the Village affected by any decision of the Zoning Inspector. Such appeals to the Board shall be taken within twenty (20) days after the decision of the Zoning Inspector by filing with the Inspector from whom the appeal is taken and with the Board, a notice of the appeal specifying the grounds thereof. The Zoning Inspector shall forthwith transmit to the Board of Appeals all papers constituting the records on which the action appealed from was taken. The Board shall fix a reasonable time for hearing of the appeals, give ten (10) days notice to the parties in interest, and decide the same within a reasonable time after the hearing. Upon hearing, any party may appear in person or by attorney.

##### SECTION 802.2 PROCEDURES FOR GRANTING VARIANCE

A request for variance may be submitted to the Board of Appeals by the owner of the property involved or a person having an interest in such property and acting under written authority of the owner.

a. Application

Application for a zoning variance shall be submitted to the Zoning Inspector on forms provided for that purpose. Each application shall be accompanied by the required fee, along with plans, elevations, other drawings, at a readable scale, and documentation necessary to convey the reasons for the requested variance.

b. Public Hearing

The Board of Appeals shall fix a reasonable time for the hearing of a request for variance, give at least ten (10) days notice of the time and place of the hearing by publication in a local newspaper selected by the Planning Commission or Village Clerk for such purpose and shall give due notice of the hearing by regular mail, personal delivery, residence delivery, or any other type of delivery to each owner of record of any (1249-1998) property shown upon the County Auditor's duplicate within two hundred (200) feet of the property in question; or where any such land is under the same ownership as the property involved, the owners of all property adjoining shall be notified. Failure of delivery of any such notice shall not invalidate the proceedings.

c. Requirements for Variance

A variance for the terms of this Ordinance shall not be granted unless the Board of Appeals upon hearing finds:

1. That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same Zoning District; examples of such special conditions or circumstances are:

exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to non-conforming and inharmonious uses, structures or conditions;

2. That literal interpretation or application of the provisions of this Ordinance would deprive the owner of rights commonly enjoyed by owners of other properties in the same Zoning District under the terms of this Ordinance, and would deprive the owner of a reasonable use of his property;
3. That the special conditions and circumstances do not result from the actions of the owner;
4. That granting the variance requested will not confer on the owner any special privilege that is denied by this Ordinance to other lands or structures in the same Zoning District;
5. That the variance requested is the minimum variance that will make possible the reasonable use of the land or structure; and
6. That the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

d. Action by Board of Appeals

1. If the Board of Appeals finds that such request for variance complies with the purpose and intent of this Ordinance, it shall grant the variance, the Board may attach to and make a part of any authorized variance such condition(s) as the Board may deem necessary.

Every lawful variance authorized by the Board shall expire, if construction has not commenced, one year from the date of such authorization.

2. If the Board of Appeals finds that the request for variance does not so comply, it shall deny the variance; provided, however, the Board of Appeals may submit recommendations to the applicant for changes in such request for variance or conditions to the granting of such variance deemed necessary by the Board to comply with the purpose and intent of this Ordinance.

SECTION 802.3 SITE PLAN REVIEW

a. Purpose

The purpose of this section is to provide adequate review of proposed development by the Planning Commission in order to:

1. Ensure that new development makes proper use of natural environment;
2. Ensure that sites are properly designed for traffic circulation and emergency access;
3. Promote high standards in layout, design, landscaping and overall quality development.

b. Review Required

1. Site plan review shall be required for new construction of all multiple family, business, institutional and recreational uses.
2. Review is also required for existing or previously approved developments which propose:
  - (a) An increase in number of dwelling units in a multiple-family development.
  - (b) An expansion of floor area of commercial, institutional, recreational uses.
  - (c) A change in use which requires an increase in parking area.
3. An applicant may request preliminary approval of a proposed plan.

c. Application Procedure

An application for review of a site plan is to be submitted to the Village Zoning Inspector. It may be filed by a land owner, a developer on behalf of owner or group of owners acting jointly. The Zoning Inspector reviews applications to assure compliance with the submission requirements. If the requirements have not been satisfied, the application is returned to the applicant with the deficiencies noted.

1. Submission Requirements

All applications shall be accompanied by the following.

- (a) Property location map and topography survey of proposed development area showing the following information for the subject site and surrounding property.
  - (1) Property lines;
  - (2) Easements;
  - (3) Street right-of-ways;
  - (4) Topography lines at two foot intervals;
  - (5) Existing structures;
  - (6) Landscape features, including existing trees and wooded areas;
  - (7) Existing drainage patterns.
- (b) A proposed site plan at the same scale as the property location map, and including the following:
  - (1) Location and use of buildings
  - (2) Location of structures on surrounding properties;
  - (3) Landscaping and screening;
  - (4) Utilities and surface drainage;



- (5) Circulation, including driveways, access, sidewalks, parking and loading, including type of pavement;
- (6) Site improvements and grading.

(c) Preliminary architectural sketches of buildings and other structures, including signs, floor plans, site construction materials.

(d) Summary table showing total acres and amount devoted to type of residential and non-residential uses including streets.

## 2. Review by Planning Commission

A satisfactory application is transmitted simultaneously to the Planning Commission and for appropriate administrative review (fire, police, health, environmental services, etc.). Administrative review should be completed and the reports/comments available to the Planning Commission at the time of the Commission's review.

