

ARTICLE 18. NONCONFORMING STRUCTURES AND USES

Section 18.01 Intent

It is the intent of this Article to provide regulations governing lots, buildings structures and the uses thereof, which were lawful prior to the enactment of this ordinance, or amendment thereto, but which are prohibited, regulated or restricted under the provisions of this ordinance. It is the intent of this Article to permit these buildings, structures and uses to continue but not to encourage their prolonged existence. It is further the intent of this Article that non-conformities shall not be enlarged upon, expanded, or extended, or be used as grounds for adding other structures or uses prohibited elsewhere in the same district. Therefore, an intent of this Article is to gradually eliminate nonconforming uses or decrease their nonconforming status.

Section 18.02 Nonconforming Lots, Uses, Buildings and Structures

Lots, uses, buildings and structures, which were lawfully in existence at the time of enactment or amendment of this ordinance and which have been prohibited, regulated or restricted under the terms of this ordinance are hereby recognized as nonconforming lots, uses, buildings and structures. The burden shall be on the person claiming a lawful nonconformity to prove that the nonconformity was in existence at the time of enactment or amendment.

Section 18.03 Survey and Record of Nonconforming Lots, Uses, Buildings and Structures

Upon enactment or amendment of the text and/or map of any use district provided in this ordinance, the Zoning Administrator shall submit to the Planning Commission a list of existing nonconforming lots, uses, buildings and structures in such district. In preparing the list the Zoning Administrator shall conduct a survey of the affected area and shall list the general property description, the name of the property owner and the nature of the non-conforming specifying uses and measurements. The Zoning Administrator shall maintain a record of such nonconforming lots, uses, buildings and structures which shall be organized by survey sections. Periodic review shall be made of this record and abandonment of any nonconforming lot, use, building or structure shall be reported to the Planning Commission and the Township Board.

Section 18.04 Structures Under Construction at Ordinance Adoption

To avoid undue hardship, nothing in this Article 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 ordinance and upon which actual building

construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position, except that where demolition or removal of an existing building has substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.

Section 18.05 Use of Nonconforming Lots

- A. In any zoning district in which single family dwellings are permitted, notwithstanding limitations imposed by other provision of this ordinance, a single-family dwelling and customary accessory buildings may be erected upon any parcel of land which was a single lot of record at the effective date of this ordinance. This provision shall apply even though such lot of record fails to meet the requirements of this ordinance for minimum lot area, minimum lot width, or both, of the zoning district in which it is located. Yard dimensions and other requirements not involving area or width, or both, of the lots shall conform to the regulations for the district in which such lot is located. Variance to yard requirements may be obtained through approval of the Board of Appeals.

- B. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots 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 ordinance, and no portions of said parcel shall be used or divided in a manner which diminishes compliance with lot width and area requirements established by this ordinance.

Section 18.06 Nonconforming Uses of Land

On land where no building is located or where a conforming building is located and an existing lawful use is no longer permissible under the terms of this ordinance, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. Such nonconforming use shall not be enlarged, increased or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance. A nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, and which existed at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy additional land area.

- B. Such nonconforming use shall not be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this ordinance.
- C. If such nonconforming use of land ceases for any reason for a period of more than one hundred twenty (120) days, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such and is located.

Section 18.07 Non-Conforming Buildings and Structures

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

- A. Such structure may not be enlarged or altered in a way which increases its nonconformity.
- B. Should a nonconforming structure be altered or modified so as to eliminate, remove or lessen any or all of its nonconforming characteristics, then such nonconforming characteristics shall not be later re-established or increased.
- C. Should such structure be damaged or destroyed by any means, to an extent that the estimated cost of reconstruction exceeds fifty percent (50%) of the appraised replacement cost of the structure at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.
- D. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

Section 18.08 Permitted Expansion, Repairs and Maintenance of Non-Conforming Buildings

- A. **Permitted Expansion of Residential Buildings.** A residential nonconforming building may be allowed to expand provided the expansion is within a yard which retains compliance with the required setback and height (e.g., a home with a nonconforming front yard setback may be expanded in the rear so long as the rear yard setback remains conforming), provided that the following criteria are met for the subject building:

1. The cost of such work shall not exceed fifty percent (50%) of the market value of such residential building prior to the time such work is started.
2. The only nonconforming situation on the parcel shall be dimensional ones related to the house and/or garage.

