

ARTICLE 12 NONCONFORMITIES

SECTION 12.1 PURPOSE, APPLICABILITY, REGISTRATION, AND CONTINUATION AND CHANGE

12.1.1 PURPOSE

It is the purpose of this Article to recognize that if, prior to the adoption of the original Wyalusing Township Zoning Ordinance, as amended, reenacted and replaced, property was used for a then lawful purpose or in a then lawful manner which the Zoning Ordinance would render thereafter prohibited and nonconforming, such property is generally held to have acquired a vested right to continue such nonconforming use or nonconforming structure. Nevertheless, this does not preclude the Township from regulating the change, alteration, reconstruction, reestablishment, extension, destruction and abandonment of nonconforming uses in accord with the Pennsylvania Municipalities Planning Code and general case law.

It is also the purpose of this Article to limit the injurious impact of nonconforming uses and/or structures on other adjacent properties within a particular district and the community as a whole, while recognizing that the change, alteration, reconstruction, reestablishment, or extension of non-conforming uses and/or structures may not be contrary to the public interest or the general purpose of this Zoning Ordinance, when failure to allow such change, alteration, reconstruction, reestablishment, or extension would itself lead to neighborhood or district deterioration.

It is further the purpose of this Article to prescribe those standards which are to be applied by the Township in determining the reasonableness of a proposal to change, alter, reconstruct, reestablish, or extend a non-conforming use. The following are regulations which shall apply.

12.1.2 APPLICABILITY

The provisions and protections of this Article VII shall apply only to those nonconforming lots, structures and uses which legally pre-existed the applicable provisions of this Ordinance, as amended, or which are recognized by Section 12.3 or Section 12.4 of this Article 12. Any lot, structure or use created, constructed or established after the effective date of the original Zoning Ordinance, as amended, reenacted and replaced, which does not conform to the applicable requirements shall be considered an illegal lot, structure or use subject to the penalties prescribed by this Ordinance, and the said lot, structure or use shall not be entitled to any of the protections afforded to legal, pre-existing nonconforming lots, structures or uses.

12.1.3 REGISTRATION

It shall be the responsibility of the party asserting a nonconformity to provide the evidence that the nonconformity is legal. A property owner may request a written statement of nonconformity from the Zoning Officer after providing sufficient evidence. The Zoning Officer may submit any application for a Certificate of Nonconformance to the Planning Commission for the Commission's review and recommendation with regard to the evidence of nonconformity.

12.1.4 CONTINUATION AND CHANGE

A lawful nonconforming lot, structure or use as defined by this Ordinance may be continued and may be sold and be continued by new owners. Any expansion, alteration, extension or change in a nonconformity shall only proceed in compliance with this Article.

SECTION 12.2 DEFINITIONS

12.2.1 NONCONFORMING LOT

Any lot which does not conform with the minimum width, depth and area dimensions specified for the district where such a lot is situated, such lot having been created and recorded in the office of the County Recorder of Deeds prior to the effective date of this Zoning Ordinance, as amended.

12.2.2 NONCONFORMING STRUCTURE

A structure or part of a structure which does not comply with the applicable district limitations on structure size and location on a lot, where such structure lawfully existed prior to the enactment of this Zoning Ordinance, as amended; and including, but not limited to, non-conforming signs.

12.2.3 NONCONFORMING STRUCTURE, ALTERATION OR EXPANSION

As applied to a nonconforming structure, a change or rearrangement in the structural parts or in the existing facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

12.2.4 NONCONFORMING STRUCTURE, RECONSTRUCTION

The rebuilding of a nonconforming structure damaged or destroyed by casualty to the exact or less nonconforming condition which existed prior to the casualty.

12.2.5 NONCONFORMING USE

A use, whether of land or of a structure, which does not comply with the applicable use provisions in this Ordinance or amendments hereto, where such use was Lawfully in existence prior to the enactment of this Zoning Ordinance, as amended.

12.2.6 NONCONFORMING USE, CHANGE

The conversion of a nonconforming use to a different use classification as enumerated on the Schedule in Article III.