## 3. Review Criteria

Planning Commission reviews the plans and either approves, approves with modifications, or rejects the proposal according to the following criteria:

- (a) Preservation of natural amenities;
- (b) All development features (principle buildings, open spaces, drives, parking areas) located to minimize adverse affects on adjacent development;
- (c) Adequate screening of parking, storage, service and recreation areas for adjacent properties by landscaping and/or ornamental walls or fences;
- (d) Adequate surface drainage, grading and sediment control;
- (e) Maximum possible visual privacy for multiple-family developments;
- (f) Architectural design of buildings and relationship to adjacent development;
- (g) Minimal removal of trees;
- (h) Adequate fire and police protection as affected by circulation system and placement of buildings;
- (i) Adequate design of lighting and amplification systems to ensure neither hazard or nuisance created by such fixtures.

## 4. Action

- (a) If the Planning Commission does not act on the application within 60 days from the time the application has been deemed complete and accepted by the Zoning Inspector, the plan is considered approved.
- (b) If the Plan is rejected, the applicant may resubmit at any time.
- (c) Based on an approved plan, a Zoning Permit may be issued by the Zoning Inspector.

## SECTION 802.4 PERMITS AND CERTIFICATES

### a. Zoning Permits

1. No permit for the erection of any building shall be issued for the construction, alteration or change of a building or premises until the plans, specifications and intended use conform in all respects to the provisions of this Ordinance or amendments hereafter duly enacted.
2. All applications for zoning permits for single-family homes shall be accompanied by a plan in duplicate, drawn to scale, showing the actual dimensions of the lot to be built upon, all buildings existing upon said lot, the size and proposed location of the building for which the application for a permit is made and such as may be necessary to provide for the enforcement of these regulations, or that may be required by the rules and regulations of the Board of Appeals. A careful record of such applications and plans shall be kept in the office of the Zoning Inspector.
3. All applications for zoning permits for multiple-family and non-residential uses shall be accompanied by an approved site plan as specified in the Site Plan Approval Procedures, Section 802.3.
4. The Zoning Inspector shall issue a zoning permit when an application has been approved as in compliance with all the regulations and procedures of this Ordinance.
5. Zoning permits shall be effective for one (1) year from the date of issue. Thereafter, the applicant shall be required to obtain a new permit and pay the necessary fees required before construction can begin.

### b. Certificate of Occupancy

1. It shall be unlawful to use or permit the use of any building or premises or part thereof hereafter erected, created, changed or converted wholly or partly in its use or structure until the Zoning Inspector shall have issued a Certificate of Occupancy stating that the building and premises comply with the provisions of these regulations, provided that nothing in this section shall prevent the continuance of the present occupancy or use of any premises or any existing building as provided under Chapter 701.
2. The Zoning Inspector shall issue a Certificate of Occupancy and compliance within 3 days after application therefore has been filed in his office when such erection or alteration is completed to a point of availability for occupancy or use, provided said building or premises, and proposed use therefore, complies with these regulations.

## SECTION 802.5 SCHEDULE OF FEES, CHARGES AND EXPENSES

The Village Council shall, by resolution, establish a schedule of fees, charges and expenses related to site plan approvals, zoning permits, certificates of occupancy, appeals, variances, amendments and other matters pertaining to the administration and enforcement of this Zoning Ordinance. The schedule of fees shall be posted in the office of the Zoning Inspector and may be altered or amended only by the Village Council.

Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

SECTION 802.6 ENFORCEMENT AND PENALTY

a. Enforcement

The enforcement of this Zoning Ordinance shall be vested in the Zoning Inspector and his assistants.

b. Violation of Zoning Ordinance

No person shall erect, construct, alter, repair or maintain any building or structure or use any land in violation of this Zoning ordinance.

In the event of any such violation, or imminent threat thereof, the Village of Lakemore, or the owner of any contiguous or neighboring property who would be especially damaged by such violation may, in addition to any other remedies provided by law, institute a suit for injunction to prevent or terminate such violation.

c. Penalty

Any person, firm or corporation who violates any of the provisions of this Ordinance shall, upon conviction, be subject to a fine of not less than ten (10) dollars nor more than one-hundred (\$100.00). Every day during which such violation shall continue shall constitute a separate violation.

## ARTICLE VIII - ADMINISTRATIVE PROVISIONS

### CHAPTER 803

#### Amendments to Zoning Regulations

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##### SECTION 803.1 AMENDMENTS TO ZONING REGULATIONS

The Council may from time to time on its own motion on recommendation from the Planning Commission or on petition from property owner(s), after public notice and hearing, amend or change the regulations, districts or building lines herein established according to the following procedures.

- a. No such amendment or change shall be effective unless the ordinance or petition proposing such amendment or change shall first be submitted to the Village Planning Commission for approval, disapproval or suggestions, and the Village Planning Commission shall have been allowed a reasonable time, not less than 30 days for consideration and report.
- b. Each applicant for an amendment, except those initiated by Council or the Planning Commission, shall be accompanied by a certified check, bank money order or cash, payable to the Treasurer of the Village of Lakemore in the amount set forth by the Village Council to cover the processing of the zoning application.
- c. Before any such proposed amendment or supplement may be passed, the Village Council shall hold a public hearing thereon and shall give at least 30 days notice of the time and place thereof in a [local newspaper selected by the Council or Village Clerk for such purpose. \(1249-1998\)](#)
- d. The Village Council shall either adopt or deny the recommendation of the Village Planning Commission or adopt some modification thereof. No such amendment or supplement which violates, differs from, or departs from the recommendation of the Planning Commission shall take effect unless passed or approved by not less than five of the members of the Village Council.