Any other expansion shall be prohibited unless a variance is granted by the ZBA.

- B. Permitted Expansion of Nonresidential Non-Conforming Buildings.** A building necessary for an existing agricultural activity may be enlarged, altered, or rehabilitated if the purpose is to maintain or improve the agricultural activity. All other nonresidential nonconforming buildings shall not be expanded except to the extent permitted by the ZBA pursuant to the authority granted in Article 5.
- C. Repairs and Maintenance.** On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding fifty (50) percent of the assessed value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this ordinance shall not be increased. Nothing in this ordinance 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.

Section 18.09

Nonconforming Uses of Structures and Land

If a lawful use of a structure, or of structure and land in combination, exist at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A.** An existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall not be enlarged, extended, constructed, reconstructed, moved or structurally altered, except in changing the use of the structure to a use permitted in the district in which it is located, provided that all such changes are also in conformance with the requirements of the district in which it is located.
- B.** A nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for

such use, and which existed at the time of adoption or amendment of this ordinance, 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 of the district in which such structure is located, 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 ceases to exist for six (6) consecutive months or for eighteen (18) months during any three (3) year period, the structure, or structure and land in combination shall not thereafter be used except in conformance with the regulations of the district in which it located. Structures occupied by seasonal uses shall be excepted from this provision.
- E.** Where nonconforming use status is applied to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

Section 18.10 Non-Conforming Parking Facilities

Notwithstanding contrary provisions of this ordinance, nonconforming off-street parking facilities may be continued for as long as the off-street parking facilities are used in conjunction with a building or land use which complies with the permitted use requirements of the district in which it is located.

Section 18.11 Non-Conforming Signs

- A.** Signs existing at the time of enactment of this ordinance and not conforming to its provisions but which were constructed in compliance with previous regulations shall be regarded as non-conforming signs which may be continued if properly repaired and maintained as provided in this code and continue to be in conformance with other ordinances of this municipality.
- B.** Non-conforming signs which are structurally altered, relocated, or replaced, shall comply immediately with all provisions of this ordinance.
- C.** Any building or land use not conforming to the zoning ordinance provisions for the zone in which it is located shall, nevertheless, comply with all the provisions of the sign ordinance for the applicable zoning district.

Section 18.12 Abandonment and Notice to Property Owners

Abandonment of a non-conforming building structure, sign, or use shall be reported to the Planning Commission and the Township Board by the Zoning Administrator. The Township Clerk shall notify the property owner of record of the Township's intention to classify a non-conformance as discontinued or no longer in existence. The notice shall be provided by certified mail, thirty (30) days before the date the Township intends to classify the non-conformance as discontinued.

Section 18.13 Change in Tenancy or Ownership

There may be a change of tenancy, ownership or management of any existing nonconforming uses of land, structures and premises provided there is no change in the nature or character of such nonconforming uses, except as provided for herein.

Section 18.14 Change in District

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district classification the provisions of this Article shall also apply to any existing uses that become non-conforming as a result of the boundary changes.

Section 18.15 Uses Allowed as Special Uses

Any use for which a general exception, conditional approval, or special approval is permitted as provided in this ordinance shall not be deemed a non-conforming use, but shall without further action be deemed a conforming use in such district.

Section 18.16 Elimination of Non-Conforming Uses and Structures

- A.** By authority of applicable state legislation, the Township Board, through its designated agents, may acquire properties on which nonconforming buildings or uses are located by condemnation or other means, and may remove such uses or structures. The resultant property may be leased or sold for a conforming use or may be used by the township for a public use. The net cost of such acquisition may be assessed either against a special district as a public improvement or may be paid from general funds.
- B.** The Township Board also has the right to condemn or purchase an interest in private property. The Township Board may purchase or condemn the right to conduct a particular nonconforming use, but leave the property owner with the property itself. The property may be used only for uses allowed in that zoning district.