12.2.7 NONCONFORMING USE, EXTENSION

The expansion of a nonconforming use throughout the structure which the said use partially occupies; or the expansion of a nonconforming use onto property not already occupied by the said use.

12.2.8 NONCONFORMING USE, REESTABLISHMENT

The reopening or reestablishment of a nonconforming use which has been discontinued by the owner of the said use, such reopening effected prior to the abandonment of the nonconforming use as determined under the provisions of this Zoning Ordinance.

SECTION 12.3 NONCONFORMITIES UNDER DEVELOPMENT

For the purposes of this Article 12, a building, structure or use, legally permitted, planned and substantially under construction in compliance with existing Ordinances prior to the effective date of this Ordinance, or any amendment hereto, and completed within a one-year period after the effective date of this Ordinance or amendment hereto, shall be considered nonconforming.

SECTION 12.4 NONCONFORMITIES BY VARIANCE

A building, structure or use allowed by variance in a district where it is non-conforming with any regulations of this Ordinance, as amended, reenacted and replaced, shall be considered nonconforming for the purposes of this Ordinance.

SECTION 12.5 NORMAL MAINTENANCE AND REPAIR ACTIVITIES

Normal maintenance and repair, such as painting, replacement of siding, and similar activities is allowed, as well as those interior renovations which do not structurally alter the building or area or result in increased use of the building or area, or a change of nonconforming, or otherwise create more incompatibility with the surrounding permitted uses. Such maintenance and repair activities shall, however, shall comply with all other applicable standards and permit requirements of this Ordinance.

SECTION 12.6 CHANGES OF NONCONFORMING USES**12.6.1 CONDITIONAL USES**

All changes of nonconforming uses shall be considered conditional uses subject to the specific procedures and review criteria contained in this Ordinance. A nonconforming use may only be changed to a use of equal or less nonconformity (i.e., more restrictive classification) as determined by the Planning Commission and Board of Supervisors in accord with classification of the uses in the Schedule in Article III Ordinance. The general standard shall be that no change of a nonconforming use shall be permitted if such change will result in the establishment of a use which is materially different from the existing use in terms of negative affects on the community and the long term application of the Zoning Ordinance to eliminate incompatible uses from specific zoning districts. For example, a change from a nonconforming retail store in an R District to a bank may be permitted; however, a change to a manufacturing use would not be permitted.

12.6.2 CONFORMING CHANGES AND CONVERSIONS

- (a) Change - A change in a nonconforming use to a conforming use shall not be considered a conditional use unless the proposed use is classified as a conditional use by the Schedule in Article III this Ordinance. A change of a nonconforming use to a conforming use shall be considered an abandonment of the nonconforming use which shall not thereafter revert to a nonconforming use.
- (b) Conversion - The conversion of a nonconforming use to a nonconforming use of like classification shall not be considered a conditional use. For example, a nonconforming retail establishment selling groceries proposed for conversion to a shoe store would not be considered a change in nonconforming use.

12.6.3 OTHER STANDARDS

All changes to nonconforming uses shall also be subject to all other applicable standards in this Ordinance.

SECTION 12.7 EXTENSION OF NONCONFORMING USES

12.7.1 CONDITIONAL USES

All extensions of nonconforming uses into more area of a structure or onto more area of property shall be considered conditional uses subject to the specific procedures and review criteria contained in Article XI of this Ordinance, and the review factors in §712 of this Article.

12.7.2 EXTENSION ONTO OTHER PROPERTIES IN THE SAME OWNERSHIP; NEW STRUCTURES

Extensions of a non-conforming use shall be on land contiguous to the existing use and shall be limited to the same parcel of property on which the non-conforming use is situated as said parcel existed on record at the time of the adoption of this Ordinance. For any non-conforming uses not involving a non-conforming structure, no new structures shall be permitted as part of an extension.

12.7.3 EXTENSION LIMITATION

An extension of land or structure utilized for a non-conforming use shall be limited to a total increase not to exceed one third (33 and one-third percent) of land area and one third (33 and one-third percent) percent of structure area beyond what existed on the effective date of this Ordinance, as amended. All such extensions of a non-conforming use may be permitted in successive increments for a total up to the increase permitted; and each increment shall be a separate application. Applications for successive increments shall only be entertained by the Township upon the completion of the previously approved addition or extension.

