

ARTICLE 16

NON-CONFORMING 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 non-conforming 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 non-conforming uses which are considered to be incompatible with permitted uses and encourage redevelopment into more conforming uses.
 - 2. To prohibit the expansion of non-conforming uses, buildings and structures.
 - 3. Permit legal non-conforming buildings, structures or uses to remain until they are discontinued or removed.
 - 4. Encourage investment in surrounding neighborhoods by bringing non-conforming structures into compliance with this Ordinance.
 - 5. 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.
 - 6. Encourage combination of contiguous non-conforming 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 that has obtained a vested right as defined by law.

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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 NON-CONFORMING LOTS

- A. **Use of Non-conforming Lots.** Contiguous non-conforming lots must be combined when under the same ownership. If the owner of a non-conforming lot does not own and cannot reasonably acquire sufficient land to conform to the Ordinance requirements for lot area and/or width, a principal building may be erected provided all other standards of this Ordinance are met.
- B. **Division of Lots Restricted.** No lot or parcel shall be divided in such a way as to create a non-conforming lot or to increase the degree of nonconformance already in existence.

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SECTION 16.03 NON-CONFORMING USES

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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 non-conforming use. These non-conforming uses may be continued so long as they remain otherwise lawful, subject to the following limitations:

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- A. **Not Increased.** Non-conforming 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 non-conforming 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 non-conforming structure shall be considered an expansion.
- C. **Not Moved.** Non-conforming 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.
- Change in Use of a Structure.** If no structural alterations are made, any non-conforming use of a structure may be changed to another non-conforming use provided that the Zoning Board of Appeals with the recommendation of the Planning Commission finds that the proposed use is more in conformance with the district regulations than the existing non-conforming 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.

- 5 E. **Repairs and Modernizations to Buildings or Structures Associated with Non-conforming Uses.** Repairs and modernizations of structures which are utilized by non-conforming uses may be made provided that such repairs or modernizations do not intensify the extent of the non-conforming 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.
- 10 F. **Change to a Permitted Use.** Once a land use is changed from a non-conforming use to a permitted use, the non-conforming use may not be reestablished or resumed.
- 15 G. **Abandoned Non-conforming Use.** A non-conforming use that is abandoned for a period of twelve (12) months or more shall not be reestablished. A non-conforming use shall be determined to be abandoned if one or more of the following conditions exist:
- 20 1. Utilities, such as water, gas and electricity to the property have been disconnected.
 2. The property, building, or grounds have fallen into disrepair.
 - 25 3. Signs or other indications of the existence of the non-conforming use have been removed.
 4. Equipment of fixtures necessary for the operation of the non-conforming use have been removed.
 - 30 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 non-conforming use.
 - 35 6. Those alleged non-conforming 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.
- 40 H. **Removal of Structure.** Where non-conforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land.
- I. **Subdivision of Land Prohibited.** No land that accommodates a use nonconformity shall be subdivided.

SECTION 16.04 NON-CONFORMING SPECIAL LAND USES

A lawful special land use that existed prior to the effective date of this Ordinance shall be considered a non-conforming use if no longer permitted by this Ordinance.

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SECTION 16.05 NON-CONFORMING BUILDINGS AND STRUCTURES

A structure or building lawfully constructed prior to the effective date of this ordinance that does not conform with the requirements of the district in which it is situated is considered a non-conforming building or structure. These non-conforming buildings or structures may be maintained so long as they remain otherwise lawful, subject to the following limitations:

- 15 A. A non-conforming building or structure may not be enlarged or altered in any way that increases its nonconformity, except as provided for in this Section.
- 20 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.
- C. An additional story may be added only over those parts of the building or structure that comply with this Ordinance.
- 25 D. Repairs, improvements or modernization of non-conforming 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
- 30 meet Health Code or Building Code requirements.
- E. Should a non-conforming 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, shall not be reconstructed except in
- 35 conformance with this Ordinance.
- F. Should a non-conforming 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,
- 40 provided a building permit for the necessary work is issued within one (1) year of the occurrence of such damage.
- G. Should a non-conforming 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
- 45 is located after it is moved.

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

5 J. 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.

10 **SECTION 16.06 LOTS WITH NON-CONFORMING SITE IMPROVEMENTS**

15 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 non-conforming. 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 non-conformance.

20 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.

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

30 D. The Zoning Board of Appeals with Planning Commission recommendation may 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:

- 35 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.
- 40 2. The applicant has addressed safety related site issues on the overall site.
- 45 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 non-conforming uses of land, of structures or of structures and land in combination.

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SECTION 16.08 PURCHASE OR CONDEMNATION OF NON-CONFORMING USES

10 The Township may acquire, by purchase, condemnation or otherwise, private property or an interest in private property for the removal of non-conforming 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 non-conforming 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 non-conforming uses and structures under
15 procedures established by applicable state law.

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