

# **CHAPTER 10. NONCONFORMITIES**

## **10.1. PURPOSE**

Within the districts established by this zoning code, some lots, uses of land or structures, or combinations thereof may exist which were lawful prior to the effective date or amendment of this zoning code, but that are prohibited, regulated, or restricted under the terms of this amended zoning code. The purpose of this chapter is to outline provisions related to the continuance of those existing uses, lands, and structures.

## **10.2. GENERAL PROVISIONS**

- 10.2.1.** The lawful use of any dwelling, building, structure, or of any land or premises as existing and lawful at the time of enactment of this zoning code may be continued although such use does not conform to the provisions of this zoning code.
- 10.2.2.** Passage of this zoning code in no way legalizes any illegal uses existing at the time of its adoption.
- 10.2.3.** Normal maintenance and incidental repair or replacement, and installation or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use or structure.

## **10.3. NONCONFORMITIES AND VARIANCES**

- 10.3.1.** Whenever a nonconforming use has been changed to a conforming use, such use shall no longer be defined as a nonconforming use.
- 10.3.2.** The granting of a variance for a lot, site, or structure that would otherwise comply with this code shall not create a nonconformity upon the approval of the variance.
- 10.3.3.** When a property owner or authorized agent is granted a variance for a nonconforming lot, site, or structure that addresses the nonconformity, the lot, site, or structure shall no longer be considered nonconforming.
- 10.3.4.** If a property owner or authorized agent is granted a variance for a nonconforming lot, site, or structure that addresses some nonconformities but additional nonconformities continue, the lot, site, or structure shall still be considered a legal nonconformity.

## **10.4. NONCONFORMING USES**

- 10.4.1.** An existing building or premises devoted to a use that is not permitted by this zoning code in the applicable zoning district, except when required to do so by law or order, shall not be enlarged, extended, reconstructed, substituted or structurally altered, unless the use thereof is changed to a use permitted in the applicable zoning district, or unless approved by the BZA.
- 10.4.2.** If no structural alterations are made, a nonconforming use of a building or premises may be changed to another nonconforming use of the same or more restrictive classification, provided that the change is less offensive to adjacent properties, and the proposed use is desirable to the township as determined by the BZA.

**10.4.3.** Whenever a nonconforming use has voluntarily been changed to a conforming use (i.e., a use that is permitted within the applicable zoning district), such use shall be deemed conforming and shall not be changed back to the previous nonconforming use.

**10.4.4.** Whenever a nonconforming use has been changed to a more restrictive classification of use, such use shall not be changed thereafter to a less restrictive use.

#### **10.4.5. Termination of Use through Discontinuance**

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If the legally nonconforming use of any building, structure, or of any land or premises is voluntarily discontinued for 24 continuous months or longer, any future use thereof shall be in conformity with the provisions of this zoning code. Discontinued shall mean that the structure has remained vacant, unoccupied, unused or has ceased the daily activities or operations which had occurred.

#### **10.4.6. Damage or Destruction of a Structure Containing a Nonconforming Use**

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- A.** When a building or structure, the use of which does not conform to the provisions of this zoning code, is damaged by fire, explosion, Act of God, or a public enemy, it may be restored.
- B.** In the event that any structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means not covered by [Subsection 10.4.6.A](#) above, to the extent of more than 50 percent of the market value as established by the Warren County Auditor's Office, such structure shall not be restored unless the structure and the use will conform to all regulations of the applicable zoning district.
- C.** When such damage or destruction is 50 percent or less of the market value as established by the Warren County Auditor's Office, such structure may be repaired and reconstructed and used for the same purposes and to the same extent as it was before the damage or destruction, provided that such repair or reconstruction is commenced and completed within 24 months of the date of such damage or destruction. The BZA may impose such reasonable conditions as may be necessary to mitigate the adverse effect of the nonconformity within the district in which such use is located and upon surrounding and neighboring properties.

