

§ 148-12. Nonconforming uses, structures and lots. [Amended 7-24-2007 by L.L. No. 13-2007]

The rules that follow apply to nonconforming uses, structures, and lots. It should be noted that, in any given circumstance, a nonconformity may exist as to any one or any combination of these three categories. Nonconforming structures (including nonconformities as to impermeable surface coverage) and uses are governed by Subsections A through G and I below. Nonconforming lots are governed by Subsections G and H. These sections operate independently, i.e., more than one set of rules may apply if a structure or use is nonconforming and the lot is also nonconforming. In case of any conflict among the requirements of these subsections, the more restrictive shall apply.

- A. Continuation of nonconforming uses and structures. Any lawful structure or use existing at the time of enactment or amendment of this chapter which becomes nonconforming as a result of such enactment or amendment may be continued, except that:
- (1) Any sign which was nonconforming under this chapter or under any previous ordinance or local law shall be subject to the provisions of Chapter 123 of the Town Code.
 - (2) Any junk storage area shall be required to comply with § 148-35E of this chapter and Chapter 86 of the Town Code.
- B. Abandonment. A nonconforming use of land or structure(s) which is abandoned for a period of 18 consecutive months shall not be reestablished, and any subsequent use of the same property shall conform to the requirements of this chapter.
- C. Alteration and restoration. A nonconforming use or structure shall not be extended, expanded or structurally altered except upon site plan approval for structures located within 1000500 feet of Skaneateles Lake, and as provided below. (The extension of a lawful use to any portion of a nonconforming structure shall not be deemed the extension of a nonconforming structure or use.)
- (1) A nonconforming structure or use may be rebuilt in the event of its total or partial destruction by fire, casualty, or other natural causes, to occupy the same or a lesser amount of footprint, but may not exceed the height or interior volume of the totally or partially destroyed structure. The rebuilt structure may also be enlarged as provided in Subsections C(2), (3), and (4) below. This subsection shall not apply to voluntary demolition of a structure. [See Subsection C(5) below.]
 - (2) A nonconforming structure that is nonconforming only as to lot line setbacks may be expanded without a variance or special permit, provided that such expansion does not increase the nonconformity of the structure.
 - (3) Notwithstanding the provisions of § 148-12G(1)(a)[7], a nonconforming structure or use may be altered and/or renovated, which for purposes of this section must result in the re-use of at least fifty percent (50%) of the structural component materials of the existing structure, and expanded by up to a total of 500 square feet of floor space and 5,000 cubic feet of interior volume without a variance or special permit, provided that; (i) such expansion does not increase the nonconformity of the structure or

expand the nonconforming use; (ii) the alteration and/or renovation results in the re-use of at least fifty percent (50%) of the component materials of the existing structure; (iii) the alteration and/or renovation may not disturb the land, and (iv) the alteration and/or renovation may not include a structural change to the nonconforming structure. The 500 square feet of permitted expansion shall be cumulative and shall include all prior expansions since January 1, 1996. For purposes of this Subsection C(3), the floor space and interior volume of a garage and the floor space of decks and patios shall be counted toward the total floor space and interior volume. The increased floor space or volume may result in an increase in the height of the structure consistent with the height limits of this chapter, provided that no part of the structure is located within 50 feet of the lake line.

