

Article 12 Nonconformity

Section 12.1 Intent [G-1]

- A. **Applicability.** To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the approved plans, construction, or designated use of any structure of land on which actual construction was lawfully begun prior to the effective date of adoption of this Ordinance and that there is likelihood that said lawful construction will be completed twelve (12) months after the effective date of this Ordinance. These include structures that were granted variances under the provisions of a previous Ordinance. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district. [N-2 & N-3] [G-1]

Section 12.2 Legality of Non-conformity

Non-conformity will be classified as "legal" or "illegal" based on the following guidelines. Regulation of non-conformity will vary based on their legality.

- A. Illegal non-conformity is those that have been developed in conflict with zoning regulations in force when the nonconformity was established.
- B. Legal non-conformity is those that existed legally before the effective date of this Ordinance, or before some amendment to this Ordinance which resulted in the non-conformity. [N-4]

Section 12.3 Nonconforming Lots [G-1]

- A. The intent of this Section is to allow reasonable development of lawfully existing nonconforming lots. [N-3]
- B. In any district in which single family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, 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 Ordinance. 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; provided that yard dimensions and other requirements not involving area or width or both, of the lot shall conform to the regulations for the district in which such lot is located. Yard requirements variances may be obtained through approval of the Zoning Board of Appeals. [TA 2-7]
- C. If two (2) 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 for lot width and area as established by this Ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or occupied which does not meet lot width and area requirements established by this Ordinance, nor shall any division of the parcel be made which

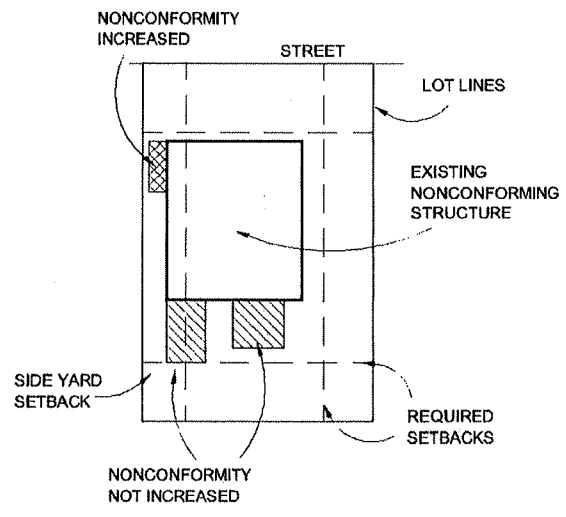
leaves remaining any lot with width or area below the requirements stated in this Ordinance.

Section 12.4 Nonconforming Building and Structure [N-6]

- A. Intent. It is the purpose of this Ordinance to eliminate nonconforming structures as rapidly as is permitted by law without payment or compensation, except as otherwise provided herein.
- B. Where a lawful structure exists at the effective date of adoption of this Ordinance or some future amendment to this Ordinance, that could not be built under the terms of this Ordinance or some future amendment to this Ordinance, by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provision:

1. For a structure other than a single family dwelling, the proposed change(s) is of the same degree of nonconformity or (preferably) is made less nonconforming. [G-1]
2. A variance is granted by the Zoning Board of Appeals.
3. A nonconforming building or structure that does not comply with the regulations, it may be structurally enlarged or altered without regard to values or cost thereof, provided it is otherwise a permitted use and provided the structural enlargement or alteration does not cause an increase in nonconformity, or preferably will make it less nonconforming. See Figure 12-1. [N-8]

Figure 12-1: Nonconforming Structure Diagram
ADDITIONS TO A NONCONFORMING STRUCTURE



4. No nonconforming building or structure shall be permitted to continue in existence if it was unlawful at the time of its inception.
5. No nonconforming building or structure shall 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, unless it thereafter conforms to all requirements of this Ordinance.

- C. If a nonconforming single family home is destroyed to any extent it may be rebuilt provided it is rebuilt in the same footprint as the original residence.
- D. If a building or structure is destroyed by an act of god, accident etc. nonconforming building or structure including repair and replacement of non bearing walls, fixtures, wiring or plumbing to an extent not exceeding fifty (50%) percent of the state equalized value of the structure provided that the cubic content of the building as it existed at the

time of adoption of this Ordinance shall not be increased. If the amount is fifty (50) percent or more the nonconforming building or structure must come into full compliance, excluding single family homes as noted in subsection C above. Nonconforming Uses [N-6]

- E. Intent. It is the purpose of this Ordinance to eliminate nonconforming uses as rapidly as is permitted by law without payment of compensation.
- F. Where a lawful use, which would not be permitted by the regulations imposed by this Ordinance, or a future amendment to this Ordinance, the use may be continued so long as it remains otherwise lawful provided:
 - 1. No nonconforming use is determined to be abandoned per Section 12.6. [G-1]
 - 2. If it has been changed to a conforming use for any period. [G-1]
 - 3. No nonconforming use shall be changed to a substantially different nonconforming use. Any determination as to what constitutes a substantial difference shall be made by the Zoning Board of Appeals.
 - a. A nonconforming condition of use may, upon application to, and approval by the Zoning Board of Appeals, be changed provided the proposed change(s) is of the same degree of nonconformity or is made less nonconforming.
 - 4. In the case of the mineral removal operations, existing holes or shafts may be worked and enlarged on the land which constituted the lot on which operations were conducted at the time of becoming nonconforming, but no new holes or shafts shall be established.
 - 5. No nonconforming use shall be permitted to continue in existence if it was unlawful at the time of its inception. [G-1]
 - 6. No nonconforming use shall 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. [G-1]
 - 7. No nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of the adoption or amendment of this Ordinance. [G-1] If a building or structure that houses the nonconforming use is destroyed by an act of god, accident etc. including repair and replacement of non bearing walls, fixtures, wiring or plumbing to an extent not exceeding fifty (50%) percent of the state equalized value of the structure provided that the cubic content of the building as it existed at the time of adoption of this Ordinance shall not be increased. If the amount is fifty (50) percent or more the nonconforming building or structure must come into full compliance

