

ARTICLE 22
NONCONFORMING LOTS, NONCONFORMING USES OF LAND,
NONCONFORMING STRUCTURES AND NONCONFORMING USES
OF STRUCTURES AND PREMISES

SECTION 22.00 INTENT

1. Legal Nonconformities

It is recognized that there exists within the districts established by this Ordinance and subsequent amendments, lots, structures, and uses of land and structures which were lawful before this Ordinance was passed or amended which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit legal nonconforming lots, structures, or uses to remain until they are discontinued or removed but not to encourage their survival. Where discontinuance or removal is not considered feasible, this ordinance is intended to gradually allow the improvement of such non-conformities to a more conforming status. A nonconforming use of a structure, a nonconforming use of land, or a combination thereof shall not be extended, enlarged, expanded or replaced, except as provided herein, and shall not be used as grounds for adding other non-conforming uses, building or structures.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.

2. Illegal Nonconformities

Any lot, use, building structure or any combination thereof that was not lawful at the date of adoption of this Ordinance or any amendments shall be classified as a illegal nonconformity and shall not receive any of the rights, privileges or protection conferred by this Article. Such illegal nonconformity shall be in violation of this Ordinance and shall be terminated and removed.

SECTION 22.01 NONCONFORMING LOTS OF RECORD

In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory buildings may be erected, modified or expanded on any single lot of record at the effective date of adoption or amendment of this Ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district; provided that yard dimensions and other requirements not involving area or width or both, of the lot shall conform to the regulations for the district in which such lot

is located. A reduction of minimum setback requirements shall only be permitted upon granting of a variance by the Board of Zoning Appeals, in accordance with the provisions of Article 20.

If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements for lot width and area as established by this Ordinance, the lands involved shall be considered to be an undivided parcel for the purpose of this Ordinance, and no portion of said parcel shall be used or occupied which does not meet lot width and area requirements established by this Ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this Ordinance.

Upon application to the Township Board, the Board may, at its sole discretion, permit the combination, in whole or in part, of nonconforming lots of record into building sites less than the size requirements provided in this Ordinance. Said application shall be filed with the Township Clerk on forms provided by the Township. Approval of any such application shall be subject to the following provisions:

1. Any newly created lot must be capable of accommodating a structure that is in conformance with the building area, setback, and side yard requirements set forth in this Ordinance.
2. Any lot created under these provisions shall be at least sixty (60) feet in width.
3. In the event that a lot created under these provisions is less than 12,500 square feet in area, then any structure constructed on the lot shall have direct hookup to a public sanitary sewer system.

SECTION 22.02 NONCONFORMING USES OF LAND

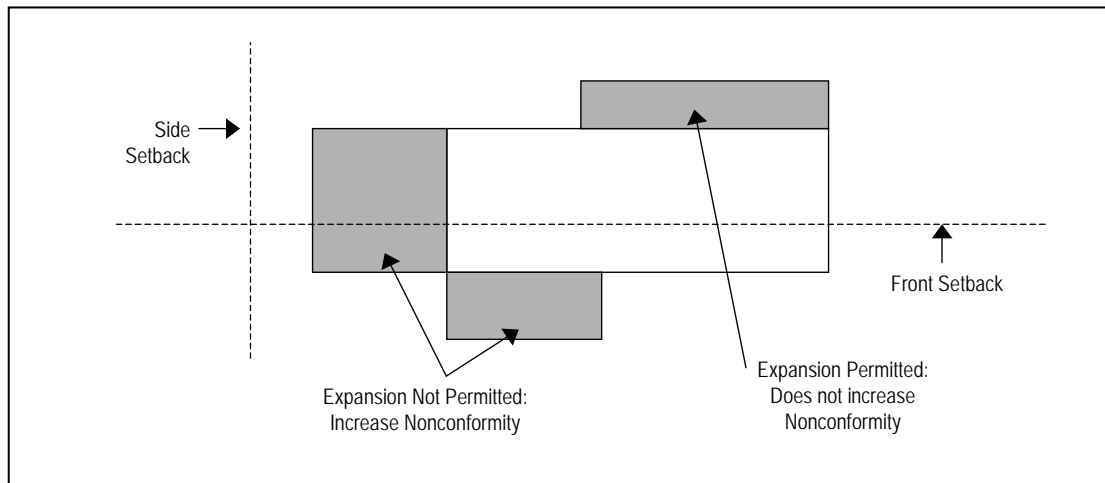
Where, at the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is made no longer permissible under the terms of this Ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

1. No such use may be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
2. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance;
3. If such nonconforming use of land ceases for any reason for a period of more than six (6) consecutive months or for eighteen (18) months during any three (3) year period, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located.

SECTION 22.03 NONCONFORMING STRUCTURES

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such structure may be enlarged or altered in a way which increases its nonconformity. If the nonconforming structure is a sign, it shall not be structurally altered so as to prolong the life of the sign or as to change the shape, size, type, or design of the sign. The following graphics provide examples of permitted expansions or alterations under this section.



