

## **Article 6**

# **NONCONFORMING LOTS, USES and STRUCTURES**

### **Section 6.1 Purpose**

It is recognized that there exists lots, buildings, structures and uses within the Districts of this Ordinance and subsequent amendments, which were lawful before this Ordinance was passed or amended, which would be prohibited, regulated or restricted under the terms of this Ordinance or subsequent amendment. It is the purpose of this Article to permit legal nonconforming lots, buildings, structures and uses to continue until they are removed or discontinued, and to provide for their maintenance and repair, but not their expansion, enlargement, extension or other alteration which in any way increases or intensifies nonconformity, except as otherwise expressly provided by this Article.

### **Section 6.2 Nonconforming Lots**

**A. Use of Nonconforming Lots:** Notwithstanding limitations imposed by other provisions of this Ordinance, any use and customary accessory buildings and structures may be conducted or erected on any single lot of record lawfully in existence on or before the date of adoption or amendment of this Ordinance, where such use is an authorized "use permitted by right" in said District according to Tables 3-2 and 3-3 of Article 3, even though such lot fails to meet the requirements for area, width, dimension and/or frontage that are applicable in the District. The following additional provisions shall apply:

1. **Compliance with Standards:** All yard dimensions, setbacks and other requirements not involving area, width, and/or frontage, shall conform to the regulations for the District in which such lot is located unless a variance is obtained through approval of the Zoning Board of Appeals according to Article 16. This subsection (1) shall not be construed to approve or authorize any instances of noncompliance with area, dimension, width and/or frontage standards except existing nonconforming conditions.
2. **Multiple Nonconforming Lots:** If two or more lots or combinations of lots and portions of lots, share continuous frontage and share a common side lot line or portion thereof, and are in single ownership of record at the time of passage or amendment of this Ordinance as recorded in the County Register of Deeds, and if all, part or some of the lots do not meet the requirements established for area, dimension, width, and/or frontage, the lands involved shall be deemed automatically combined and shall be considered to be an undivided lot for the purposes of this Ordinance. No portion of said lot shall be used or divided in a manner that diminishes compliance with the area, dimension, width and frontage requirements of this Ordinance.

### **Section 6.3 Nonconforming Uses**

**A.** Where, on the date of adoption or amendment of this Ordinance, a lawful use exists that is made no longer permissible under the terms of this Ordinance as enacted or amended, such use may be continued so long as it remains otherwise lawful, subject to all of the following provisions:

1. **Enlargement or Increase:** No nonconforming use shall be changed, enlarged or increased in intensity or in area or bulk or in the number of buildings and structures, or moved or extended to occupy a greater area of land, than as existed on the date of adoption or amendment of this Ordinance.
  - a. Subsection (1) above shall not prohibit the extension of a nonconforming use throughout any portion of a building in which it is located irrespective of whether such portion was manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, provided there is compliance with all other requirements of this Ordinance including lot coverage and setback limitations and parking and loading/unloading regulations. No such building shall be enlarged or expanded.
2. **Change of Tenancy/Ownership:** A change or intensity of tenancy or ownership of a nonconforming use is allowed provided there is no increase in the degree of nonconformance of the nonconforming use, except as may be authorized according to subsection (1).
3. **Re-establishment of a Nonconforming Use:** A lot occupied by a nonconforming use of land, building or structure, or combination thereof, that is subsequently occupied by a permitted use, shall thereafter conform to the regulations for the District in which such use is located and a nonconforming use may not thereafter be resumed or otherwise established.
4. **Cessation/Destruction:** If a nonconforming use of any building, structure, land or premises or part thereof ceases for any reason for a period of more than one (1) year, or where the use is destroyed to an extent of more than 50% of its replacement value, the subsequent use of the property shall thereafter conform to the regulations and provisions of this Ordinance for the respective District.

Conditions that shall be considered in determining the cessation or abandonment of a nonconforming use shall include, but need not be limited to, disconnection of utilities, the property has fallen into a state of disrepair, the removal of signage associated with the use, and the removal of equipment necessary for such use.

5. **Substitution:** No nonconforming use may be changed to another nonconforming use except upon approval of the Township Board, after receiving a recommendation from the Planning Commission, upon finding that such change in use will be as or more conforming to the intent of the District in which it is located than the existing nonconforming use, and will be more compatible with surrounding conditions. In making such a determination, factors to be considered shall include the anticipated change in intensity of use including vehicular and pedestrian traffic, hours of operation, anticipated noise levels, and other aspects of the proposed use. Such change in use shall be subject to plot plan or site plan approval according to Section 14.2.
6. **Nonconforming Use and Structure in Combination:** In the case where nonconforming status applies to a structure and use in combination, removal or destruction of the structure to an extent of more than fifty percent (50%) of its replacement value, exclusive of foundations, all subsequent uses and structures on the land shall conform to the respective District regulations.
7. **Abandonment:** Once a nonconforming use is abandoned, the uses of the lot shall conform to this Ordinance.

