

Article 9

Nonconformities

900 Purpose:

Within the districts established by this Resolution, or by amendments thereto which may later be adopted, lots, uses of land, structures, and uses of structures and land in combination exist, which were lawful before this Resolution was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Resolution, are deemed to be legal nonconformities. The legitimate interest of those who lawfully established these nonconformities are herein recognized by providing for their continuance, subject to regulations limiting their completion, restoration, reconstruction, extension, or substitution. Furthermore, nothing contained in this Resolution shall be construed to require any change in the layout, plans, construction, size or use of any lot, structure, or structure and land in combination, for which a zoning permit became effective prior to the effective date of this Resolution, or any amendment thereto. Nevertheless, while it is the intent of this Resolution that such nonconformities be allowed to continue until removed, they should not be encouraged to survive. Therefore, no nonconformity may be moved, extended, altered, expanded, or used as grounds for any other use(s) or structure(s) prohibited elsewhere in the District, without the approval of the Board of Zoning Appeals, except as otherwise specifically provided for in this Resolution.

910 Uses under conditional use provisions not nonconforming uses

Any use which is permitted as a conditional use in a District under the terms of this Resolution shall not be deemed a nonconforming use in such District, but shall, without further action, be considered a conforming use.

915 Incompatibility of nonconformities

Nonconformities are declared by this Resolution to be incompatible with permitted uses in the Districts in which such uses are located. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination, shall not be extended or enlarged after passage of this Resolution by attachment on a building or premises or additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the District in which such use is located.

920 Avoidance of undue hardship

To avoid undue hardship, nothing in this Resolution shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Resolution and upon which actual building construction is hereby defined to include the placing of construction material in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried out diligently.

925 Certificates for nonconforming uses

The Zoning Administrator may upon his own initiative, or shall upon the request of any owner, issue a certificate for any lot, structure, use of land, use of structure, or use of land and structure in combination, that certifies that the lot, structure or use is a valid nonconforming use. The certificate shall specify the reason why the use is a nonconforming use, including a description of the extent and kind of use made of the property in question, the portion of the structure or land used for the nonconforming use, and the extent that dimensional requirements are nonconforming. The purpose of this section is to protect the owners of lands or structures that are or become nonconforming. No fee shall be charged for such a certificate. One copy of the certificate shall be returned to the owner and one copy shall be retained by the Zoning Administrator, who shall maintain as a public record a file of all such certificates.

930 Substitution of nonconforming uses

So long as no structural alterations are made, except as required by enforcement of other codes or resolutions, any nonconforming use may, upon appeal to and approval by the Board of Zoning Appeals, be changed to another nonconforming use of the same classification or of a less intensive classification, or the Board shall find that the use proposed for substitution is equally appropriate or more appropriate to the District than the existing nonconforming use. In permitting such change, the Board may require that additional conditions and safeguards be met, which requirements shall pertain as stipulated conditions to the approval of such change, and failure to meet such conditions shall be considered a punishable violation of this Resolution. Whenever a nonconforming use has been changed to a less intensive use or becomes a conforming use, such use shall not thereafter be changed to a more intensive use.

In determining the appropriateness for a "substitution of nonconforming uses" the Board of Zoning Appeals shall, to the best of its ability, examine the degree of positive or negative change in degree of risk to, or impact upon, the Township from factors in, but not necessarily limited to, the following list:

- A. Frequency of or magnitude of fire services.
- B. Frequency of or magnitude of need for law enforcement services.
- C. Danger from chemical or other hazardous materials.
- D. Danger to human life from operations or use of land.
- E. Danger to community from air, water, and/or land pollution.
- F. Density of population residing in, employed in, or visiting the land or buildings.
- G. Impact upon pedestrian traffic.
- H. Impact upon vehicular traffic.
- I. Impact upon parking within and without the premises.
- J. Impact of noise upon neighboring properties.
- K. Impact of lighting upon neighboring properties.
- L. Interference to the circulation of air, light, and/or water.
- M. Impact upon water supply.
- N. Impact upon sewer system.
- O. Visual impact upon surrounding properties.
- P. Economic impact upon surrounding properties and/or the Township.
- Q. Compatibility with surrounding community character.
- R. Impact on the general health, safety and welfare of the surrounding properties and Township as a whole.

935 Single nonconforming lots of record

In any District in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Resolution, notwithstanding limitations imposed by other provisions of this Resolution. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the District.

940 Nonconforming lots of record in combination

If two (2) or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Resolution, and if all or part of the lots with no buildings do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Resolution, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements by this Resolution, nor shall any division of any parcel be made which creates a lot with a width or area below the requirements stated in this Resolution.

945 Nonconforming uses of land

Where, at the time of adoption of this Resolution, lawful uses of land exist which would not be permitted by the regulations imposed by this Resolution, the uses may be continued so long as they remain otherwise lawful, provided:

- A. No such nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Resolution;
- B. No such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this Resolution;
- C. If any such nonconforming uses of land are voluntarily discontinued or abandoned for more than two (2) years (except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulations specified by this Resolution for the District in which such land is located;

- D. No additional structure not conforming to the requirements of this Resolution shall be erected in connection with such nonconforming use of land.

950 Nonconforming structures

Where a lawful structure exists at the effective date of adoption or amendment of this Resolution that could not be built under the terms of this Resolution by reason of restrictions on area, lot coverage, height, yards, its location on the lot, bulk, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity;
- B. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Resolution, but no such use shall be extended to occupy any land outside such building;
- C. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the District, and the nonconforming use may not thereafter be resumed;
- D. When a nonconforming use of a structure, or structure and land in combination, is discontinued or abandoned for more than two (2) years (except when government action impedes access to the premises), the structure, or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the District in which it is located.

960 Termination of nonconforming use through discontinuance

When any nonconforming use is voluntarily discontinued or abandoned for more than two (2) years, any new use shall not thereafter be used except in conformity with the regulations of the District in which it is located, and the nonconforming use may not thereafter be resumed.

965 Termination of nonconforming use by damage or destruction

In the event that any nonconforming building or structure is destroyed by any means to the extent of more than fifty (50) percent of the cost of replacement of such structure, exclusive of foundation, it shall not be rebuilt, restored, or reoccupied for any use unless it conforms to all regulations of this Resolution. When such a nonconforming structure is damaged or destroyed to the extent of fifty (50) percent or less of the replacement cost, no repairs or rebuilding shall be permitted except in conformity with all applicable regulations of this Resolution and the following conditions:

- A. A zoning certificate pertaining to such restoration shall be applied for and issued within one (1) year of such destruction, and rebuilding shall be diligently pursued to completion.
- B. Such restoration shall not cause a new nonconformity, nor shall it increase the degree of nonconformance or noncompliance existing prior to such damage or destruction.

970 Repairs and maintenance of nonconforming structures

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the cubic content existing when it became nonconforming shall not be increased. 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 any official charged with protecting the public safety, upon order of such official. Where appropriate, a building permit for such activities shall be required.