

# Frequently Asked Questions Regarding Nonconformance Regulations

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*For more information, Town of Ulysses website includes the draft Nonconformance language (with scenarios) and a presentation from August 20, 2013. There will be a Public Information Meeting on September 10, 2013 at 6PM at the Town Hall.*

## What is the objective of the Nonconformance Regulations or “grandfather clause”?

Zoning is a tool to guide FUTURE development. It is not aimed at altering existing structures or lots. The Town of Ulysses has had zoning regulations since 1960. Many residential properties in the town were developed before 1960, and because of the house location on the lot, the house might not conform to existing zoning requirements. These existing houses and their associated structures are not in violation of the Zoning Law and are automatically “grandfathered.” Even though the Zoning Law has changed over time, homeowners may continue their use of existing structures. If a new structure is proposed, the new regulations need to be followed.

## Why is the Town proposing changes to the current Nonconformance language?

The Town adopted the first zoning regulations in 1960, and since that time, the nonconformance language has been about the same. The Town wants to update the language so that it makes better sense, but keep in mind that this is a legal document and needs to be written in a legally-defensible manner.

The proposed language includes the following key changes:

- It separates nonconformance based on the USES of land and/or buildings from nonconformance based on a BUILDING’S/STRUCTURE’S relationship to required lot dimensions.
- There is NO percentage for how much a structure is damaged in order to assess the ability to rebuild. A nonconforming building that is completely destroyed can be rebuilt in the same footprint to the same height.

This draft is intended to replace Article XX, Nonconformance, p135 in the Town’s Zoning Law, <http://ulysses.ny.us/pdf/zoning-law-2007.pdf>. Note that this impacts all zoning districts and all properties in the Town.

## **What is a “use”? Do “use” restrictions impact my residential property?**

The Zoning Law divides the Town into zoning DISTRICTS. Each District lists USES that are permissible, either with a building permit only or after site plan or special permit approval. Throughout the entire town, the zoning allows for a variety of different USES, such as single-family or two family residences, agriculture, restaurants, churches, and community centers.

An existing USE becomes nonconforming if the zoning changes and that USE is no longer a listed, permissible USE in that district. Also there are USES that have existed since before there was zoning in the Town, and continue as legal nonconforming uses.

**If the existing use is a single-family or two-family residence and a zoning change continues to allow residential use, a residential USE continues as a CONFORMING USE, and the nonconformance language references to USE are not applicable.**

## **What is a nonconforming structure? What if I want to add onto my house and I cannot meet the setback requirements?**

The Zoning Law also includes standards for LOT DIMENSIONS, such as the lot area, lot coverage, building height, and property line setbacks (referred to as “Lot Area and Yard Requirements”).

A building is considered nonconforming based on LOT DIMENSIONS typically if its location on a lot is too close to the property line. For example, a house built prior to zoning (first adopted in 1960) might be 30 feet from the road, but the zoning district LOT DIMENSIONS now require 50 feet for any new construction. This house is defined as an existing, nonconforming building. The house is not in violation of any regulation. If the homeowner wants to build an addition to the house, the addition can be located on other sides of the house where the new construction will meet the setback requirements, or the owner can apply for a zoning variance to build closer to the property line on the nonconforming side. (See examples on page 4.)

The BZA uses a balance test where they must evaluate the following five factors to determine if the variance should be granted or denied: (1) will there be an undesirable change in the neighborhood; (2) is there an alternative to the variance; (3) how substantial is the variance; (4) what is the environmental impact; and (5) is the difficulty self-created.

## What is the truth about “grandfathering”?

There are many misunderstandings about grandfathering and some misleading statements about the Nonconformance language have been circulated to homeowners. The following table includes untrue, misleading statements on the left, and responses with factual explanations on the right.

Incorrect Statements	Town of Ulysses Responses and Factual Statements
“If your home is damaged by fire of moderate consequence, you may not be able to replicate it and will need to file and obtain approval for new plans in compliance with the zoning law. There is no approval guarantee.”	The draft Section 20.1 does not put a limit on how much of a house is damaged, and draft Section 20.5 explains the restoration process. You will need to submit a building permit to do the work and rebuild the house on the same footprint.
“If your home is updated with different types of siding or painted a different color, you will need to go to the Board of Zoning Appeals for approval.”	Only house enlargements that increase the nonconformity will need BZA approval. New paint, side, windows, wiring, plumbing do not increase the size of the house.
“If you don’t use your boathouse or other accessory building for one year (for example, because of illness or damage), you may be forced to tear it down if it doesn’t comply with the new zoning setbacks and other rules.”	Your boathouse or shed is accessory to a residential USE, and where residential USES are permitted, you may continue to use it or not use it for any time period. You will not be forced to tear down a shed just because you haven’t stepped foot into it for a year or more.
“If you have begun a home project hoping to avoid the application of the zoning law, be advised the Town may even try to hold you to their proposed standards before the new zoning is even passed. And even if you completed the project before the law is enacted, the Town may take the position that it is a violation of the new zoning laws because you knew the law was to be enacted and you rushed to circumvent the coming ordinance.”	Any zoning changes will impact new construction that begins AFTER the local law becomes effective (addressed in draft Section 20.4).
“Older properties that need updating are even more at risk for rebuilding because of age or wear and tear (such as foundation replacement) and may require site plan approval from the BZA if this proposal is passed. If your place is without a newer foundation, you should be doubly concerned.”	Only house ENLARGEMENTS that increase the nonconformity will need BZA approval. A new foundation does not increase the size of the house. (Note: The BZA reviews variances, and the Planning Board reviews Site Plans. A new foundation would require a building permit.)

EXAMPLES based on R1-Rural Residence District where property borders Cayuga Lake

<p><b>EXAMPLE 1.</b> Your house is on a 2 acre lot and conforms to all of the lot area and yard requirements of the zoning law. You may:</p> <ol style="list-style-type: none"> <li>Build in any direction, up to the setback lines.</li> <li>Increase building footprint of house or accessory buildings up to the 5% combined lot coverage limit.</li> <li>Add an additional story, keeping total height to 32 ft.</li> <li>Add a second residence.</li> </ol> <p>Note: if your lot is smaller than 2 acres, that's fine, you just need to meet the other lot requirements.</p>	
<p><b>EXAMPLE 2.</b> Your house is 10 feet from the side yard line, inside of the required 15 ft side yard setback. You may:</p> <ol style="list-style-type: none"> <li>Build in any direction, except south. To build south, you may request an area variance with rationale why building in other directions is not possible.</li> <li>Rebuild the house if it is destroyed or demolished.</li> <li>Renovate the interior or exterior.</li> <li>Plus letters b, c, &amp; d of Example 1.</li> </ol>	
<p><b>EXAMPLE 3.</b> Your house is 10 feet from a permanent stream, inside of the required 50 ft stream buffer area. You may:</p> <ol style="list-style-type: none"> <li>Build in any direction, except south. To build south, you may request an area variance with rationale why building in other directions is not possible.</li> <li>Rebuild the house if it is destroyed by flood or natural causes.</li> <li>Renovate the interior or exterior.</li> <li>Plus letters b, c, &amp; d of Example 1.</li> </ol>	