#### **10.4.7. Expansion of a Nonconforming Use**

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- A.** Notwithstanding the foregoing provisions to the contrary, a structure containing a nonconforming residential use may be increased or improved, regardless of the applicable zoning district, provided the structure continues to be used for residential purposes only and meets all required setbacks.
- B.** Notwithstanding the foregoing provisions to the contrary, a structure containing a nonconforming, nonresidential use, may be increased or improved, regardless of the applicable zoning district, where the owner of such use can demonstrate through application to the BZA that the manner in which the useable area of the nonconforming use will be increased or improved will have minimal adverse impact upon adjacent properties and other permitted land uses in the surrounding neighborhood or can be made compatible with the adjacent properties and the uses in the surrounding neighborhood upon compliance with specified conditions.
- C.** The BZA shall review a request to expand a nonconforming use pursuant to the variance procedure in [Section 3.8 Appeals, Variances, and Conditional Uses](#), and shall be subject to the review criteria of this section.

## **10.5. NONCONFORMING STRUCTURES OR SITES**

- 10.5.1.** Any nonconforming structure or site may be enlarged, maintained, repaired or altered provided, however, that no such enlargement, maintenance, repair or alteration shall either create an additional nonconformity or increase the degree of the existing nonconformity of all or any part of such structure or site, unless otherwise specified in this code.
- 10.5.2.** No nonconforming structure shall be relocated in whole or in part to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the district in which such structure is located after being relocated.

### **10.5.3. Damage or Destruction of a Structure Containing a Conforming Use**

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- A.** When a building or structure that does not conform to the provisions of this zoning code is damaged by fire, explosion, Act of God, or a public enemy, it may be restored.
- B.** In the event that any structure that is devoted in whole to a conforming use is damaged or destroyed, by any means not covered by [Subsection 10.5.3.A](#) above, to the extent of more than 50 percent of the market value as established by the Warren County Auditor's Office, such structure shall not be restored unless the structure will conform to all regulations of the applicable zoning district.
- C.** When such damage or destruction is 50 percent or less of the market value as established by the Warren County Auditor's Office, such structure may be repaired and reconstructed to the same extent as it was before the damage or destruction, provided that such repair or reconstruction is commenced and completed within 24 months of the date of such damage or destruction. The BZA may impose such reasonable conditions as may be necessary to mitigate the adverse effect of the nonconformity within the district in which such use is located and upon surrounding and neighboring properties.

## **10.6. NONCONFORMING LOTS**

- 10.6.1.** All lots of record or subdivisions with preliminary plats or Stage I Sketch Plans approved by the Warren County Regional Planning Commission prior to the effective date of this zoning code, and which approval has not lapsed by reason of inactivity as provided in the "Warren County Subdivision Regulations", shall be controlled by the zoning regulations under which they were approved and shall not be considered as nonconforming.
- 10.6.2.** All existing lots of record prior to the effective date of this zoning code shall be controlled by the zoning regulations under which they were approved and shall not be considered nonconforming.
- 10.6.3.** Where any lot or lots of record exist, as of the effective date of this zoning code, that do not conform to the area and/or frontage requirements of this zoning code, development in accordance with the use and other regulations of the district in which it is located may be permitted on any such lot provided that the lot was subdivided or platted as a separate tax parcel and regardless of whether contiguous parcels are in separate ownership, however, no lot shall be used for if it is found to be less than 40 feet wide. Where a dimensional variance from any minimum yard or setback requirement is necessary to develop on said lot, an application for dimensional variance shall meet the criteria of this section.
- 10.6.4.** If two or more adjacent lots of substandard width for the district in which they are located, belong to one owner, they shall be combined into new lot sizes as follows:

- A.** If the total combined width is less than the required minimum width for one lot for the district in which they are located, they shall be combined to form one lot.
- B.** If the total combined width is greater than the minimum required width for one lot, for the district in which it is located, but not a multiple of said width, it shall be divided into equal width lots of such width as to result in one more lot with the minimum width required in the district in which they are located.

**10.6.5.** The sum of the side yard width of any substandard size lot shall be 30 percent of the width of the lot.

**10.6.6.** The sum of the side yard width of any substandard size lot shall be at least 10 percent of the lot width for any one side yard.

**10.6.7.** The depth of the rear yard of any substandard size lot need not exceed 20 percent of the depth of the lot, but in no case less than 10 percent.

## **10.7. BURDEN OF PROOF**

An applicant for any development review procedure that deals with a nonconforming use shall bear the burden of proof in demonstrating that the use was a legal nonconforming use on the effective date of this zoning code.