- (4) The Planning Board may issue a special permit allowing the expansion of a nonconforming use or structure by more than 500 square feet of floor space and/or 5,000 cubic feet of interior volume [including garage, deck, or patio as in Subsection C(3) above]. Such expansion may not exceed 25% of total floor space or volume of the structure or use as it existed on January 1, 1996, provided that all other requirements of this Zoning Law can be met, including the limitation on impermeable surface coverage, and that the expansion does not reduce the size of any nonconforming yards by more than 10%. No nonconforming lake yard may be reduced by such an expansion. The permitted expansion referenced above shall be cumulative. The Planning Board shall consider and include all prior expansions since January 1, 1996. The Planning Board may also issue a special permit allowing the expansion of a nonconforming use or structure by 500 square feet or less of floor space and/or 5,000 cubic feet or less of interior volume where the structure and/or the lot on which it is situated do not comply with applicable maximum impermeable surface requirements. For any case in which the structure and/or the lot on which it is situated do not comply with applicable maximum impermeable surface requirements, the Planning Board shall require the applicant to reduce impermeable surface coverage on the property to the maximum extent feasible as a condition of the special permit. The Planning Board may also require mitigation as provided in § 148-12G(6). In no event may the special permit allow an applicant to increase the nonconforming impermeable surface coverage.
- (5) A nonconforming structure may be demolished and a new structure built to the same or lesser height and floor space and on the same or lesser footprint without a variance or special permit, provided that the structure and the lot on which it is situated comply with applicable maximum impermeable surface requirements. Increases in height, footprint, floor space, or interior volume are permitted in compliance with all of the limits in Subsection C(2), (3), and (4) above. Any change in location of the footprint shall require a special permit unless the structure in the new location complies with all of the dimensional requirements of this Zoning Law, including impermeable surface coverage requirements. If the structure and/or the lot on which it is situated do not comply with applicable maximum impermeable surface coverage requirements, the Planning Board shall require the applicant to reduce impermeable surface coverage on the property to the maximum extent feasible as a condition of the special permit. The Planning Board may also require mitigation as provided in § 148-12G(6).

In no event may the special permit allow an applicant to increase the nonconforming impermeable surface coverage.

- (6) Nonconforming boathouses shall not be expanded under any circumstances, and no expansion of nonconforming residential uses within boathouses shall be permitted. No kitchen or bathroom facilities shall be installed in such boathouses.
- D. Necessary maintenance and repairs. A nonconforming use or structure may be repaired or restored to a safe condition.
 - E. Change to other nonconforming use. A nonconforming use of a structure or parcel of land may, upon issuance of a special permit by the Planning Board, be changed to another nonconforming use which is of the same or lesser impact. However, no structure in which a nonconforming use has been changed to a use of lesser impact shall again be devoted to a nonconforming use with greater impact. In determining whether a use is of greater or lesser impact, the Planning Board shall consider the criteria listed in § 148-16.
 - F. Construction started prior to this chapter. Any structure for which construction was begun prior to the effective date of this chapter, or of any amendment thereto, may be completed and used in accordance with the approved plans, specifications and permits for such structure. Any structure for which construction has not begun pursuant to approved plans shall not be subject to this chapter and any amendments thereto, provided that a valid building permit has been issued prior to enactment. The Codes Enforcement Officer, may, in his or her discretion, issue a building permit for any application involving a variance, special permit or site plan review that has been given final approval prior to enactment.
 - G. Existing nonconforming lots.
 - (1) Any lot of record created prior to December 7, 2005, which complied with the area, density or dimensional requirements of this chapter at the time it was created but no longer complies shall be deemed to comply with such requirements, and no variance shall be required for its development, provided that:
 - (a) The following dimensional requirements are satisfied:
 - [1] Minimum lot area: 5,000 square feet, except within the Lake Watershed Overlay District, where the minimum lot area shall be 20,000 square feet.
 - [2] Minimum lot width and lake frontage: 50 feet minimum lot width; 75 feet minimum lake frontage.
 - [3] Minimum front yard: 15% of lot depth but not less than 25 feet. This reduction of setback is not available for lots over two acres.
 - [4] Minimum side yard, each: 20% of lot width but not less than eight feet. This reduction of setback is not available for lots over two acres.
 - [5] Minimum rear yard: 15% of lot depth but not less than 25 feet. This reduction of setback is not available for lots over two acres.
 - [6] Minimum lake yard: 60 feet for structures built prior to January 1, 2001, and 100 feet for the construction of any new structures thereafter

[7] Building limitations:

[a] The following limitations of Subsection G(1)(a)[7][a][i] and [ii] below shall apply, separately or together, to new buildings and to the enlargement of the footprint of preexisting buildings on nonconforming lots of less than 40,000 square feet. These limitations apply whether or not the preexisting buildings are conforming or nonconforming structures and do not apply on lots of 40,000 square feet or larger. For expansion of preexisting nonconforming structures, see § 148-12C. On lots within 1000 feet of the lake line (includes any portion thereof): [Amended 1-20-2011 by L.L. No. 1-2011]

[i] The total footprint of all principal and accessory buildings shall not exceed 6% of the lot area.

