

*article XVI*

# *Nonconforming Uses, Structures, and Lots*

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## *SECTION 1600 APPLICABILITY*

The regulations of this Article apply to nonconforming uses, structures, and lots, as defined below:

- A. Nonconforming Use - A use, whether of land or of structure, 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. Nonconforming Structure - A structure which does not comply with the applicable dimensional regulations, including those relating to density, 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.
- C. Nonconforming Lot - A lot or site which does not comply with the applicable dimensional regulations, including those relating 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. Nonconforming Sign - Any sign legally existing at the time of the passage of this Ordinance that does not conform in use, location, height, or size to the regulations of Article XV.

## *SECTION 1601 CONTINUATION*

Any lawful nonconforming building or structure, or any lawful nonconforming use of a building, structure, or lot legally existing on the effective date of this Ordinance or authorized by a building permit issued prior thereto, may be continued, except as otherwise herein provided.

## *SECTION 1602 EXPANSION*

The following provisions shall apply to expansions of nonconforming uses or structures:

- A. **Expansion of a Nonconforming Use**

A use that does not conform to the use regulations of the district in which it is located may not be expanded more than fifty (50) percent in floor area, land area, or building volume, devoted to such use. Such expansion shall be permitted only by special exception, provided:

1. The proposed expansion shall take place only upon the lot containing the nonconformity or upon lots bordering the lot containing the nonconformity provided all such lots were held in single and separate ownership at the time the use became nonconforming.
2. The proposed expansion shall conform with the dimensional requirements of the use to be expanded or the requirements of the district in which the said expansion is located, whichever is the more restrictive, as contained in this Ordinance. Such requirements shall include but not be limited to those pertaining to area, building height, parking, signs, setback, and screening.

**B. Expansion of a Structure**

A structure that does not conform with the setback, building coverage, building height, or other dimensional regulations of the district in which it is located may be extended along the existing building line, provided the extension or addition does not increase the nonconformity and is no closer to the side, rear, or front boundary line than the existing nonconforming structure. Where a variance is sought, in no case shall a nonconforming expansion be permitted to exceed twenty-five (25) percent of the ground floor area of the existing structure.

***SECTION 1603 USE OF A NONCONFORMING LOT***

The following provisions shall apply to the use of a nonconforming lot:

- A. No nonconforming lot shall be reduced in size. An owner of two or more contiguous lots at the time of the effective date of this Ordinance which, when combined, would create a lot of conforming size, shall be required to combine such lots to create conforming lots prior to the issuance of a building permit.
- B. A building may be altered or erected on any nonconforming lot which was lawful when created and which, prior to the effective date of this Ordinance, was in separate ownership duly recorded by plan or deed, subject to the following provisions:
  1. Where all applicable setbacks of the existing zoning district can be met, construction shall be permitted by right, following the issuance of the required building permit.
  2. Where applicable setbacks cannot be met by the proposed building, construction shall only be permitted when a special exception is authorized by the Zoning Hearing Board.
  3. In all cases, the use of the nonconforming lot shall be required to conform to the permitted uses within the district in which the nonconforming lot lies.

### **SECTION 1604 USE OF LAND**

The following provisions shall apply to the nonconforming use of land:

- A. Any lawful nonconforming use of land, exclusive of buildings and the uses contained therein, may be extended when authorized by special exception on the lot upon which it exists at the time of the effective date of this Ordinance. Expansion of a nonconforming use within a structure shall be subject to the provisions of Section 1602, above.
- B. Such extension shall conform to the area and bulk requirements and to applicable sections of this Ordinance.
- C. The extension of a nonconforming use on a lot shall be limited to the lot upon which the nonconforming use was located on the effective date of this Ordinance.

### **SECTION 1605 CHANGE OF NONCONFORMITY**

The following provisions shall apply to changes in a nonconforming use, structure, lot, or sign:

- A. **Change of a Nonconforming Use**
  - 1. Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use.
  - 2. A nonconforming use may be changed to another nonconforming use at the request of the owner only when the following conditions are met:
    - a. Such change shall be permitted only as a special exception by the Zoning Hearing Board.
    - b. The applicant shall demonstrate that a nonconforming use cannot reasonably be changed to a use permitted by right.
    - c. The applicant shall demonstrate that the proposed change will have no greater external effects than the existing nonconforming use with respect to:
      - 1) Traffic generation and congestion, including truck, passenger car, and pedestrian traffic.
      - 2) Noise, smoke, dust, fumes, vapors, gases, heat, odor, glare, vibration, or visual impact.

- 3) Storage and waste disposal.
- 4) The height, area, and volume of the structure.

**B. Change of a Nonconforming Structure, Lot, or Sign.**

Once changed to conforming conditions, no structure, lot, or sign shall be permitted to revert to nonconforming conditions.

***SECTION 1606 RESTORATION***

A nonconforming building wholly or partially and involuntarily destroyed by fire, explosion, flood, or other phenomenon, or legally condemned may be reconstructed and used for the same nonconforming use provided that:

- A. The reconstructed building shall not exceed in height, area, and volume the building destroyed or condemned.
- B. The building reconstruction shall be commenced within one (1) year from the date the building was destroyed or condemned, and shall be completed within one (1) year of the starting date.
- C. Any reconstruction in the Flood Hazard District shall comply with the requirements of Article XI of this Ordinance.
- D. Nothing in this Ordinance shall prevent the strengthening or restoration to a safe condition of any walls, floor, foundation, or roof which has been declared unsafe by the Borough building inspector.

***SECTION 1607 ABANDONMENT***

If a nonconforming use of a building ceases for a continuous period of one (1) year or more, or when a nonconforming use of land ceases for any reason, subsequent use of such building or land shall be in conformity with the provisions of this Ordinance. For the purposes of this Ordinance, abandonment shall commence when the nonconforming use ceases. The burden of proof for determining the date of abandonment shall be on the applicant.

***SECTION 1608 NONCONFORMING SIGNS***

Nonconforming signs shall be subject to the requirements of Section 1508 of this Ordinance.