

ARTICLE XXVI

NONCONFORMING LOTS, BUILDINGS, STRUCTURES AND USES

Section 26.1 Purpose and Intent

- A. **Nonconformities Permitted.** It is recognized that there exist within each zoning district certain lots, buildings, structures, and uses which were lawful before this Ordinance was passed or amended, which would be prohibited, regulated, or restricted under the terms of this Ordinance. It is the intent of this Ordinance to permit nonconforming lots, buildings, structures, and uses to continue until they are removed, but not to encourage their continued use or survival.
- B. **No Expansion of Nonconformities.** Nonconforming lots, buildings, structures, and uses are hereby declared to be incompatible with the Zoning District in which they are located. It is the intent of this Ordinance that these nonconformities shall not be enlarged upon, expanded, or extended, nor be used as grounds for adding other buildings, structures or uses prohibited elsewhere in the Zoning District, except as may be provided for in this Ordinance.
- C. **Construction Prior to Effective Date of this Ordinance.** 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 this Ordinance, or an amendment thereto, and upon which actual building construction has been diligently conducted.
- D. **Acquisition of Nonconformities.** The Township may acquire, through purchase or condemnation, private nonconforming lots, buildings, structures, and uses. The Township Board may take action in the manner provided for by law.

Section 26.2 Nonconforming Lots of Record

- A. **Uses Permitted.** Where an existing lot of record does not meet the minimum requirements for lot area or lot width in this Ordinance, the lot of record may be used for any purposes permitted in the Zoning District. Any side yard requirement for a building or structure may be reduced by the same percentage the area of the lot bears to the Zoning District requirements, provided that no side yard shall be less than 5 feet.
- B. **Contiguous Nonconforming Lots in Common Ownership.** For any 2 or more nonconforming lots of record or combination of lots and portions of lots of record, in existence prior to the effective date of this Ordinance, or an amendment thereto, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance if they:

1. Are in common ownership.
2. Have continuous frontage, and
3. Individually do not meet the lot width or lot area requirements of this Ordinance.

Parcels meeting these requirements shall be combined into a lot or lots complying as nearly as possible to the lot width and lot size requirements of this Ordinance. No portion of that parcel shall be used or divided in a manner that diminishes compliance with lot width and area requirements of this Ordinance.

Section 26.3 Nonconforming Buildings or Structures

- A. **Continuation of Nonconforming Buildings and Structures.** Where a lawful building or structure exists prior to the effective date of this Ordinance, or an amendment thereto, that does not comply with the requirements of this Ordinance because of restrictions such as lot area, coverage, width, height, or yards, that building or structure may be continued so long as it remains otherwise lawful.
- B. **Extensions of Nonconforming Buildings and Structures.** A nonconforming building or structure may not be enlarged or altered in a way that increases its nonconformity, except as noted.

Where the nonconforming setback of a building or structure is equal to or less than $\frac{1}{2}$ of the distance required by this Ordinance, the nonconforming setback may be extended along the same plane as the existing nonconforming setback, provided that in so doing, the setback itself is not further reduced.

The extension of the nonconforming setback of a building or structure shall not be greater than 50 percent of the total length of the existing building side that is to be extended.

- C. **Expansions.** Additions to an existing building, which now exceeds the height limitations of the Zoning District, shall be permitted up to the height of the existing building in those instances in which the lot is large enough to encompass a circular area with a minimum radius equal to the height of the new addition.
- D. **Reconstruction or Movement.** Should a nonconforming building or structure be destroyed to an extent of more than 55 percent of its replacement cost, exclusive of the foundation, using estimates from at least two (2) licensed building contractors, it shall be reconstructed only in conformance with the provisions of this Ordinance.

Should a nonconforming building or structure be destroyed to an amount equal to or less than 55 percent of its estimated replacement cost, exclusive of the foundation, it may be reconstructed in its previously nonconforming location.

Should a nonconforming building or structure be moved, whether that move is within the existing lot or to a different lot, it shall be moved to a location that complies with the requirements of this Ordinance.