12.7.4 PROHIBITED EXTENSIONS

Should the use proposed for extension be judged by the Township to be of such a nature as to impose health, safety or welfare concerns which cannot be satisfied by the imposition of the conditions permitted under this Ordinance, the requested extension shall be denied. The Board shall, in addition to the other standards in this Ordinance, consider past operating performance in making its decision.

SECTION 12.8 RECONSTRUCTION

12.8.1 TIME LIMIT

If any nonconforming structure or use (see Subsections 12.8.4 below for exception) is damaged up to a maximum of fifty (50) percent of its appraised fair market value as a result of a casualty, it may be restored or reconstructed to its preexisting condition of nonconformity provided:

- (a) The application for a building permit is submitted and the reconstruction is completed within eighteen (18) months of the date of the casualty.
- (b) The nonconformity is not increased and no new nonconformity is created.

12.8.2 PROCEDURE - PERMITS

All applicable permits for the reconstruction of a nonconforming use shall be required. Such reconstruction shall be considered a conditional use if the reconstruction involves a change or extension of use as regulated by Section 12.6 and Section 12.7 of this Ordinance, respectively.

12.8.3 RECONSTRUCTION PROHIBITED

A nonconforming structure that has been damaged or destroyed by more than 50 percent of its appraised fair market value by any cause shall not be rebuilt in any nonconforming manner except as provided for dwellings in §12.8.4. Any structure not reconstructed within the required eighteen-month period shall be deemed abandoned and any subsequent use of the land or structure shall be for conforming purposes only and said use shall in all respects conform to the applicable provisions of this Zoning Ordinance.

12.8.4 DWELLINGS

A destroyed or damaged nonconforming building containing not more than 2 dwelling units may be reconstructed regardless of the percentage of destruction provided:

- (a) The application for a building permit is submitted within 18 months of the date of the casualty.
- (b) The nonconformity is not increased and no new nonconformity is created.

12.8.5 FAIR MARKET VALUE

The applicant shall have the burden of proof to document the percent of the fair market value that was damaged. Such proof shall require an appraisal by a licensed real estate broker with substantial appraisal experience. Fair market value shall be as generally defined by real estate practice.

12.8.6 TIME EXTENSION

The Board of Supervisors may, as a conditional use and if deemed appropriate by the Board in accord with the intent and the conditional use standards of this Ordinance, grant a one-time extension of not more than 1 year for the re-establishment of the nonconforming use. Said extension shall only be considered by the Board upon written application for same submitted by the property owner.

SECTION 12.9 ABANDONMENT AND REESTABLISHMENT OF NONCONFORMITIES

12.9.1 ABANDONMENT

Unless extended in accord with this Section 12.9, if a nonconforming use of land or structure ceases operations, is discontinued, is vacated or is otherwise abandoned for a period of 1 year or more, then this shall be deemed to be an intent to abandon such nonconforming use, and any subsequent use of the land or structure shall be for conforming purposes only and said use shall in all respects conform to the applicable provisions of this Zoning Ordinance. A change of a nonconforming use to a conforming use shall be considered an abandonment of the nonconforming use which shall not thereafter revert to a nonconforming use.

12.9.2 TIME EXTENSION

The Board of Supervisors may, as a conditional use and if deemed appropriate by the Board in accord with the intent and conditional use standards of this Ordinance, grant a one-time extension of not more than 1 year for the re-establishment of the non-conforming use. Said extension shall only be considered by the Board upon written application for same submitted by the property owner.

SECTION 12.10 ALTERATIONS AND EXPANSIONS OF NONCONFORMING STRUCTURES

12.10.1 ALTERATIONS

The alteration or expansion of nonconforming structures shall be permitted only in accord with this Section 12.10.

12.10.2 PROCEDURE - PERMITS

All applicable permits for the alteration or expansion of a nonconforming structure shall be required. Such alteration or expansion shall be considered a conditional use if the alteration or expansion involves a change or extension of a nonconforming use as regulated by §12.6 and §12.12. of this Ordinance, respectively.

