

## ARTICLE XVII

### NONCONFORMING LAND, BUILDING AND STRUCTURAL USES

#### SECTION 17.01 PURPOSE

It is the intent of this Ordinance to permit the continuance of a lawful use of any building or land existing at the effective date of this Ordinance, although such use of land or structure may not conform with the provisions of this Ordinance. Further, it is the intent of this Ordinance that only existing non-conformities may be enlarged upon, expanded or extended, but shall not be used as grounds for adding other similar structures or uses elsewhere in the same districts. The continuance of all nonconforming uses and structures within the Township shall be subject to the conditions and requirements set forth in this section. *[amended 7-12-00]*

#### SECTION 17.02 CONTINUANCE OF NONCONFORMING USES

*[amended 7-12-00]*

- A. **STRUCTURAL CHANGES:** The building that is nonconforming may be structurally changed, or enlarged, provided the resultant changed, altered or enlarged building conforms to the provisions of this Ordinance for the district in which it is located.
- B. **REPAIRS:** Any lawful nonconforming building may be repaired, reinforced, or reconstructed during its life to correct deterioration, obsolescence, depreciation, and wear, provided that wherever possible, all such repairs shall cause a building or structure to become more conforming.
- C. **ALTERATIONS AND IMPROVEMENTS:** Nothing in this Ordinance shall prohibit the alteration, improvement, or modernizing of a lawful nonconforming building, provided that such alteration will wherever possible increase the conformance of the height, area, bulk, or use of the building.
- D. **PRIOR CONSTRUCTION APPROVAL:** Nothing in this Ordinance shall prohibit the completion of construction and use of a nonconforming building for which a building permit has been issued prior to the effective date of this Ordinance, provided that construction is carried on diligently; and that the entire building shall have been completed according to the plans filed with the permit application within two (2) years after the issuance of the building permit.

#### SECTION 17.03 RESTORATION OF DAMAGE *[amended 1-14-98 & 7-12-00]*

- A. **Restoration:** **Except when the structure is located within a Flood Hazard Boundary**, any lawful nonconforming use damaged by fire, explosion, an act of God, or by other causes may be restored, rebuilt, or repaired provided that the replacement building or structure is substantially of the same size and in essentially the same location

as the damaged building or structure. Significant changes in building or structure size or location shall be permitted subject to the provisions of Section 17.02.

*[amended 6-1-2006]*

B. *Restoration of structures within a Flood Hazard Boundary:* For all structures located within a Flood Hazard Area, any repair, reconstruction or improvement of such structure, the cost of which equals or exceeds 50% of the market value of the structure either, (1) before the improvement or repair started, or (2) if the structure is damaged and is being restored, before the damage occurred, shall comply with the following standards:

1. All new construction, replacement, or improvements of residential structures shall have the lowest floor, including basement, elevated to at least one (1) foot above the base flood level.

2. All new construction, replacements or improvements of non-residential structures shall have either:

a. the lowest floor, including basement, elevated to at least one (1) foot above the base flood level; or

b. be constructed such that below the base flood level, together with utility and sanitary facilities, the structure is watertight with walls substantially impermeable to the passage of water and the structural components having the capability of resisting hydrostatic and hydrodynamic loads and effective buoyancy in full compliance with the state building code.

For the purpose of this section “improvement” is considered to be when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places. *[amended 6-1-2006]*

#### **SECTION 17.04 DISCONTINUANCE OR ABANDONMENT OF NONCONFORMING USE**

Whenever a nonconforming use has been discontinued for two (2) years, such discontinuance shall be considered conclusive evidence of an intention to abandon legally the nonconforming use, unless the Zoning Board of Appeals determines that two (2) years is too restrictive and determines that a longer period of discontinuance is necessary to overcome an unnecessary hardship by granting a variance from the two (2) year limitation. However, if a nonconforming use is converted to either a conforming use or a more conforming use, then the conforming or more conforming use must continue and reversion to the previous or any other nonconforming use shall be prohibited.

**SECTION 17.05 REVERSION TO A NONCONFORMING USE**

If a nonconforming use is changed to a more conforming use or to a use permitted in the district in which it is located, it shall not revert or be changed back to a nonconforming or lesser conforming use.

**SECTION 17.06 DISPLACEMENT OF A CONFORMING USE**

A nonconforming use shall not be extended to displace a conforming use.

**SECTION 17.07 CHANGE TO ANOTHER LESSER NONCONFORMING USE**

The Township Zoning Board of Appeals may authorize a change from one nonconforming use to another nonconforming use, provided the proposed use would be more suitable and of less nonconformance to the zoning district in which it is located than the nonconforming use which it is replacing.

**SECTION 17.08 TERMINATION OF A NONCONFORMING USE**

The nonconforming uses of land, where no building is located, existing at the effective date of this Ordinance may be continued, provided that the nonconforming land use shall be terminated if it is discontinued for a period of one (1) year, unless it is determined by the Zoning Board of Appeals that one (1) year is too restrictive and a longer period of discontinued time is necessary to be provided through the granting of a variance.

**SECTION 17.09 ILLEGAL NONCONFORMING USES**

Those nonconforming uses which are created after the effective date of this Ordinance shall be declared illegal nonconforming uses and shall be discontinued. Uses which were illegal under a prior Ordinance and which do not conform to this Ordinance shall continue to be illegal.

**SECTION 17.10 CHANGES IN ZONING DISTRICT**

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district, the foregoing provisions shall also apply to any existing uses that become nonconforming as a result of the boundary and Zoning District classification changes. *[amended 7-12-00]*

**SECTION 17.11 ELIMINATION OF NONCONFORMING USES**

The Township Board may acquire properties on which nonconforming buildings or uses are located, by condemnation or other means, and may remove such uses or structures. The resultant property may be leased or sold for a conforming use or may be used by the

Township for a public purpose. The net cost of such acquisition may be assessed against a benefit district, or may be paid from other sources of revenue.

#### **SECTION 17.12 NONCONFORMING LOTS AND PARCELS**

- A. Notwithstanding limitations imposed by other provisions of this Ordinance, any permitted use in a district and its customary accessory uses may be erected on any nonconforming lot or parcel of record subsequent to the effective date of adoption or amendment to this Ordinance. This provision shall apply even though such lot fails to meet any of the dimensional requirements for the District in which such lot is located. It is the intent to permit only minimum variances to be granted by the Zoning Board of Appeals upon application by a property owner or a representative of the owner of dimensionally nonconforming lots or parcels.
  
- B. If two (2) or more lots, parcels, or portions of lots are contiguous and in common ownership, and if all or part of the lands 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 purposes of this Article, and no portion of such lots or parcels in common ownership shall be used or occupied except in compliance with the lot width and area requirements of this Ordinance. In addition, no division of such lands shall be made which results in any parcel with width or area below the minimum requirements established by the Zoning District in which the lot or parcel is located. *[amended 2008]*