

ARTICLE 10

NONCONFORMING LOTS, USES, STRUCTURES

Section 10.1. Applicability

10.1.1. EXISTING CONSTRUCTION. To avoid undue hardship and infringement upon private property rights, nothing in this Ordinance shall be deemed to require a change to any building or structure upon which actual construction was lawfully begun prior to the adoption of this Ordinance, where said construction will be completed within eighteen (18) months after the effective date of this Ordinance, except that for reasonable cause, the Building Inspector may grant one (1) extension of time for an additional period not exceeding ninety (90) days.

10.1.2. DEFINITION. Actual construction is hereby defined to include:

- A. Any lawful and approved physical operation on the premises which is preparatory to the intended development.
- B. Site preparation or physical construction each constitute actual construction.
- C. Demolition started before adoption of this Ordinance is actual construction.

10.1.3. PREVIOUS VARIANCES. The adoption of amendment of this ordinance shall not be deemed to affect, alter or change any special exceptions, interpretation, or variance theretofore decided or granted by the appropriate administrative or legislative body of the Township or by a court of competent jurisdiction upon review of action of such administration or legislative body.

Section 10.2. Lawfully Existing Nonconforming Lots. The intent of this subsection is to allow reasonable development of lawfully existing nonconforming residential lots of record based on the preamble of this Ordinance.

10.2.1. APPROVED LOTS. Notwithstanding limitations imposed by other provisions of this Ordinance, in any district where the lot does not meet the minimum lot size requirements, and is a lawfully recorded lot at the time of adoption or amendment of this Ordinance buildings may be constructed in conformity with approved uses in the district even though the lot fails to meet the minimum requirements of the particular district.

- A. Definition. A single, isolated, lawful, nonconforming residential lot or record refers to a lot either situated between two (2) interior lots which are developed or a corner lot contiguous to a developed interior lot and there is no likelihood to:
 - 1. Obtain additional land area to satisfy minimum required lot area, or width, or both;
 - 2. No arrangement is available for public purchase of such lot; or
 - 3. No likelihood exists to sell the parcel to one (1), or preferably to both, of the contiguous property owners.
- B. Setback requirements. Exclusive of those requirements involving area or width, or both, the erection or construction of a building or structure or both, on a single, isolated, lawful, nonconforming residential lot of record shall conform to the front, side and rear yard dimensions and other requirements applicable to the district in which the lot is located, except that the required total side yards for a principal building may be reduced six (6") inches for each one (1') foot of lot width less than the minimum required regardless of the district classification in which the lot is located except further that under no circumstances shall total side yards be less than fifteen (15') feet and in the case of a principal residential building where a private garage is not attached or part of the dwelling, then at least ten (10') feet shall be provided for driveway purposes leading to the rear yard. Minimum side yard in all cases shall not be less than five (5') feet.

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10.2.2. REVIEW REQUIRED. These lots, because of the unnecessary hardship upon the property owner, may be allowed to develop after review by the Board of Zoning Appeals and it has been determined that there is no likelihood to:

- A. Obtain additional land area to satisfy the minimum required lot area, or lot width, or both;
- B. No arrangement is available for public purchase of such lot; or
- C. No likelihood exists to sell the parcel to one, or preferably to both, of the contiguous property owners.

10.2.3. CONTIGUOUS PARCELS. Irrespective of common ownership, contiguous vacant nonconforming lots of record having continuous frontage of a private or public street or officially approved thoroughfare shall be combined to form lots meeting minimum lot width and lot area requirements for the district in which the lot is located.

- A. Exception. If, however, fifty-one (51%) percent or more of the parcels on both sides of the street, between the nearest cross street on each side of the subject parcel, are developed and do not meet the minimum lot width and lot area requirements, said nonconforming lots may be divided provided the lot width and lot area is equal to or greater than the mean lot width and lot area of the developed parcels on both sides of the street between the nearest cross streets on each side of the parcel.

