

**ARTICLE 16**

**NONCONFORMING USES AND STRUCTURES**

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**SECTION 16.01 INTENT**

- A. It is the purpose of this Article to provide regulations governing lots, buildings, structures and uses which were lawful prior to the enactment of this Ordinance, or amendments thereto, but which are prohibited, regulated, or restricted under the provisions of this Ordinance.
- B. It is the intent of this Article to permit these buildings, structures and uses to continue, but not to encourage their prolonged existence. Because such nonconforming lots, buildings, structures and uses prevent full realization of the goals and objectives of this Ordinance, the spirit of this Ordinance is to reduce and eliminate such nonconformance.
- C. The standards of this Article are intended to accomplish the following:
  - 1. Eliminate nonconforming uses which are considered to be incompatible with permitted uses and encourage redevelopment into more conforming uses.
  - 2. Permit legal nonconforming buildings, structures or uses to remain until they are discontinued or removed.
  - 3. Encourage investment in surrounding neighborhoods by bringing nonconforming structures into compliance with this Ordinance.
  - 4. Encourage upgrading of site elements such as site landscaping, parking, paving, signage, access, pedestrian circulation or other features of a site which were developed in compliance with the standards at the time of construction, but which do not meet current site standards.
  - 5. Encourage combination of contiguous nonconforming lots of record to create lots which conform to current standards, are compatible with other lots in the appropriate zoning district, to promote public health, safety and welfare and to eliminate problems associated with over-crowding.
- D. It is not the intent of this Ordinance to require a change in plans, construction or designated use of any building which was constructed or under construction prior to the effective date of adoption or amendment of this Ordinance, provided progress has been diligently pursued and substantial construction has occurred. "Construction" is defined as actual physical placement of building materials in their permanent positions under a valid building permit.

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- E. The authorization for nonconformities that were legally established prior to enactment or amendment of this Ordinance to continue shall not apply to building structures or uses which were not legally established prior to the enactment or amendment of this Ordinance.

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### **SECTION 16.02 NONCONFORMING LOTS**

- A. **Use of Nonconforming Lots.** Any lot of record existing at the effective date of this Ordinance that now fails to meet the requirements for lot area or width, or both, for the applicable zoning district shall be considered a nonconforming lot. When the owner of a non-conforming lot of record does not own and cannot reasonably acquire sufficient land to conform to the Ordinance requirements for lot area and/or width, a principal building and customary accessory buildings for a permitted use may be erected without recourse to a variance, provided all other standards of this Ordinance are met, such as setbacks, minimum floor area, maximum height and access requirements.
- B. **Division of Lots Restricted.** No lot or parcel shall be divided in such a way as to create a nonconforming lot or to increase the degree of nonconformance already in existence.

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### **SECTION 16.03 NONCONFORMING USES**

A lawful use of a building, land or of a building and land in combination, that existed prior to the effective date of this Ordinance, or amendment thereto, that is no longer permissible under the provisions of this Ordinance, shall be considered a nonconforming use. These nonconforming uses may be continued so long as they remain otherwise lawful, subject to the following limitations:

- A. **Not Increased.** Nonconforming uses shall not be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption of or amendment of this Ordinance.
- B. **Not Expanded.** The existing structure devoted to a nonconforming use shall not be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the zoning district in which it is located, or to bring the structure into greater conformity with the Ordinance. The addition of a second story on an existing nonconforming structure shall be considered an expansion.
- C. **Not Moved.** Nonconforming uses shall not be moved in whole or in part to any other portion of the lot or parcel other than that portion of the lot in use at the effective date of adoption or amendment of this Ordinance.

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- 5 D. **Change in Use of a Structure.** If no structural alterations are made, any nonconforming use of a structure may be changed to another nonconforming use provided that the Zoning Board of Appeals first finds that the proposed use is at least as appropriate in the district as the existing nonconforming use. In permitting such change, the Zoning Board of Appeals may require appropriate conditions and safeguards in accord with the purpose and intent of this Ordinance.
- 10 E. **Repairs and Modernizations to Buildings or Structures Associated with Nonconforming Uses.** Repairs and modernizations of structures which are utilized by nonconforming uses may be made provided that such repairs or modernizations do not intensify the extent of the nonconforming use, and provided that such repairs and modernizations do not, within any twelve (12) month period, exceed fifty (50%) percent of the assessed value of the subject structure.
- 15 F. **Change to a Permitted Use.** Once a land use is changed from a nonconforming use to a permitted use, the nonconforming use may not be reestablished or resumed.
- 20 G. **Abandoned Nonconforming Use.** A nonconforming use that is abandoned for a period of twelve (12) months or more shall not be reestablished. A nonconforming use shall be determined to be abandoned if one or more of the following conditions exist:
- 25 1. Utilities, such as water, gas and electricity to the property have been disconnected.
  - 30 2. The property, building, or grounds have fallen into disrepair
  - 35 3. Signs or other indications of the existence of the nonconforming use have been removed.
  - 40 4. Equipment of fixtures necessary for the operation of the nonconforming use have been removed.
  - 45 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.
  6. Those alleged nonconforming uses which have not been legally established prior to the effective date of this Ordinance shall be declared illegal and shall be discontinued following the effective date of this Ordinance.
- H. **Removal of Structure.** Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.
- I. **Subdivision of Land Prohibited.** No land that accommodates a use nonconformity shall be subdivided.