Section 12.5 Abandonment of Nonconforming Use

- A. If it has been identified to or by the Township that a legal nonconforming use appears to have been abandoned, they shall submit the property to the Planning Commission for a determination of abandonment.
- B. The Planning Commission shall hold a public hearing in compliance with Section 16.8

- C. The Planning Commission shall determine whether or not intent to abandon the nonconforming use was demonstrated based on a preponderance of the following factors:
1. Reports such as from the building inspection or health department indicating the property is or has not been suitable for occupation.
 2. Disconnection of utilities.
 3. Evidence that the use was relocated to a new site.
 4. Evidence of a "going out of business" sale.
 5. Signs advertising the business has been removed.
 6. The use has been discontinued for one (1) year, except where government action such as road construction has prevented access to the premises, or where a clear intent to discontinue has not been demonstrated.
 7. Removal of the equipment or fixtures necessary for the operation of the nonconforming use.
 8. Request by the property owner for changes in their property tax designation inconsistent with the nonconforming use.
 9. Other actions by the property owner or lessee that demonstrates an intent to abandon the nonconforming use. [N-7]

Section 12.6 Class A Nonconformities [N-5]

- A. Nonconforming uses, buildings, and structures are those which do not conform to certain provisions or requirements of this Ordinance but were lawfully established prior to the time of its applicability. Class A nonconforming uses and structures are those which have been so designated by the Zoning Board of Appeals (ZBA), after application by any interested person upon findings that: [G-1]
1. Continuance thereof would not be contrary to the public health, safety, or welfare. [G-1]
 2. That the use of structure does not and is not likely to significantly depress the value of nearby properties.
 3. That the use of structure was lawful at the time of its inception.
 4. That no useful purpose would be served by strict application of the provisions or requirements of this Ordinance with which the use or structure does not conform.
 5. That there are no nuisance factors or the same do not cause any substantial effect on the surrounding area, including aesthetics.
- B. All nonconforming uses, buildings, or structures not designated as Class A are Class B nonconforming uses, buildings or structures, provided however, a Class B nonconforming use which would otherwise be terminated because of fire or other casualty may apply for a Class A designation within 60 days of such casualty occurring. [G-1]

C. Procedure for Obtaining Class A Designation, Conditions

1. A written application shall be filed with the Zoning Administrator setting forth the name and address of the applicant, giving a legal description of the property to which the application pertains and including such other information as may be necessary to enable the Zoning Board of Appeals to make a determination of the matter. The Zoning Board of Appeals may require the furnishing of such additional information as it considers necessary. The notice and hearing procedure before the Zoning Board of Appeals shall be the same as in the case of an application for a variance and require a public hearing. The decision shall be in writing and shall set forth the findings and reasons on which it is based.
2. Conditions may be attached, including any time limit, where necessary, to assure that the use, building, or structure does not become contrary to the public health, safety, or welfare or the spirit and purpose of this Ordinance. [G-1]
3. No vested interest shall arise out of a Class A designation.

D. Revocation of Class A Designation. Any Class A designation shall be revoked, following the same procedure required for designation, upon a finding that as a result of any change or conditions or circumstances the use or structure no longer qualifies for Class A designation.

E. Regulations Pertaining to Class A Nonconforming Uses and Structures [G-1]

1. No Class A nonconforming use of a land, building, or structure shall be resumed if it has been, for any reason, discontinued for a continuous period of at least twelve (12) months or if it has been changed to a conforming use for any period. [G-1]
2. A Class A nonconforming use building, or structure may upon application to, and approval by the Planning Commission, be altered or enlarged provided that it does not violate any condition imposed by the Planning Commission at the time of its designation, and provided it does not create any new nonconforming condition and it does not increase the degree of any existing nonconforming condition. [TA 2-7]

A Class A nonconforming use may upon application to, and approval by the ZBA, be changed to a different nonconforming use provided the proposed nonconforming conditions are the same or are made less nonconforming. [G-1]

Section 12.7 Repairs and Maintenance [G-1]

- A. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to safe condition of any nonconforming structure or part thereof which is used for a nonconforming use declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
- B. Ordinary repair and maintenance work may be done on any nonconforming building or structure which is used for a nonconforming use, including repair and replacement of non-bearing walls, fixtures, wiring, or plumbing to an extent not exceeding fifty percent (50%) of the state equalized value of the building or structure provided that the cubic content of the building as it existed at the time of adoption of this Ordinance shall not be increased. [G-1]

Section 12.8 Change of Tenancy or Ownership [G-1]

- A. 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. [G-1]