CHAPTER 2

LOTS OF RECORD; NONCONFORMITIES

1-2-1: LOTS OF RECORD

1-2-2: NONCONFORMING USES AND STRUCTURES IN ALL DISTRICTS

1-2-3: NONCONFORMING USES AND STRUCTURES IN FLOOD HAZARD ZONES

1-2-4: NONCONFORMING USES AND STRUCTURES IN SHORELAND DISTRICTS

1-2-1: LOTS OF RECORD:

All lots legally recorded in the office of the County Recorder prior to the effective date of this Ordinance are considered to be lots of record and, therefore, buildable even though such lots may not conform to the provisions of this Ordinance, provided all of the following requirements are met:

1. **Separate Ownership:**  Such lots have separate ownership from abutting lands;
2. **Sanitary, Setback Requirements:**  All sanitary and setback requirements of the County are complied with insofar as practical;
3. **Lot Frontage, Area:**  Such lots occupy no less than seventy-five percent (75%) of the minimum requirements of the appropriate district for lot frontage and minimum lot area. This provision shall not apply to nonconforming, substandard lots of record with existing structures thereon;
4. **Permissible Use:**  The proposed use is an allowed use within the applicable zoning district; and
5. **Floodproofing:**  Within any flood plain zone, the proposed use must be elevated on fill or floodproofed to the regulatory flood protection elevation according to the standards contained in this Ordinance.

1-2-2: NONCONFORMING USES AND STRUCTURES IN ALL DISTRICTS:

In all zoning districts, a structure or the use of a structure or premises which was lawful before the passage or amendment hereof but which is not in conformity with the provisions of this Ordinance may be continued subject to the following conditions:

1. **Discontinued or Abandoned:** If a nonconforming use or nonconforming structure is discontinued or abandoned for a period of one year, further use of the structure shall conform to this Ordinance. The Zoning Administrator may be made aware of discontinuance or abandonment by staff observation or other evidence, in addition however, the County Assessor shall notify the Zoning Administrator in writing of all instances where a nonconforming use or structure has been discontinued or abandoned for a period in excess of twelve (12) consecutive months.
2. **Change in Use:** Changes in nonconforming uses shall comply with the following provisions:
	1. **Change to Allowed Use:** A nonconforming use may be changed to a permitted or conditional use that is allowed in the zoning district where the use is located.
	2. **Change to Use of Lesser Intensity:** The nonconforming use of a structure and land may be changed to another nonconforming use if approved by the Planning Commission as a conditional use. Such change shall be allowed only if the new use is of lesser intensity than the original nonconforming use.
	3. **Cannot be Re-established:** In every instance where a nonconforming use is replaced by a conforming use, no nonconforming use on that site shall be resumed.
3. **Increase in Nonconformity Prohibited:** Nonconforming use of a structure, nonconforming use of land, or nonconforming structures shall not be expanded, enlarged, intensified, or altered in a way that increases its nonconformity.
4. **Maintenance and Nonstructural Repairs:**  Normal maintenance and nonstructural repairs and alterations and structural alterations necessary for the safety of a structure are permissible. Such activities, however, shall not expand or intensify the nonconforming use of a structure or land. Normal maintenance and nonstructural repairs and alterations shall be limited to the following:
	1. Residing;
	2. Reshingling and/or reroofing;
	3. Installation of storm windows;
	4. Painting;
	5. Redecorating; limited to interior painting, wallpapering, and/or installation of carpeting;
	6. Replacement or conversion of heating systems; and
	7. Repairs to plumbing or electrical systems.
5. **Health and Safety:** Repairs and alterations necessary to comply with health and safety provisions of the County sanitary or public nuisance ordinances are permissible. Such repairs and alterations shall include the following:
	1. Installation of indoor plumbing;
	2. Rewiring to comply with the electrical code; or
	3. Insulating a structure.
6. **Access for Disabled Persons:** Alteration necessary to accommodate the needs of a disabled person residing in a nonconforming residence are allowed but shall not include an expansion in the exterior dimensions of the nonconforming structure. Allowed alterations may include unenclosed access ramps, widening of doors, and other nonstructural alterations.
7. **Limitation on Repairs and Alterations:** Normal maintenance and nonstructural alterations and repairs and structural alterations necessary for the safety of the building as permitted in subsections D and E of this Section 1-2-2 shall not exceed fifty percent (50%) of the market value or replacement cost of said structure, whichever is less, within any given three (3) year period.
8. **Damaged Over Fifty Percent of Value:**  If a nonconforming structure is damaged to an extent exceeding fifty percent (50%) of its market value or replacement cost, whichever is less, any future structure or rebuilding of the structure on the site shall conform to the applicable regulations of this Ordinance. Additionally, the reestablishment of a nonconforming use of a structure or land is disallowed when damages are in excess of the aforementioned fifty percent (50%) figure, and the status of the lot upon which such structures sit, whether it be a conforming lot or a nonconforming substandard lot of record, shall have no bearing on this determination.
9. **Fire, Flood, or Other Natural Disaster:**  In the event of a fire, flood or other natural disaster leading to the damage or destruction of nonconforming uses and structures, the following procedures shall be initiated by the Zoning Administrator on behalf of the County:
	1. **Identification; Notice:** The Zoning Administrator, with the assistance of the County Civil Defense Director and/or County Engineer, shall identify all nonconforming structures or uses sustaining appreciable levels of damage. Following the identification of damaged nonconforming structures, the Zoning Administrator shall inform all affected parties by mail that no repair or rebuilding activities shall be initiated until notification from the Zoning Administrator.
	2. **Determination of Damage:** The Zoning Administrator shall determine the percentage of damage to a nonconforming use or structure by survey and by the use of either or all of the following indices:
		1. County Assessor's records;
		2. Insurance adjuster's damage survey;
		3. Appraisal of replacement or market value, as appropriate, by a qualified appraiser subject to final approval by the County; or
		4. National Flood Insurance Program proof of loss statement, if available.
	3. **Repair and Maintenance Permit for Nonconforming Structures:** Those nonconforming structures not damaged in excess of fifty percent (50%) of the market value or replacement cost of the structure, whichever is less, will be notified in writing that repairs can commence pending the approval and issuance of a repair and maintenance permit for nonconforming structures, as long as the structure is not expanded in any way.
	4. **Damage Over Fifty Percent:** Nonconforming structures damaged to a level in excess of fifty percent (50%) of the structure's market value or replacement cost, whichever is less, shall be ticketed and the ticket shall state that:
		1. **Conformance Required:**  The use or structure is nonconforming and cannot be rebuilt or repaired except in conformance with provisions of this Ordinance. The applicable provisions will be stated on the ticket.
		2. **Zoning Certificate:** The owners of the nonconforming structure must apply for and receive approval of a zoning certificate before such rebuilding can be initiated and must commence rebuilding within ninety (90) days of the date of ticketing. The structures must be rebuilt within one year of the issuance of a zoning certificate.
		3. **Occupancy Permit:** Occupancy of a nonconforming structure will not be permitted until an inspection by the Zoning Administrator reveals that substantial repairs as identified on the ticket have been done in a manner consistent with the provisions of this Ordinance and an occupancy permit is issued.
		4. **Rebuilding Prohibited:** Nonconforming structures and uses in floodway areas damaged in excess of fifty percent (50%) of the structure's market value or replacement costs, whichever is less, cannot be rebuilt. Nor can nonconforming structures in flood fringe areas, damaged in excess of fifty percent (50%) of the structures market value or replacement cost, whichever is less, that cannot be elevated on fill or floodproofed to County floodproofing standards and the regulatory flood protection elevation (RFPE) be rebuilt. Such structures must be removed or demolished.
10. **Declared Hazard:** When nonconforming structures or portions of a structure containing nonconforming uses become physically unsafe or unlawful due to lack of repairs, maintenance, or general neglect (as in the case of abandonment,) the Zoning Administrator may declare such structures health or safety hazards and, therefore, violations of the public nuisance provisions of Chapter 5 of this Ordinance by virtue of the structure's physical condition alone. Repairs shall be made as ordered by the Zoning Administrator and in the case such structures are damaged in excess of fifty percent (50%) of their market value or replacement cost, whichever is less, the repairs shall conform to the provisions of subsection G, above.

1-2-3: NONCONFORMING USES AND STRUCTURES IN FLOOD HAZARD ZONES

In addition to the provisions 1-2-2, the following provisions shall apply to nonconforming uses and structures in flood hazard zones.

1. **Intensification of Nonconforming Uses:** There shall be no intensification in use of an existing nonconforming use that would result in a structural alteration to the existing structure or increase its flood damage potential.
	1. **Dimensional Area:** A nonconforming use of a structure or land within a flood hazard zone shall not be enlarged, increased, or extended to occupy a greater dimensional area than was occupied on the effective date of adoption hereof.
2. **Enlargement or Structural Alteration of Nonconforming Structures:** A nonconforming structure may be enlarged or altered so long as such enlargement or alteration does not increase the existing degree of nonconformity or flood damage potential. Any structural alteration or addition to a nonconforming structure that would increase its flood damage potential shall be subject to the following provisions:
	1. **Floodproofing/Elevation on Fill:** Such alteration or enlargement shall be elevated on fill or floodproofed to the regulatory flood protection elevation in accordance with any of the elevation on fill or flood proofing techniques (i.e., FP-1 through FP-4 Floodproofing Classifications) allowable in the State Building Code, except as further restricted in B2(c) and (d), below.
	2. **Cost of Structural Alterations or Additions Limited:**
		1. **Limit Imposed:**  The cost of structural alterations or additions to any nonconforming structure shall not, over the life of the structure, exceed fifty percent (50%) of the current market value of the structure unless the entire structure is made to conform to this Ordinance.
		2. **Calculation of Cost:** The cost of all structural alterations and/or additions must include all costs such as construction materials and a reasonable cost placed on all manpower or labor.
		3. **Exceeds Limit:** If the cost of all previous and proposed alterations and additions exceeds fifty percent (50%) of the current market value of the structure then the entire structure must meet the standards of Section 1-5A-6 and 1-5A-7 of this Ordinance for new structures depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.
	3. **Increase in Stage of Regional Flood:** There shall be no alteration or enlargement of an existing nonconforming structure in the Floodway District that would result in an increase in the stage of the regional flood.
3. **Damage to Nonconforming Uses and Structures in a Flood Hazard Zone:** The following shall apply to nonconforming structures in the Flood Fringe District that area damaged:

Nonconforming uses and structures in a Flood Hazard Zone that are substantially damaged, as defined in Section 1-1-2 shall not be reconstructed except in conformity with the provisions of this Ordinance. The applicable provisions for establishing new uses or new structures in Section 1-5A-6 and 1-5A-1 will apply depending upon whether the use or structure is in the Floodway Flood Fringe or General Flood Plain District, respectively.

1. **Substantial Improvements to Nonconforming Uses and Structures in a Flood Hazard Zone:** If a substantial improvement occurs, as defined in Section 1-1-2 of this Ordinance, from any combination of a building addition to the outside dimensions of the existing building or a rehabilitation, reconstruction, alteration, or other improvement to the inside dimensions of an existing nonconforming building, then the building addition and the existing nonconforming building must meet the requirements of Sections 1-5A-6 and 1-5A-7 of this Ordinance for new structures, depending upon whether the structure is in the Floodway or Flood Fringe District, respectively.
2. For substantially damaged and substantially improved structures as described in C and D above and the enlargement or alteration of structures as described in B1 above, the following provisions shall be required:
	1. **Floodproofing Requires a Conditional Use Permit:** Such floodproofing requirements, including diking, are considered conditional uses and must receive approval by the appropriate watershed board as well as the Planning Commission.
	2. **Standard for Approving a Conditional Use Permit:** Approval of such a conditional use is contingent upon certification by a registered professional engineer or architect that the floodproofing techniques to be employed will not result in any increase whatsoever in flood heights, and that the structure will be protected to the regulatory flood protection elevation.
	3. **Removal of Nonconforming Status**: If the elevating on fill or floodproofing measures for such structures are feasible, complied with, and if the certifications required in subsection 2, immediately above, are received, the structure in question may be eliminated from the Township’s nonconforming use category.

1-2-4: NONCONFORMING USES AND STRUCUTRES IN SHORELAND DISTRICTS

In addition to the provisions 1-2-2, the following provisions shall apply to nonconforming uses and structures in Shoreland Districts.

1. **Construction on Lots of Record:**
	1. **Allowed:** Lots of record that do not meet the lot area and width requirements of Section 1-5B of this Ordinance may be allowed as building sites without variances from lot size requirements provided that all of the following provisions are met:
		1. The proposed use is a permitted use in the zoning district in which the lot of record is located;
		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 official controls in effect at the time;
		4. All sewage treatment requirements of this Ordinance are met; and
		5. All setback requirements for the Shoreland District where the lot of record is located are met.
	2. **Variance Required if Setbacks Not Met:** If a proposed structure does not meet the setback requirements for the Shoreland District where the lot of record is located, a variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued. 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.
	3. **Combining Lots:** If, in a group of two (2) or more contiguous lots under the same ownership, any individual lot does not meet the requirements of subsection A1, above, the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with the one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of subsection A1, above, as much as possible.
2. **Additions/Expansions to Nonconforming Structures:**
	1. **Outside Dimensions:** All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of Section 1-5B of this Ordinance. Any deviation from these requirements must be authorized by a variance pursuant to Section ­­­1-4-5 of this Ordinance.
	2. **Deck Additions:** Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water level if all of the following criteria and standards are met:
		1. The structure existed on the date the structure setbacks were established;
		2. A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure;
		3. The deck encroachment toward the ordinary high water level does not exceed fifteen percent (15%) of the existing setback of the structure from the ordinary high water level or does not encroach closer than thirty feet (30'), whichever is more restrictive; and
		4. The deck is constructed primarily of wood, and is not roofed or screened.
3. **Nonconforming Sewage Treatment Systems:**
	1. **Upgrade Required:** A sewage treatment system not meeting the Clay County requirements for individual sewage treatment systems must be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of, the property. For the purposes of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatment system's improper setback from the ordinary high water level.
	2. **Conforming Systems Defined:** Sewage systems installed according to all applicable local shoreland management standards adopted under Minnesota Statutes Annotated Section 103F.201, in effect at the time of installation may be considered as conforming unless they are determined to be failing. Systems using cesspools, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above ground water than required by the Minnesota Pollution Control Agency's Chapter 7010 for design of on-site sewage treatment systems, shall be considered nonconforming.