

Chapter 23, Nonconformities

SECTION 23.00 PURPOSE AND INTENT

- A. It is recognized that there exists certain lots, buildings, structures, and uses which were lawful before this Ordinance was adopted or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or an amendment to it. It is the intent of this Ordinance to permit these nonconformities until they are removed or are otherwise no longer non-conforming, but not to encourage their survival, intensification, expansion, or extension.
- B. Nonconforming lots, buildings, structures, and uses are declared by this Ordinance to be incompatible with permitted or other uses in the zoning districts in which they are located. It is the intent of this Ordinance that these nonconformities shall not be enlarged, moved, intensified, expanded, or extended, nor be used as grounds for adding other buildings, structures, or uses prohibited by this Ordinance.

SECTION 23.01 GENERAL PROVISIONS

- A. A lawful use of land, building, or structure which is under substantial construction at the time of adoption or amendment of this Ordinance shall be allowed to continue as a nonconformity if completed and shall be subject to the provisions of this Chapter.
- B. Any lot, use of land, building, or structure that was established in violation of the provisions of this or a previous Zoning Ordinance having jurisdiction at the time it was established shall remain in violation of this Ordinance.
- C. Any lot, use of land, building, or structure that was lawfully established under this or a previous Zoning Ordinance, but violates the terms of the permit under which it was established, shall remain in violation of this Ordinance.
- D. None of the provisions of this Chapter are meant to preclude normal repairs and maintenance on any nonconforming building or structure. Nor are the provisions of this Chapter intended to prevent the strengthening or correction of any unsafe condition of the building or structure, provided that the building or structure as it existed on the effective date or amendment of this Ordinance shall not be altered or increased except in compliance with this Chapter. Any structural change or alteration is an unlawful expansion.
- E. The burden of proof for establishing or proving the existence of any aspect of a lawful nonconforming structure, sign, lot, or use (as well as the size, scope, type, intensity, and extent thereof) is on the owner of the property involved.
- F. A change of tenancy, ownership, or management of any existing nonconforming lots, uses of land, buildings, or structures, or combination thereof, shall be permitted.

SECTION 23.02 NONCONFORMING LOTS

- A. Where a lawful nonconforming lot of record exists at the time of the adoption or amendment of this Ordinance and it does not meet the current minimum requirements for lot width, frontage, area, or other lot dimensional requirements due to the adoption or amendment of this Ordinance or a new ordinance amendment, such lot may be used for any use permitted by the zoning district in which the lot is located provided that it meets all applicable building and structure setback, lot coverage, yard, and similar requirements.
- B. For two or more lawful nonconforming lots of record, combination of such lots, and/or portions of such lots of record in existence at the time of passage of this Ordinance, or an amendment thereto, the lots involved shall be deemed automatically combined and shall be considered to be one undivided parcel for the purposes of this Ordinance if they:
1. Are in common ownership;
 2. Are adjacent to each other or with continuous frontage;
 3. Are vacant or have a principal building on either or any of the lots; and
 4. Individually do not meet the lot width, area, or other dimensional requirements of this Ordinance;
- No such combined parcel or portion of such parcel shall ever be split, detached, or be used or divided in a manner that diminishes compliance with the lot width, area, frontage, and dimensional requirements of this Ordinance.

SECTION 23.03 NONCONFORMING USES

- A. A nonconforming use shall not be enlarged, extended or increased or intensified in scope, frequency, size, area, mass or intensity, nor extended to occupy a greater area of land or space than was occupied at the effective date of the adoption or amendment of this Ordinance.
- B. No part of any nonconforming use shall be moved unless such movement eliminates the nonconformity.
- C. If a nonconforming use is abandoned for any reason for a period of more than one year, any subsequent use shall fully conform to the requirements of this Ordinance.
- D. A nonconforming use shall be considered to be abandoned if one or more of the following conditions exist, which are deemed to constitute an intent on the part of the property owner to abandon the nonconforming use:
1. Utilities such as water, gas, or electricity to the property have been disconnected;
 2. The property, buildings, or grounds have fallen into disrepair;
 3. Signs or other indications of the existence of the nonconforming use have been removed;
 4. Removal of buildings, structures, equipment, or fixtures which are necessary for the continuation or operation of the nonconforming use; or

5. Other actions which in the opinion of the Zoning Administrator constitute an intention on the part of the property owner or lessee to abandon the nonconforming use.
- E. A nonconforming use may be changed to another nonconforming use provided that the new use is approved by the Zoning Board of Appeals and that all of the following determinations are made by the Board of Appeals:
1. The proposed use shall be as compatible as or more compatible with the surrounding neighborhood and uses than the previous nonconforming use.
 2. The proposed nonconforming use shall not be enlarged or increased nor extended to occupy a greater or increased area of land, nor have a greater scope or intensity than the previous nonconforming use.
 3. The proposed use is consistent with the Township's Master plan.
 4. Appropriate conditions and safeguards are provided to ensure compliance with the intent and purpose of this Ordinance.

SECTION 23.04 NONCONFORMING BUILDINGS AND STRUCTURES

- A. Where a lawful building or structure exists as of the effective date of this Ordinance or amendment to it that does not comply with the requirements of this Ordinance because of restrictions such as lot area, coverage, width, setback, size, height, yards, or other characteristics, such building or structure may remain as long as it is otherwise lawful.
- B. No building or structure that is nonconforming due to its size, height, setback, or other dimensional characteristic may be enlarged or altered in a way that extends or increases the degree of nonconformance, except as noted in subsection C, below.
- C. Where the setback of a building or structure is nonconforming by a distance equal to or less than one-half of the distance required by this Ordinance, the nonconforming setback may be extended along the same plane, provided that the degree of nonconformance is not increased, with the approval of the Zoning Administrator under the standards of subsection 23.03E.
- D. Should a nonconforming building or structure be moved for any reason and for any distance, it shall be moved to a location that reduces or eliminates that nonconformity.
- E. Should a nonconforming building or structure be destroyed to an extent of more than 60% of its replacement value, it shall lose its lawful nonconforming status and shall be reconstructed only in full conformance with all of the provisions of this Ordinance. However, a single-family detached dwelling may be reconstructed in its previously nonconforming location (i.e., the exact same footprint and size) and at its preexisting size. Any such reconstruction shall be completed within one year of the date at which the dwelling was destroyed.
- F. Should a nonconforming building or structure be destroyed in an amount equal to or less than 60% of its replacement value, it may be reconstructed in its previously nonconforming location (i.e. the exact same footprint and size), but may not be enlarged in size or height. Said reconstruction shall be

completed within one year of the date at which the building or structure was destroyed.