

## **ARTICLE 16      NON-CONFORMANCE**

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### **Section 1600      Applicability.**

The regulations of this Article shall apply to non-conforming uses, non-conforming structures, non-conforming lots, and non-conforming signs, as defined below.

- A. Non-Conforming Use.** Use of buildings, structures, premises, land or parts thereof, which does not comply with the applicable use provisions in this Ordinance or amendments hereafter enacted where such use was lawfully in existence prior to the enactment of this Ordinance or amendments.
- B. Non-Conforming Structure.** A structure which does not comply with the applicable dimensional regulations, including those relating to impervious surfaces, building coverage, building height, and setbacks in this Ordinance or amendments hereafter enacted where such structure was lawfully in existence prior to enactment of this Ordinance. Such structures include, but are not limited to, buildings, fences, and swimming pools.
- C. Non-Conforming Lot.** A lot or site which does not comply with the applicable dimensional regulations, including those related to site area, lot area, and lot width, in this Ordinance or amendments hereafter enacted where such lot was lawfully in existence prior to enactment of this Ordinance or amendments.
- D. Non-Conforming Sign.** Any sign, which has a valid permit, was erected prior to the effective date of this Ordinance or any subsequent amendment hereto and which does not otherwise conform to the provisions of this Article and the provisions of Article 11.

### **Section 1601      Continuation and Transfer of Ownership.**

- A.** Any lawful building or other structure, or any lawful use of a building, land, or sign legally existing at the time of adoption of this Ordinance, or authorized by a building permit issued prior thereto, may be continued in the form evident at the time of adoption of this Ordinance.
- B.** A non-conforming use, non-conforming structure, and non-conforming lot may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.

### **Section 1602      Non-Conforming Use.**

#### **A. Expansion.**

The non-conforming use of a building or of a lot shall not be expanded so as to use other portions of the building or lot unless the Zoning Hearing Board shall, by special exception as hereinafter provided, authorize the expansion of such use. The Zoning Hearing Board, upon proper application, may grant such special exception, provided that:

1. It is clear that such expansion is not materially detrimental to the character of the surrounding area or to the interest of the municipality.
2. The area devoted to the non-conforming use shall not be increased more than once during the life of the use. In addition, the area devoted to the non-conforming use shall not be increased more than twenty-five (25) percent of the area of that portion of the lot or structure actually occupied by the use.

3. Any expansion of the building or of a lot having a non-conforming use shall conform to all applicable area and bulk regulations of the district in which it is situated and to all regulations applicable to such a use in the district which it is located, unless an expansion is granted as per Section 1603.A.3, below.
4. Any expansion of a non-conforming use shall meet the off-street parking requirements of this Ordinance and landscaping and buffering requirements in Article 10 and Article 11 of the Natural Resource Protection Ordinance, as incorporated by reference in Section 804 of this Ordinance.

#### **B. Change of Use.**

1. A non-conforming use may be changed to another non-conforming use by the grant of a special exception, only upon determination by the Zoning Hearing Board, after a public hearing, that the proposed new use will be similar to or less detrimental to its neighborhood and abutting properties than is the use it is to replace. In evaluating relative detriment, the Zoning Hearing Board shall take into consideration, among other things: potential traffic generation; nuisance characteristics, such as emission of noise, dust, odor, glare, and smoke; fire hazards; and hours and manner of operation.
2. Once changed to a conforming use, no structure or land shall be permitted to revert to a non-conforming use.

#### **C. Restoration.**

A structure containing a non-conforming use involuntarily destroyed or substantially damaged by fire, explosion, flood, or other phenomena, or legally condemned, may be reconstructed and used for the same non-conforming use, provided that:

1. Reconstruction of the structure shall commence within one (1) year from the date the structure was destroyed or condemned and shall be completed within one (1) year of the date commenced.
2. The reconstructed structure shall not exceed the area and bulk of the damaged or destroyed structure, except as provided by Section 1603.A.3, below.

#### **D. Discontinuance or Abandonment.**

If a non-conforming use of a structure or land is razed, removed, discontinued, or abandoned for twelve (12) consecutive months, subsequent use of such structure or land shall conform to the regulations of the district in which it is located. However, the same non-conforming use shall be allowed, provided the request for the non-conforming use is filed within the twelve (12) month period and thereafter approved by the Zoning Hearing Board and the permit application for such approved non-conforming use is filed within thirty (30) days after the decision of the Zoning Hearing Board.

### **Section 1603 Non-Conforming Structure.**

#### **A. Alteration, Renovation, or Enlargement.**

1. Non-conforming structures may be altered, renovated, or enlarged provided that such alteration, renovation or enlargement does not increase the floor area of the structure as it existed on the date when the structure became non-conforming, and such alteration, renovation, or enlargement shall not increase any existing non-conformity, except as provided in Section 1603.A.3, below. In the case of a non-conforming structure which is occupied by a non-conforming use, such alteration, renovation, or enlargement shall also meet the requirements of Section 1602.A, above. In the case of a non-conforming structure, which is located on a non-conforming lot, such alteration, renovation, or enlargement shall also meet the requirements of Section 1604, below.

2. Any structural alteration of or addition to existing structures shall conform with all area and bulk regulations including minimum area, height, width, yard and coverage requirements for the district in which it is located as well as building code regulations currently in effect, except insofar as is permitted by law to assure the structural safety of the building.
3. The Zoning Hearing Board may, by special exception, authorize the alteration, renovation, or expansion of a non-conforming structure to increase the structures size by not more than twenty-five (25) percent of the footprint of the existing structure, provided that it is clear that such expansion is not materially detrimental to the character of the surrounding area or to the interest of the municipality.

#### **B. Restoration.**

Any lawful non-conforming building or other structure which has been involuntarily damaged or destroyed or substantially damaged by fire, explosion, windstorm, or other active cause, may be reconstructed in the same location provided that:

1. The reconstructed building or structure shall not exceed the height, area, or bulk permitted by Section 1602 C, or the original building, whichever shall be the more limited.
2. Reconstruction shall begin within one (1) year from the date of damage or destruction and shall be completed without interruption.

#### **Section 1604 Non-Conforming Lot.**

- A. A building may be constructed on a non-conforming lot in existence at the effective date of this Ordinance under the following circumstances:
  1. An owner of two (2) or more contiguous non-conforming lots, which, if combined, would create a lot of conforming size, shall be required to combine such lots prior to the issuance of a building permit.
  2. A building may be constructed on a lot, which is non-conforming solely in respect to lot area requirements, when authorized by the Zoning Officer.
  3. Where the side, rear, or front yard setbacks cannot be met, a special exception to construct a building on a non-conforming lot may be authorized by the Zoning Hearing Board.
- B. No lot area shall be reduced so that the area or width of the lot or the applicable setback dimensions shall be smaller than herein prescribed.
- C. An existing structure located on a lot non-conforming as to area may be used for the use permitted in the district in which it is located, provided the structure complies with all bulk requirements of that district. If a non-conforming structure is located on a non-conforming lot, such structure may be used for a use permitted in the district in which it is located when it is determined by the Zoning Officer, or by the Zoning Hearing Board on appeal, that the proposed use is not injurious to health, safety, morals, and general welfare of the Township in general and the surrounding property owners in particular.

#### **Section 1605 Non-Conforming Sign.**

Non-conforming signs are regulated by Section 1108.