2. Should such structure be destroyed by any means to an extent of more than fifty (50) percent of its replacement costs, exclusive of the foundation, it shall be reconstructed only in conformity with the provisions of this Ordinance.
3. Single-family residential dwellings located in a Local Commercial or General Commercial District, (C-1 or C-2), constructed prior to the adoption of this Ordinance, are exempt from the reconstruction requirements of 22.03(2) and are permitted to be rebuilt as single-family residential dwelling upon their existing foundations. *(ADOPTED JAN 27 2013)*
4. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is removed.
5. In the event of more than one nonconforming structure, no change shall be allowed for one structure unless all structures are made conforming or substantially conforming. Provided however, if the structure is a single-family dwelling, and if the structure complies with the required front yard set-back, upon written application, the Township Board may approve a modification or addition to the dwelling, if after taking into account the following factors, the Township Board is satisfied that approval of the application, with or without conditions, or approval of something less

than is requested, would be reasonable and provide substantial justice to the adjacent property owners as well as the applicant.

- A. The size of the parcel and the size of surrounding parcels and the zoning requirements.
- B. The location and size of structures on the parcel, as well as the location and size of structures on immediately adjacent parcels, and the zoning requirements.
- C. The nature of the area and the density of structures and of the population in terms of being isolated or rural or a developed subdivision, etc.
- D. The use of the parcel at issue and Township policy as set forth in the ordinance.

Any decision of the Township Board may be appealed to the Zoning Board of Appeals within 21 days of the approval of the minutes relative to the meeting where the application was acted upon by the Township Board.

SECTION 22.04 NONCONFORMING USES OF STRUCTURE AND LAND

If a lawful use of a structure, or of structure and land in combination, exists at the effective date of adoption or amendment of this Ordinance, that would not be permitted in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- 1. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located. If the nonconforming structure is a sign, it shall not be structurally altered so as to prolong the life of the sign or so as to change the shape, size, type, or design of the sign.
- 2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, and which existed at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.
- 3. If no structural alterations are made, any nonconforming use of a structure, or structure and land in combination, may be changed to another nonconforming use of the same or a more restricted classification provided that the Board of Appeals, either by general rule or by specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Appeals may require conditions and safeguards in accord with the purpose and intent of this Ordinance, where a nonconforming use of a structure, land, or structure and land in combination is hereafter changed to a more conforming use, it shall not thereafter be changed to a less conforming use.
- 4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the

district in which such structure is located, and the nonconforming use may not thereafter be resumed.

5. When a nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for six (6) consecutive months or for eighteen (18) months during any three (3) year period, the structure, or structure and land in combination, shall not hereafter be used except in conformance with the regulations of the district in which it is located. Structures occupied by seasonal uses shall be excepted from this provision.
6. Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

SECTION 22.05 REPAIRS AND MAINTENANCE

On any nonconforming structure, or in any building devoted in whole or in part to any nonconforming use, ordinary repairs, or work on the repair or replacement of nonbearing walls, fixtures, wiring or plumbing may be done, provided however, neither the cubic content of the structure nor its square or cubic footage, as it existed at the time of becoming nonconforming, shall be increased, except as may be allowed by Section 22.03(4).

SECTION 22.06 OWNERSHIP

There may be a change of tenancy, ownership or management any existing nonconforming uses of land, structures and land in combination, provided there is no change in the nature of such nonconforming uses.

SECTION 22.07 CLASSIFICATION OF NONCONFORMING USES

1. Class A Nonconforming Uses
Class A nonconforming uses and structures are those which have been designated by the Zoning Board of Appeals after application by any interested person or the Building Inspector upon findings that (1) continuance thereof would not be contrary to the public health, safety or welfare, (2) that the use or structure does not and is not likely to significantly depress the value of nearby properties, (3) that the use or structure was lawful at the time of its inception, and (4) that no useful purpose would be service by strict application of the provisions or requirements of this Ordinance with which the use or structure does not conform.
2. Procedures for Obtaining Class A Designation, Conditions
 - A. A written application shall be filed with the Township Clerk including the name and address of the applicant, a legal description of the property to which the application pertains and any other information as may be necessary to enable the Zoning Board of Appeals to make a determination of the matter. The Zoning Board of Appeals may require additional information as it considers necessary. The notice and hearing procedure before the Zoning Board of Appeals shall be the same as in the case of an application for a variance. The decision shall be in writing and shall set forth the findings and reasons on which it is based.

- B. Conditions may be attached, including any time limits, where necessary to assure that the use, building or structure does not become contrary to the public health, safety or welfare or the spirit and purpose of this Ordinance.
 - C. No vested interest shall arise out of a Class A designation.
3. Revocation of Class A Designation
Any Class A designation shall be revoked, following the same procedure required for designation upon a finding that as a result of any change of conditions or circumstances the use or structure no longer qualifies for Class A designation.
4. Regulations Pertaining to Class A Nonconforming Uses and Structures
- A. No Class A nonconforming use of land, buildings or structures shall be resumed if it has been, for any reason discontinued for a continuous period of at least twelve (12) months or if it has been changed to a conforming use for any period.
 - B. An individual Class A use or structure may be used, altered or enlarged provided that it does not violate any condition imposed by the Board of Appeals at the time of its designation.
 - C. The expansion of all Class A nonconforming uses, except those used as single family dwellings, shall require site plan approval by the Planning Commission prior to the issuance of a building permit. Refer to Section 17.00 of this Ordinance for site plan review regulations.