[ii] The total floor space of all principal and accessory buildings shall not exceed 10% of the lot area.

[b] The Town Codes Enforcement Officer shall use the most recent floor plans approved and on file to determine preexisting conditions and compliance. When no floor plans are on file with the Town or otherwise not available, the floor space calculation shall be based on measurements certified by a qualified design professional at the time of a new application for a building and/or zoning permit.

[c] For purposes of this section, 80% of unfinished but potentially habitable floor space in basements shall be included in the floor space calculation.

[8] In the Lake Watershed Overlay District, maximum impermeable surface coverage shall be 10%, except as provided in § 148-12G(6) below.

[9] Outside the Lake Watershed Overlay District, for lots of less than two acres, the maximum impermeable surface coverage shall be 15%, except as provided in § 148-12G(6) below.

(b) All Health Department regulations are satisfied.

(c) Any residential use of a nonconforming lot shall be limited to one single-family dwelling, unless a special permit for an accessory apartment has been granted pursuant to § 148-11K(2)(b).

(d) Site plan review, if otherwise required, is obtained. For lots of less than 40,000 square feet, site plan review shall also be required for any building or expansion of an existing building exceeding 500 square feet in footprint area and located within 1,000 feet of the lake line.

(e) Site plan approval shall not be granted for any structure on a nonconforming lot unless the Planning Board makes a written finding that in its judgment the applicant has mitigated any impacts of the proposed development and that the

result of such development will be to reduce the quantity and improve the quality of surface and ground water leaving the site. The Planning Board shall require improvements in on-site stormwater and landscape management and septic waste management in order to make such a finding. Such improvements may include, without limitation, infiltration trenches and other drainage improvements and vegetated stream and lake buffers.

- (f) In the Lake Watershed Overlay District, all requirements of §§ 148-21, 148-26, 148-29 and 148-30 must also be satisfied.
- (2) Notwithstanding the foregoing provisions, no variance shall be required for the following:
- (a) On nonconforming lots of less than 20,000 square feet, the construction of a permanent deck or patio, not to exceed 175 square feet, provided that the construction does not increase the nonconformity of the structure it adjoins. If the increased nonconformity relates only to the open space requirements, then such construction shall be permitted.
 - (b) Construction of a fence, berm, or wall complying with § 148-11G and H.
 - (c) Any renovation or ordinary repairs to an existing building or structure which is not intended to and does not provide for a new or extended use or size of the building, structure or premises, provided that such alteration or repair does not increase the nonconformity of the building or structure.
 - (d) On nonconforming lots of less than 20,000 square feet, outside the required lake yard, there may be one detached storage shed, provided all of the following conditions are met:
 - [1] The storage shed is not larger than 80 square feet.
 - [2] The storage shed is no more than 10 feet in height.
 - [3] The storage shed is not used for human habitation.
 - [4] The storage shed is not used for housing animals or storing manure, nonresidential fertilizers or chemicals.
 - [5] The storage shed does not occupy more than 10% of a required rear yard.
 - [6] The storage shed is set back at least 10 feet from the side or rear lot lines.
 - [7] The storage shed is not located closer to the street than the front yard setback required for a principal structure.
 - (e) The construction of a sea wall or retaining wall along or parallel to the lake line where the Planning Board determines, through the special permit review process, that the wall will provide erosion control benefits.
 - (f) Demolition of a structure, provided that any replacement structure fully complies with all dimensional requirements of the Zoning Law.

