

## **Article 6**

# **NONCONFORMING LOTS, USES and STRUCTURES**

### **Section 6.1 Purpose**

It is recognized that there exists lots, structures and uses within the Districts of this Ordinance and subsequent amendments, which were lawful before this Ordinance was passed or amended and 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, 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 its nonconformity, except as otherwise 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 structures may be erected on any single lot of record 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, 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 from the Zoning Board of Appeals according to Article 16. This subsection (1) shall not be construed to authorize any instances of noncompliance with area, width and/or frontage standards except nonconforming conditions in existence on or before the date of adoption or amendment of this Ordinance.

### **Section 6.3 Nonconforming Uses**

**A. Limitations:** 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 the following limitations:

1. **Enlargement/Expansion:** No nonconforming use shall be enlarged or increased in area or bulk or in the number of structures and buildings, 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) shall not prohibit the extension of a nonconforming use throughout any portion of a building in which it is located where 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 parking and loading/unloading regulations.
2. **Change of Tenancy/Ownership:** A change 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 Nonconforming Use:** A lot occupied by a nonconforming use of land or nonconforming use of a structure, or combination thereof, which is subsequently occupied by a conforming 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 six (6) months, 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 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.
  - a. The restrictions of subsection (4) shall not apply in the case of a single-family or two-family dwelling constituting a nonconforming use. Such a dwelling constituting a nonconforming use may, upon destruction or razing, be reestablished on the same lot provided such replacement dwelling complies with the applicable setback and height standards of the District in which it is located, the erection of the replacement structure is initiated within one (1) year of the previous structure's destruction or razing, the first story floor area of the replacement dwelling shall not exceed one hundred fifty percent (150%) of the previous dwelling's first story floor area as existing at the time of

adoption of this Ordinance or amendment thereto, and the replacement structure is completed to an extent equal to fifty percent (50%) or more of its construction cost within eighteen (18) months of such destruction. Further, nothing in this subsection (4) shall prohibit such dwelling constituting a nonconforming use from being expanded, increased or enlarged, provided the first story floor area of the modified dwelling shall not exceed one hundred fifty percent (150%) of the previous dwelling's first story floor area as existing at the time of adoption of this Ordinance or amendment thereto, and provided such modifications comply with the applicable setback and height standards of the District in which it is located.

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, as applicable.
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.

## **Section 6.4 Nonconforming Structures**

**A. Limitations:** Where a lawful structure 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 structure or location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following limitations:

1. **Enlargement/Alteration:** No nonconforming structure may be enlarged 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 of a building that encroaches into a required setback, and an increase in the number of stories encroaching into a required setback, except as provided by subsection (1).
  - a. Subsection (1) shall not prohibit the erection of a nonconforming garage in association with a nonconforming single-family dwelling on the same lot, where the dwelling is a nonconforming structure due to its encroachment into the required front yard setback, provided such nonconforming garage shall not extend further into the required front yard setback than the nonconforming dwelling's principal wall extending into the required setback.
2. **Destruction:** Should a nonconforming structure be destroyed by any means to an extent of more than sixty percent (60%) of its replacement value, exclusive of foundations, it shall not be reconstructed except in conformity with 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, the Zoning Administrator may seek a written opinion from a qualified building appraiser and the opinion shall include the basis for the opinion.
  - a. **Single and Two-Family Dwelling Exception:** The limitations of this subsection (2) shall not apply in the case of single and two-family dwellings that are nonconforming due to their encroachment into a required yard setback where such yard is adjacent to a road right-of-way or easement, excluding accessory structures thereto, when all of the following conditions are met:
    - 1) The walls of the replacement dwelling shall not extend beyond the foundation of the previous structure.
    - 2) A building permit for the erection of the replacement dwelling is issued within one (1) year of the previous structure's destruction, and the replacement structure is completed to an extent equal to fifty percent (50%) or more of its construction cost within two (2) years of such destruction.
    - 3) The replacement structure is no more nonconforming in any aspect than the previous structure.
3. **Relocation:** Should a nonconforming structure 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 may undergo ordinary repairs and maintenance, including the repair and refurbishing of wall exteriors, fixtures, wiring or plumbing, provided there is compliance with subsections (a) and (b). 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, including the cubic area of any nonconforming portion of such structure.
- b. No structural alterations shall be undertaken, as in the case of the relocation of load-bearing walls.

*(Sec. 6.4 amended 1-21-21)*

**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 and structures that become nonconforming as a result of the boundary change.

**Section 6.6 Illegal Nonconformities**

Nonconforming lots, uses and structures existing on the effective date of this Ordinance or amendment thereto, that were established without the lawfully required procedures and approvals at such time of establishment, shall be declared 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**

*(Sec. 6.4 amended 1-21-21)*