Section 10.3. Nonconforming Uses, Buildings and Structures Jointly or Individually.

10.3.1. INTENT. It is the intent of this subsection to permit legal nonconforming buildings, structures, or uses to continue until they are removed or voluntarily discontinued but not to encourage their survival except as provided hereinafter. It is recognized that there exists within the districts established by this Ordinance and subsequent amendments buildings, structures, uses of land and uses of buildings or structures which were lawful before this Ordinance was adopted or amended which would be prohibited, regulated or otherwise restricted under the terms of this Ordinance or future amendments.

10.3.2. INCOMPATIBILITY. Such uses are declared by this Ordinance to be incompatible with permitted uses in the district involved but increasing awareness that some nonconforming uses, buildings or structures will not go away as a result of wishful thinking makes it necessary and desirable in pursuit of the public interest to distinguish between the normal kinds of nonconforming uses, buildings or structures which should be eliminated as rapidly as possible and those certain nonconforming situations which ought to be given preferred treatment, simply because although they can not be fitted into a neat zoning pattern, they are desirable and useful.

Section 10.4. Definition and Classification of Nonconforming Uses, Buildings or Structures.

10.4.1. CLASSIFICATION. All nonconforming uses, buildings or structures shall be classified as Class B nonconforming uses at adoption of this Ordinance. Class A nonconforming uses, buildings or structures are those which have been so designated by the Zoning Board of Appeals after application by an interested person or the Zoning Administrator, upon findings that:

- A. Continuance thereof would not be contrary to public health, safety or welfare, or the spirit and intent of this Ordinance;
- B. That the use, building or structure does not and is not likely to significantly depress the value of nearby properties;
- C. That the use, building or structure was lawful at the time of its inception; and
- D. That no useful purpose would be served by strict application of the provisions or requirements of this Ordinance with which the use, building or structure does not conform.

Section 10.5. Procedure for Obtaining Class A Designation Conditions.

10.5.1. APPLICATION. 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.

- A. The Zoning Board of Appeals may require the furnishing of such additional information as it considers necessary.
- B. 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.
- C. The decision shall be in writing and shall set forth the findings and reasons on which it is based.

10.5.2. CONDITIONS. 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.

10.5.3. VESTED INTEREST. No vested interest shall arise out of a Class A Designation.

Section 10.6. 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 of conditions or circumstances the use or structure no longer qualifies for Class A designation.

Section 10.7. Regulations Pertaining to Class A Nonconforming Uses and Structures. Where Class A nonconforming use status applies to a building and/or structure and premises in combination, removal of the building or structure shall eliminate the nonconforming status of the land.

10.7.1. ABANDONMENT. No Class A nonconforming use of 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.

10.7.2. ENLARGEMENT. A Class A use or structure may be used, altered or enlarged provided that it does not violate any condition imposed by the Board of Appeals at the time of its designation.

10.7.3. RESTORATION. Nothing in this Ordinance shall prevent the restoration of a Class A nonconforming building or structure destroyed by fire, explosion, act of God, or act of the public enemy, subsequent to the effective date of its Class A designation, or shall prevent the continuance of the use of such building or structure or part thereof provided that said restoration is entirely and completely executed within eighteen (18) months from the time of destruction and that the same use is made of the premises; except that for reasonable cause the Building Official may grant one (1) extension of time for an additional period not exceeding ninety (90) days.

10.7.4. MAINTENANCE. Nothing in this ordinance shall be deemed to prevent routine repairs and maintenance of a Class A nonconforming building or structure so long as such repairs and maintenance do not add to its nonconformity.

10.7.5. MOVED STRUCTURES. Should a Class A nonconforming building or structure be moved for any reason, it shall thereafter conform to the regulations for the district (zone) in which it is located after it is moved. Where Class A nonconforming use status applies to a building and/or structure and

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premises in combination, removal of the building or structure shall eliminate the nonconforming status of the land.