**SECTION 16.04 NONCONFORMING SPECIAL LAND USES**

5 A lawful use of a building, land or of a building and land in combination, that existed prior to the effective date of this Ordinance, or amendment thereto, that requires special land use approval under the provisions of this Ordinance, shall be considered a nonconforming use until an application for special land use approval has been submitted and approved. If an application is submitted and approved, the use shall be deemed legally conforming. If an application is submitted and denied, the use shall be deemed legally nonconforming and shall be subject to the regulations set forth in Section 16.03, Nonconforming Uses.

10 **SECTION 16.05 NONCONFORMING BUILDINGS AND STRUCTURES**

15 A lawful building or structure that existed prior to the effective date of this Ordinance, or amendment thereto, that is no longer permissible under this Ordinance by reason of restrictions on setbacks, lot coverage, height, or other characteristics of the building or structure or its location on the lot, shall be considered a nonconforming building or structure. These nonconforming buildings or structures may be maintained so long as they remain otherwise lawful, subject to the following limitations:

- 20 A. A nonconforming building or structure may not be enlarged or altered in any way that increases its nonconformity, except as provided for in this Section, unless otherwise approved by the Zoning Board of Appeals.
- 25 B. An existing building may be enlarged so long as the enlargement does not increase any existing encroachment of the building on required setback lines. Such enlargement may extend between the building and the required setback line so long as it does not extend closer to the front, side or rear property lines than does the existing building.
- 30 C. An additional story may be added only over those parts of the building or structure that comply with this Ordinance.
- 35 D. Repairs, improvements or modernization of nonconforming buildings or structures may be permitted, provided such repairs or improvements do not exceed one-half (1/2) of the assessed value of the building or structure during any period of twelve (12) consecutive months. This cost/value calculation shall not include any costs associated with the modernization of electrical, plumbing, heating, cooling or sanitary systems necessary to meet Health Code or Building Code requirements.
- 40 E. Should a nonconforming building or structure be destroyed by any means to an extent that the cost of reconstruction or restoration is greater than fifty percent (50%) of its assessed value at the time of destruction, it shall not be reconstructed except in conformance with this Ordinance.

5 F. Should a nonconforming building or structure be damaged by any means to an extent that the cost of reconstruction or restoration is equal to or less than fifty percent (50%) of its assessed value at time of damage, reconstruction or restoration shall be permitted, provided a building permit for the necessary work is issued within one (1) year of the occurrence of such damage.

10 G. Should a nonconforming building or structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zoning district in which it is located after it is moved.

H. Should a nonconforming building or structure be altered or modified so as to eliminate, remove or lessen any or all of its nonconforming characteristics, then the nonconforming characteristics shall not be later reestablished.

15 I. 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 any Official charged with protecting the public safety, upon order of such Official.

20 **SECTION 16.06 LOTS WITH NONCONFORMING SITE IMPROVEMENTS**

25 A. Lots that do not meet current standards for parking, loading, access, landscaping, lighting or other site improvements required under the provisions of this Ordinance are considered nonconforming. No building or structure shall be constructed, enlarged or altered in any way so as to create a new nonconformance or to enlarge an existing nonconformance.

30 B. For any change of use, the Zoning Administrator may require that all elements of the site be brought into compliance with the provisions of this Ordinance prior to approving a change of use.

C. For any change in a building, structure or use that requires site plan or special land use approval, the Planning Commission may require that all elements of the site be brought into compliance with the provisions of this Ordinance.

35 D. The Planning Commission may also permit improvements and minor modifications to a conforming use and/or building which does not meet all of the various site improvements related to the regulation of this Ordinance, in order to facilitate a gradual move towards compliance with site related requirements, provided the following conditions are satisfied:

40 1. The applicant is proposing reasonable site improvements on the overall site in relation to the scale and construction cost of the building improvements or expansion.

45 2. The applicant has addressed safety related site issues on the overall site.

3. The improvements or minor expansion will not increase any noncompliance with site requirements.
4. All driveways that do not conform with access standards of this Ordinance shall be eliminated, provided reasonable access shall be maintained, as outlined in Article 11, Access Management, Parking and Circulation.

**SECTION 16.07 CHANGE OF TENANCY OR OWNERSHIP**

There may be change of tenancy, ownership or management of any existing nonconforming uses of land, of structures or of structures and land in combination.

**SECTION 16.08 PURCHASE OR CONDEMNATION OF NONCONFORMING USES**

The Township may acquire, by purchase, condemnation or otherwise, private property or an interest in private property for the removal of nonconforming uses. The cost and expense, or a portion thereof, may be paid from general funds or assessed to a special district in accordance with applicable state law. The elimination of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use. The Township may institute and prosecute proceedings for condemnation of nonconforming uses and structures under procedures established by applicable state law.