

ARTICLE IX - NONCONFORMITIES

9.100 PURPOSE, APPLICABILITY, REGISTRATION, AND CONTINUATION AND CHANGE

9.101 Purpose

It is the purpose of this Article to recognize that if, prior to the adoption of the original Palmyra 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 is 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.

9.102 Applicability

The provisions and protections of this Article IX 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 §9.300 or §9.400 of this Article IX. 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.

9.103 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.

9.104 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.

9.200 DEFINITIONS

9.201 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 Pike County Recorder of Deeds prior to the effective date of this Zoning Ordinance, as amended.

9.202 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.

9.203 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.

9.204 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.

9.205 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.

9.206 Nonconforming Use, Change

The conversion of a nonconforming use to a different use classification as enumerated on the Schedule of Uses of this Zoning Ordinance.

9.207 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.

9.208 Nonconforming Use, Reestablishment

The reopening or reinstatement 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.

9.300 NONCONFORMITIES UNDER DEVELOPMENT

For the purposes of this Article IX, 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.

9.400 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.

9.500 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.

9.600 CHANGES OF NONCONFORMING USES

9.601 Conditional Uses

All changes of nonconforming uses 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 §9.1200 of this Article. 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 of Uses of this 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.

9.602 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 of Uses in 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.

9.603 Prohibited Changes

Changes from one non-conforming residential use to another residential use are prohibited. Changes of non-conforming commercial uses to multi-family residential uses are prohibited. Changes of any non-conforming uses in the Special District are prohibited.

9.604 Other Standards

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

9.700 EXTENSION OF NONCONFORMING USES**9.701 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 §9.1200 of this Article. (See also §9.1004.)

9.702 Extension onto Other Properties of Record in the Same Ownership; New Structures

Extensions of a nonconforming use shall be on land contiguous to the existing use and shall be limited to the same parcel of property on which the nonconforming 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.

9.703 Extension Limitation

In R, MR, S, MP and LW Districts, an extension of land or structure utilized for the non-conforming use shall be limited to a total increase not to exceed twenty-five (25) percent of land and twenty-five (25) percent of structure beyond the existing nonconformity. In CC and HC Districts such extension shall be limited to a total increase not to exceed fifty (50) percent of land and fifty (50) percent of structure beyond the existing nonconformity. 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.

9.704 Prohibited Extensions

Should the use proposed for extension be one which is specifically prohibited as a new use in the Township or is a use judged by the Township to be one similar to such a use or 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 consider past operating performance in making its decision.

9.800 RECONSTRUCTION

9.801 Time Limit

If any nonconforming structure or use is damaged or destroyed 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.

9.802 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 §9.600 and §9.700 of this Ordinance, respectively.

9.803 Extension

The Board of Supervisors may, as a conditional use and if deemed appropriate by the Board in accord with the Township Comprehensive Plan and the standards in §11.800 of this Ordinance, grant a one-time extension of not more than one (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.

9.900 ABANDONMENT AND REESTABLISHMENT OF NONCONFORMITIES

9.901 Abandonment

Unless extended in accord with this §9.900, if a nonconforming use of land or structure ceases operations, is discontinued, is vacated or is otherwise abandoned for a period of eighteen (18) months 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.

9.902 Extension

The Board of Supervisors may, as a conditional use and if deemed appropriate by the Board in accord with the Township Comprehensive Plan and the standards in §11.800 of this Ordinance, grant a one-time extension of not more than one (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.

9.1000 ALTERATIONS AND EXPANSIONS OF NONCONFORMING STRUCTURES

9.1001 Alterations

The alteration or expansion of nonconforming structures shall be permitted only in accord with this §9.1000

9.1002 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 §9.600 and §9.700 of this Ordinance, respectively.

9.1003 Nonconforming Setbacks

A one-time alteration of a residential structure shall be permitted to extend along the non-conforming setback line a distance not to exceed fifty (50) percent of the nonconforming length of the structure as it existed at the effective date of this Ordinance. In the case of a commercial structure an extension of one hundred (100) percent shall be permitted. However, the height of any such residential or commercial extension shall not exceed the lesser of the existing height of the non-conforming structure or the applicable district maximum height.

9.1004 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, no permit shall be issued for the same unless a variance is granted by the Zoning Hearing Board.

9.1100 USE OF NONCONFORMING LOTS OF RECORD

9.1101 Single Family Dwelling

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

- A. Setbacks - The required front setback is maintained at a minimum of twenty (20) feet and side and rear yards are maintained at a minimum of ten (10) feet each.
- B. Lot Coverage - Maximum lot coverage area shall not exceed thirty (30) percent.
- C. Water Supply - An adequate water supply is provided in accord with Township and other applicable regulations.
- D. Sewage Disposal - Sewage disposal is provided in accord with applicable Township and PA DEP requirements.
- E. Shared Well/Sewage - Any on-site sewage disposal system or any well which serves more than one dwelling unit shall not be permitted on a non-conforming lot.
- F. Other Standards - All other applicable standards in this Ordinance are satisfied.

9.1102 Commercial Uses

A commercial use may be developed on any lawfully existing nonconforming lot where permitted by the Schedule of Uses provided:

- A. Setbacks - All setbacks normally required in the District are maintained.
- B. 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.
- C. Water Supply - An adequate water supply is provided in accord with Township and other applicable regulations.
- D. Sewage Disposal - Sewage disposal is provided in accord with applicable Township and PA DEP requirements.
- E. Other Standards - All other applicable standards in this Ordinance are satisfied.

9.1200 REVIEW FACTORS

In addition to the standards in §11.800, Article XI, and other applicable requirements, the Township shall consider any nonconformity conditional use application in terms of the effect on the following factors:

9.1201 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.

9.1202 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 §§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 and nine (9) feet at the maximum. Yards and buffers shall be provided in accord with §7.101 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. Storm water - Storm water shall be controlled pursuant to the Palmyra Township Subdivision Ordinance and any applicable Township storm water management ordinance.
- E. 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. If the total number of parking spaces for the site is to be increased more than twenty-five (25) percent over those available as of the date of the enactment of this Ordinance, the Board of Supervisors may require vegetative screening of the parking area from nearby residential areas.