## **Section 6.4 Nonconforming Structures**

**A. General Provisions:** Where a lawful structure or building lawfully exists on the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance or subsequent amendment by reason of restrictions on area, lot coverage, height, setbacks, yards or other characteristics of the building, structure, or location on the lot, such structure or building may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. **Enlargement/Alteration:** No nonconforming structure or building may be enlarged, changed or altered so as to increase its nonconformity such as in the case of an increase in the height of a roof that currently exceeds the permitted height, an increase in the cubic area or size of a building that encroaches into a required setback, and an increase in the number of stories encroaching into a required setback area.
  - a. This subsection (1) shall not apply in the case where a single story is to be added above a one-story dwelling provided all the following requirements are met:
    - 1) The one-story dwelling complies with the District's height standards.
    - 2) The addition of a second story will maintain compliance with the District's height standards.
    - 3) All walls of the second story addition, and any dormers that are part of such addition, shall comply with the setback standards of the District.
    - 4) Any sloped roof area generally extending from the first story to a wall of the second story shall not exceed a slope of 12:12 (vertical: horizontal).
  - b. This subsection (1) shall not apply in the case where a dwelling that encroaches into a required side yard setback is to be expanded so as to cause additional floor area to encroach into the same required setback provided the following conditions are met:
    - 1) The expansion area that is to encroach into the required setback shall not exceed one (1) story in height.
    - 2) The expansion area shall not exceed a height of ten (10) feet, measured from the surrounding ground elevation to the highest point of the roof that is located within the required setback.
    - 3) The expanded floor area shall not exceed an area greater than fifty percent (50%) of the floor area that currently encroaches into the required setback area but in no case shall such expanded floor area exceed one-hundred fifty (150) sq. ft., and the expansion area shall not exceed a height of ten (10) feet measured from the surrounding ground elevation to the highest point of the roof that is located within the required setback.
    - 4) No wall of the expansion area shall extend beyond the existing wall encroaching into the required setback so as to be closer to the lot line than the existing nonconforming wall, and in no case shall the expansion area setback be less than fifty percent (50%) of the required District setback.
    - 5) The total first story floor area of the expanded dwelling shall not exceed the maximum allowable first story floor area according to the buildable area of the specific lot in question, based on required setbacks, building/lot coverage limitations, and other applicable standards of this Ordinance.

2. **Destruction:** Should a nonconforming structure or building be destroyed by any means to an extent of more than fifty percent (50%) of its replacement value, exclusive of foundations, it shall not be reconstructed except in full conformity with all of the provisions of this Ordinance, including the site development standards for the respective District. In identifying the extent of destruction and the cost to replace the damaged structure or building, the Zoning Administrator may seek a written opinion from a qualified building appraiser and the opinion shall include the basis for the opinion. The limitations of this subsection (2) shall not apply when all of the following conditions are met:
  - a. The walls of the replacement structure or building shall not extend beyond the foundation and plane of the previous structure or building.
  - b. The replacement structure or building shall be set back from all lot lines a minimum distance equal to fifty percent (50%) of the District's setback standards.
  - c. A building permit for the erection of the replacement structure or building is issued within one (1) year of the previous destruction, and the replacement structure or building is completed to an extent equal to fifty percent (50%) or more of its construction cost within two (2) years of such destruction.
  - d. The replacement structure or building is no more nonconforming than the previous structure or building except as may be permitted according to subsection (1) above.
3. **Relocation:** Should a nonconforming structure or building be moved for any reason for any distance, it shall thereafter conform to the regulations for the District in which it is located after it is moved.
4. **Minor Repairs:** A nonconforming structure or building may undergo ordinary non-structural repairs and maintenance, including the repair and refurbishing of wall exteriors, fixtures, wiring or plumbing, provided there is compliance with subsections (a) and (b) below unless otherwise permitted according to subsection (1), above. Nothing in this Section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by the Building Inspector.
  - a. The nonconformity existing at the time of Ordinance adoption or amendment shall not be increased or intensified, including the cubic area of any nonconforming portion of such structure or building.
  - b. No structural alterations shall be undertaken, as in the case of the relocation of load-bearing walls.

### **Section 6.5 District Changes**

Whenever the boundaries of a District shall be changed so as to transfer an area from one District to another District, the provisions of this Article shall also apply to any existing lots, uses, structures and buildings that become nonconforming as a result of the boundary change.

### **Section 6.6 Illegal Nonconformities**

Nonconforming lots, uses, structures and buildings existing on the effective date of this Ordinance or amendment thereto, that were established illegally or without the lawfully required procedures, permits and approvals applying at such time of establishment, shall be declared to be illegal nonconformities and are not entitled to the status and rights accorded legally established nonconformities by this Article.

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**End of Article 6**