12.10.3 NONCONFORMING SETBACKS

In the case of a structure associated with a conforming use where the structure has a nonconforming side or rear yard setback, an extension of the structure may continue along the nonconforming setback, provided the extension projects no farther into the front, side or rear yard setback than the existing structure. Conditional use approval shall not be required and the Zoning Officer may issue the permit as a use permitted by right provided the extension complies with all other applicable requirements of this Ordinance.

12.10.4 INCREASE IN AREA OR BULK NONCONFORMITY

In the case where a proposed alteration or expansion of a nonconforming structure will result in an increased nonconformity of setback, height, lot coverage or other area or bulk standard, a variance shall be required from the Zoning Hearing Board.

SECTION 12.11 USE OF NONCONFORMING LOTS OF RECORD**12.11.1 SINGLE FAMILY DWELLING**

A single-family dwelling may be erected or expanded on any lawful nonconforming lot of record in any District, provided:

- (a) Adjoining Property - The lot owner does not own adjoining property all or part of which can be combined to make the lot conforming.
- (b) Setbacks - The required front setback is maintained as required for the District in which the lot is located, and side and rear yards are maintained in the same proportion as the ratio of the lot size of the nonconforming lot to the lot size requirement for the District. However, no side yard or rear yard shall be reduced to less than fifty (50) percent of the requirement of the District.
- (c) Other Standards - All other applicable standards in this Ordinance are satisfied.
- (d) Water Supply - An adequate water supply is provided in accord with Township and other applicable regulations.
- (e) Sewage Disposal - Sewage disposal is provided in accord with applicable Township and PA DEP requirements.

12.11.2 COMMERCIAL USES

A commercial use may be developed on any lawfully existing nonconforming lot where permitted by the Schedule in Article III provided:

- (a) Adjoining Property - The lot owner does not own adjoining property all or part of which can be combined to make the lot conforming.
- (b) Setbacks - All setbacks normally required in the District are maintained.
- (c) Lot Size Requirement - This Ordinance does not require a lot size for the specific use which is greater than the lot size for the district.
- (d) Water Supply - An adequate water supply is provided in accord with Township and other applicable regulations.
- (e) Other Standards - All other applicable standards in this Ordinance are satisfied.
- (f) Sewage Disposal - Sewage disposal is provided in accord with applicable Township and PA DEP requirements.

SECTION 12.12 REVIEW FACTORS

In addition to all other applicable requirements, the Township shall consider any nonconformity conditional use application in terms of the effect on the following factors:

12.12.1 NUISANCE CONSIDERATIONS

- (a) Traffic generation.
- (b) Noise, dust, fumes, gases, odor, glare, vibration, fire and explosion hazards and other nuisances.
- (c) Amount and nature of outdoor storage.
- (d) Hours of operation.
- (e) Compatibility with the character of the surrounding neighborhood.

- (f) Potential of the expansion to reduce existing congestion and alleviate parking shortages by improved site design, addition of parking and improved loading areas.

12.12.2 SPECIFIC CONSIDERATIONS

- (a) Storage of Materials - There shall be no increase in the amount of materials, supplies and/or products that are stored outside a non-conforming facility, as on a lot in a non-conforming use, excepting those types of uses outlined in Section (b) below.
- (b) Screening - Where the non-conforming activity is one which necessarily results in the storage of large quantities of material, supplies or products outside (such as a sawmill, farm machinery sales operation or similar operation), the use may only be expanded if a solid fence of wood and/or buffer, not less than six (6) feet in height, is present on all sides of the immediate area in use. Stored material shall not exceed the height of the screening material. Yards and buffers shall be provided in accord with Section 11.10.1 of this Ordinance.
- (c) Yards and Setbacks - No addition, change or expansion of a non-conforming use shall further violate setback and/or height regulations of the district in which it is located.
- (d) Parking and Traffic - In no case will a change, addition or expansion of a non-conforming use be allowed which would result in the diversion of traffic, or relocation of a driveway on the site to any point nearer a residential property, or result in violation of any of the parking and unloading requirements of this Ordinance. The Township may require vegetative screening of the parking area from nearby residential areas in accord with Section 11.10.1 of this Ordinance.