10.7.6. CHANGE IN USE.

- A. Allowed. Any Class A nonconforming use of a building or structure or land may be changed to another nonconforming use upon written findings of the Zoning Board of Appeals that the proposed use is:
1. Similar in operational characteristics as the former nonconforming use;
 2. There is no increase in the intensity of use of the land, building or structure involved;
 3. Such change in use will have a less detrimental effect or negative impact on neighboring property than the existing nonconforming use it is replacing; and
 4. The proposed use, although inappropriate to a neat zoning pattern, is desirable and useful in pursuit of the public interest or is more appropriate to the district (zone) than the existing nonconforming use.
- B. Requirements.. In permitting such change in use, the Zoning Board of Appeals may require appropriate conditions and safeguards in accord with the purpose and intent of this Ordinance inclusive of upgrading the premises to comply as nearly as is practicable with the requirements of this Ordinance.
- C. Submission to the Planning Commission. Prior to action by the Zoning Board of Appeals, all required documentation for a change from one nonconforming use to another shall be submitted to the Planning Commission for their review and written recommendation.

Section 10.8. Regulations Pertaining to Class B Nonconforming Uses and Structures.

- 10.8.1. INTENT. It is the purpose of this Ordinance to eliminate Class B nonconforming uses and structures as rapidly as is permitted by law without payment of compensation.
- 10.8.2. ABANDONMENT. No Class B nonconforming use shall be resumed if it has been discontinued for a continuous period of at least twelve (12) months or if it has been changed to a conforming use for any period or if the structure in which such use is conducted is damaged by fire or other casualty to the extent that the cost of reconstruction or repair exceeds fifty (50%) percent of the reproduction cost of such structure.
- 10.8.3. RESTORATION. No Class B nonconforming structure shall be enlarged or structurally altered, nor shall it be repaired or reconstructed if damaged by fire or other casualty to the extent that the cost of reconstruction or repair exceeds fifty (50%) percent of the reproduction cost of such structure.
- 10.8.4. CHANGE/ENLARGEMENT. No Class B nonconforming use shall be changed to a substantially different nonconforming use, nor enlarged so as to make use of more land area than used at the time of becoming nonconforming.
- 10.8.5. MINERAL OPERATIONS. In the case of 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.
- 10.8.6. CONTINUANCE. No Class B nonconforming use or structure shall be permitted to continue in existence if it was unlawful at the time of its inception.
- 10.8.7. MOVED STRUCTURES. No Class B 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.

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- A. **Conformance.** If a Class B nonconforming structure is moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

10.8.8. **MAINTENANCE.** Ordinary repair and maintenance work may be done on any Class B nonconforming structure, including repair or 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 as it existed at the time of adoption of this Ordinance.

10.8.9. CHANGE IN USE.

- A. **Allowed.** Any Class B nonconforming use of a building or structure or land may be changed to another nonconforming use upon a written finding of the Zoning Board of Appeals that the proposed use is:
 1. Similar in operational characteristics as the former nonconforming use;
 2. There is no increase in the intensity of use of the land, building or structure involved;
 3. Such change in use will have a less detrimental effect or negative impact on neighboring property than the existing nonconforming use it is replacing; and
 4. The proposed use, although inappropriate to a neat zoning pattern is more appropriate to the district (zone) than the existing nonconforming use
- B. **Requirements.** In permitting such change in use, the Zoning Board of Appeals may require appropriate conditions and safeguards in accord with the purpose and intent of this Ordinance inclusive of upgrading the premises to comply as nearly as is practicable with the requirements of this Ordinance.
- C. **Submission to the Planning Commission.** Prior to action by the Zoning Board of Appeals, all required documentation for a change from one (1) nonconforming use to another shall be submitted to the Planning Commission for their review and written recommendation.

Section 10.9. Record of Nonconformity.