- (3) A special permit is required for conversion of a seasonal use residential structure located within 100 feet of Skaneateles Lake on a nonconforming lot to year-round use to assure protection of lake water quality.
- (4) Notwithstanding the foregoing provisions, any undeveloped lot in a subdivision which was not properly approved by the Planning Board or Town Board or not filed in the office of the County Clerk, and whose area or dimensions do not comply with the requirements of this chapter, shall be considered a violation of this chapter and shall not be protected under Subsection G(1) above.
- (5) In accordance with Town Law § 265-a, any lot proposed for residential use in a subdivision whose plat delineates one or more new roads or highways, which is shown in a subdivision plat that has been properly approved by the Planning Board and filed in the office of the County Clerk prior to the effective date of this chapter, and which violates the minimum area and dimensional requirements of this chapter, shall be deemed to comply with such minimum requirements for three years after the filing of the subdivision plat.
- (6) A lot which contains structures that are nonconforming as to impermeable surface coverage may be redeveloped by special permit granted by the Planning Board, provided that all other applicable requirements of this § 148-12 are satisfied, that the impermeable surface coverage on the lot is reduced to the maximum extent feasible, and that all practicable measures are taken to minimize the impact of such impermeable surface coverage on streams, lakes and groundwater. [Note: If the proposed redevelopment reduces impermeable surface coverage to bring the lot within compliance with this chapter, no special permit pursuant to this section shall be required.] Such measures may include, without limitation, infiltration trenches and other drainage improvements, and vegetated stream and lake buffers. If an applicant is unable to reduce such coverage sufficiently to bring the lot into compliance with applicable coverage limitations for conforming lots, the Planning Board shall condition any approval of such a special permit on either, at the applicant's option:
 - (a) The use of mitigation measures that result in the permanent protection by conservation easement of 10 square feet of land in the same general area for each square foot of impervious surface coverage greater than the area required to bring the lot into compliance with applicable coverage limitations for conforming lots sufficient to offset any drainage or environmental impact that might occur as a result of the lot exceeding the applicable coverage limitations. The determination as to the appropriate location of such protected land shall be made by the Planning Board in consultation with the Planning Board Engineer. If the lot is within the Skaneateles Lake Watershed, the Planning Board Engineer shall also consult with the City of Syracuse Department of Water in making this determination. The applicant shall bear the expenses associated with establishing the conservation easement. The conservation easement shall satisfy the requirements of § 148-9H and shall be filed and recorded in the County Clerk's office; or
 - (b) A monetary contribution, equal to the cost to protect 10 square feet of land with a conservation easement for each square foot of impermeable surface coverage

greater than the area permitted to bring the lot into compliance with applicable coverage limitations for conforming lots, to the Town's Land and Development Rights Acquisition (DRA) Fund, which fund has been established to acquire development rights or conservation easements on undeveloped land to promote permanent protection of the lake and other natural resources. For purposes of this calculation for the fiscal year 2007, the cost to protect one acre of undeveloped land with a conservation easement is determined to be \$10,000, to be calculated at \$0.23 per square foot. The Town Board may, from time to time, by separate resolution or local law, amend said cost per acre based upon the estimated then-fair market cost to obtain and administer a conservation easement.

- (7) In no case shall the applicant be permitted to increase the impermeable surface coverage on a lot.
- (8) Where a conservation easement has been established or a monetary contribution has been made pursuant to § 148-12G(6)(a) or (b) above, if the applicant or a successor in interest seeks a subsequent redevelopment of a lot, no additional conservation easement or monetary contribution shall be required.
- (9) By way of illustration only, if an applicant's property is located in the Lake Watershed Overlay District (LWOD) with a total lot area of 10,000 square feet, 10% or 1,000 square feet of impermeable surface coverage would be permitted. If the property already had 1,300 square feet of impermeable surface coverage (300 square feet in excess of the applicable coverage limitation for nonconforming lots) which the applicant desired to retain while redeveloping the property, granting of a special permit would be conditioned upon the applicant obtaining a conservation easement on at least 3,000 square feet of land (300 square feet times 10) in the same general area to offset any drainage or environmental impact that might occur as a result of exceeding the applicable coverage limitation, or making a monetary contribution to the DRA Fund in the amount of \$690 (10 square feet of land times 300, which is the number of square feet of impermeable surface coverage in excess of the applicable coverage limitations for nonconforming lots times \$0.23).