Section 26.4 Nonconforming Uses

- A. **Enlargement or Increase of a Nonconforming Use.** Nonconforming uses shall not be enlarged or increased, nor extended to occupy a greater area of land than was occupied prior to the effective date of this Ordinance, or an amendment thereto, except as may be permitted by the Zoning Board of Appeals in determining that the proposed enlargement, increase, or greater area shall:
1. Not have a substantial detrimental effect on the use and enjoyment of adjacent uses or lots;
 2. Comply with all parking, sign, or other applicable regulations for accessory uses for the area affected by the proposed enlargement, increase, or greater area;
 3. Comply with any reasonable conditions imposed by the Zoning Board of Appeals that are necessary to ensure that the proposed enlargement, increase, or greater area shall not prove detrimental to adjacent properties, the neighborhood, or the community; and
 4. Not be larger than 25 percent of the original nonconforming area.
- B. **Extension within a Building.** Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for that use at the time of adoption or amendment of this Ordinance, but the uses shall not be extended to occupy any land outside the building.
- C. **Reduction in a Nonconforming Use.** If any part of a nonconforming use is moved or reduced in size by action of the owner, the part of the nonconforming use that is moved or reduced in size shall be considered to be abandoned and any subsequent use shall conform to the requirements of this Ordinance.
- D. **Abandonment of a Nonconforming Use.** If a nonconforming use is abandoned for any reason for a period of more than 6 calendar months, any subsequent use shall conform to the requirements of this Ordinance, except when an extension is granted by the Zoning Board of Appeals as provided in Section 27.8 herein. A nonconforming use shall be determined to be abandoned if the use has ceased for 6 months or one or more of the following conditions exist that demonstrate intent on the part of the property owner to abandon the nonconforming use:

1. 1 or more utility meters, such as water, gas and electricity to the property, have been removed;
 2. The property, buildings or grounds are unsafe or unsanitary.
 3. Cessation of business operations;
 4. Removal of equipment, materials or fixtures necessary appurtenant to the use;
 5. Signs or other indications of the existence of the nonconforming use have been removed;
 6. Failure to maintain current licenses, certificates, registrations or other appropriate documentation for the use; or
 7. Other actions, which in the opinion of the Zoning Administrator, constitute an intention on the part of the property owner or lessee to abandon the nonconforming use.
- E. **Extensions.** Upon request, the Zoning Board of Appeals may approve an extension of up to an additional 6 calendar months where a property owner can demonstrate a good faith effort to sell or lease the premises to another, similar use prior to determining abandonment.
- F. **Change to Other Nonconforming Use.** A nonconforming use may be changed to another nonconforming use provided the Zoning Board of Appeals makes all of the following determinations:
1. The proposed use shall be as compatible as, or more compatible with, the surrounding neighborhood than the previous nonconforming use.
 2. The proposed nonconforming use shall not be enlarged or increased, nor extended to occupy a greater area of land than the previous nonconforming use, except as otherwise permitted by this Article.
 3. That appropriate conditions of approval and safeguards are provided that ensure compliance with the intent and purpose of this Ordinance.
- G. **Two-Family Dwellings.** Two-family dwellings that were lawfully in existence prior to the effective date of this Ordinance may continue to exist as permitted uses in any Residential Zoning District, provided:
1. There is no increase in size, alteration or change to the building or structure, external or internal, other than general maintenance;
 2. All equipment or fixtures that are necessary for the operation of the second dwelling unit remain in place, and
 3. If served by on-site wastewater disposal, the system is maintained in accordance with Barry-Eaton District Health Department requirements.

Section 26.5 Nonconforming Parking Areas

Whenever a building floor area expansion is proposed, on-site parking areas that are nonconforming by reason of required number of spaces, internal

landscaping, setback, lighting or other requirement of this Ordinance, must be modified to conform to requirements of this Ordinance.

Section 26.6 Nonconforming Landscaping

Whenever a building floor area expansion is proposed, on-site nonconforming landscape or screening must be modified to conform to requirements of this Ordinance.

In all instances, required screening walls for waste receptacles, fencing of outdoor storage or screening from adjacent residential uses shall be provided.

Section 26.7 Nonconforming Lighting

Whenever a building floor area expansion is proposed, sites that have nonconforming lighting by reason of fixture type or height, coverage, or other requirement of this Ordinance, must fully comply with lighting requirements of this Ordinance.

26.8 Nonconforming Signs *(See Section 24.13 for regulations pertaining to nonconforming signs.)*

26.9 Nonconforming Communication Towers

- A. **Pre-existing Towers.** A tower approved prior to the effective date of this Ordinance or an amendment thereto, shall be permitted to continue its use. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted.
- B. **Co-Locations.** Co-locations on nonconforming towers shall be permitted.
- C. **Damaged or Destroyed Towers or Antennas.** Nonconforming towers or antennas that have been damaged or destroyed may be rebuilt. The height, location and type of tower shall be the same as the original facility approved. Building permits to rebuild the facility shall be obtained within 120 days from the date the facility is damaged or destroyed. If no permit is obtained, or if the permit expires, then the tower or antenna shall be deemed abandoned.

Sections 26.10 – 26.99 *[Reserved]*