10.9.1. **RECORD.** Within one (1) year after the adoption of this Ordinance, or any amendment thereto, the Zoning Administrator shall prepare and complete a record of all known nonconforming uses of buildings and/or structures or land, existing at the time of the adoption of this Ordinance or amendment.

10.9.2. **INFORMATION.** Such record shall contain the names and addresses of the owners of record of such nonconforming use and of any occupant, other than the owner, the legal description of the land, and the nature and extent of use. Such record shall also contain any information regarding action by the Zoning Board of Appeals for designation of Class A status.

10.9.3. **AVAILABILITY.** Such record shall be available at all times in the office of the Township Clerk.

Section 10.10. Nonconforming Characteristics of Use.

10.10.1. **INTENT.** It is the intent of this Ordinance to eliminate, as nearly as is practicable with the prevailing requirements of this Ordinance, nonconforming characteristics of use and to eliminate them as rapidly as is possible without payment of compensation.

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10.10.2. UPGRADE OF USE. Notwithstanding other provisions of this Ordinance, whenever a change in use, ownership or tenancy occurs or when structural alterations are made, or when renewal of operating license as provided by other Township Ordinance was made, those nonconforming characteristics of use which were lawfully inadequate or totally lacking at the effective date of this Ordinance, or amendments thereto, shall be eliminated as nearly as is practicable with the prevailing requirements of this Ordinance relative to characteristics of use.

10.10.3. PROSECUTION. Such upgrading of characteristics of use shall be completely and entirely prosecuted within eighteen (18) months after the occurrence of a change in use, ownership or tenancy, or before the expiration date of the renewed operating license, or after issuance of building permit for structural alterations.

10.10.4. EXTENSION. The Zoning Board of Appeals may grant an extension of time not to exceed one (1) year to remedy those deficient characteristics of use found to exist.

A. In granting such extension of time, the Zoning Board of Appeals shall base their written decision upon findings that:

1. The applicant can document conclusively that personal hardship exists presently but there is likelihood that the improvements can be completed if the initial time allotment is extended; and
2. That the reasons of personal hardship justify granting the extension of time so as to make possible the reasonable use of land, building or structure concurrent with the likelihood for upgrading, as nearly as is practicable, those deficient characteristics of use found to exist.

B. In granting such extension of time, the Zoning Board of Appeals may require appropriate conditions and safeguards in accord with the spirit and intent of this Ordinance inclusive of requiring the posting of a performance bond or other acceptable surety to guarantee that the required upgrading is completely and entirely prosecuted.

Section 10.11. Certificate of Occupancy.

10.11.1. NOTIFICATION. At any time after adoption of this Ordinance should the Township become aware of a nonconforming use, the owner of the nonconforming use shall be notified by the Zoning Administrator of the provisions of this section, and that his property constitutes a nonconforming use.

A. Application. Within thirty (30) days after receipt of said notice the owner shall apply for and be issued a Certificate of Occupancy for the nonconforming use. The application of such certificate shall designate the:

1. location
2. nature
3. extent of the nonconforming use
4. such other details as may be necessary for the issuance of the Certificate of Occupancy.

B. Failure to comply. If the owner of a nonconforming use fails to apply for a Certificate of Occupancy within thirty (30) days after receipt of the foregoing notice, the use ceases to be nonconforming and is hereby declared to be in violation of this Ordinance.

10.11.2. VIOLATION. The Zoning Administrator shall not issue the Certificate of Occupancy but shall declare such use to be in violation of this Ordinance if he shall find upon reviewing the application for a Certificate of Occupancy, that:

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- A. the existing use if illegal or
 - B. in violation of any other ordinance or law, or
 - C. the building for which the certificate is requested has been constructed or altered for the existing use or any other use without full compliance with the Building Code or the Zoning Ordinance in effect at the time of construction or alteration.
- 10.11.3. DESIGNATION. The Certificate of Occupancy issued by the Zoning Administrator for a nonconforming use shall state that the use may be continued indefinitely, or that the use must be discontinued.