H. Reduction in lot area. No lot shall be reduced in area in a manner that violates the dimensional requirements of this chapter.

I. Special permit uses. Any use which can be allowed by special permit under this chapter, but which has not been issued a special permit, may continue as a nonconforming use until it is granted a special permit. Upon the granting of such a special permit, the use shall become conforming and shall be governed by the conditions attached to the special permit. If such a special permit is denied, the use may continue as a nonconforming use, subject to the requirements of this § 148-12.

- ~~(6) A lot which contains structures that are nonconforming as to impermeable surface coverage may be redeveloped by special permit granted by the Planning Board, provided that all other applicable requirements of this § 148-12 are satisfied, that the impermeable surface coverage on the lot is reduced to the maximum extent feasible, and that all practicable measures are taken to minimize the impact of such~~

~~impermeable surface coverage on streams, lakes and groundwater. [Note: If the proposed redevelopment reduces impermeable surface coverage to bring the lot within compliance with this chapter, no special permit pursuant to this section shall be required.] Such measures may include, without limitation, infiltration trenches and other drainage improvements, and vegetated stream and lake buffers. For the purpose of this Section 148-12(G), redevelopment of a lot specifically excludes alteration of paved surfaces and driveways which reduces impermeable surface coverage. If an applicant is unable to reduce such coverage sufficiently to bring the lot into compliance with applicable coverage limitations for conforming lots, the Planning Board shall condition any approval of such a special permit on either, at the applicant's option:~~

- ~~(a) The use of mitigation measures that result in the permanent protection by conservation easement of 10 square feet of land in the same general area for each square foot of impervious surface coverage greater than the area required to bring the lot into compliance with applicable coverage limitations for conforming lots sufficient to offset any drainage or environmental impact that might occur as a result of the lot exceeding the applicable coverage limitations. The determination as to the appropriate location of such protected land shall be made by the Planning Board in consultation with the Planning Board Engineer. If the lot is within the Skaneateles Lake Watershed, the Planning Board Engineer shall also consult with the City of Syracuse Department of Water in making this determination. The applicant shall bear the expenses associated with establishing the conservation easement. The conservation easement shall satisfy the requirements of § 148-9H and shall be filed and recorded in the County Clerk's office; or~~
- ~~(b) A monetary contribution, equal to the cost to protect 10 square feet of land with a conservation easement for each square foot of impermeable surface coverage greater than the area permitted to bring the lot into compliance with applicable coverage limitations for conforming lots, to the Town's Land and Development Rights Acquisition (DRA) Fund, which fund has been established to acquire development rights or conservation easements on undeveloped land to promote permanent protection of the lake and other natural resources. For purposes of this calculation for the fiscal year 2007, the cost to protect one acre of undeveloped land with a conservation easement is determined to be \$10,000, to be calculated at \$0.23 per square foot. The Town Board may, from time to time, by separate resolution or local law, amend said cost per acre based upon the estimated then fair market cost to obtain and administer a conservation easement.~~
- ~~(7) In no case shall the applicant be permitted to increase the impermeable surface coverage on a lot.~~
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- ~~H. Reduction in lot area. No lot shall be reduced in area in a manner that violates the dimensional requirements of this chapter.~~
- ~~I. Special permit uses. Any use which can be allowed by special permit under this chapter, but which has not been issued a special permit, may continue as a nonconforming use until it is granted a special permit. Upon the granting of such a special permit, the use shall become conforming and shall be governed by the conditions attached to the special permit. If such a special permit is denied, the use may continue as a nonconforming use, subject to the requirements of this § 148-12.~~