

ARTICLE 10.00 – NONCONFORMITIES

Section 10.01 Intent

Nonconformities are uses, structures, buildings, or lots which do not conform to one or more provisions or requirements of this Ordinance or a subsequent amendment, but which were lawfully established prior to the time of adoption of the Ordinance or amendment. Such nonconformities are not compatible with the current or intended use of land in the district in which they are located. Therefore, it is the intent of this Ordinance to permit such nonconformities to continue under certain conditions, but to discourage their expansion, enlargement, or extension. Accordingly, the purpose of this section is to establish regulations that govern the completion, restoration, reconstruction, extension, and/or substitution of nonconformities, and to specify the circumstances and conditions under which nonconformities shall be permitted to continue.

- A. Within the zoning districts established by this Ordinance and its predecessors, there exist lots, structures and uses which may have been lawful at the time the ordinance came into effect, but which would be prohibited, regulated or restricted under its present terms. Such lots, structures and uses are called “nonconforming”, ie. they do not conform to the requirements of the ordinance or its amendments. The nonconforming characteristics of these lots, structures and uses may also be known as “nonconformities”.
- B. Since such nonconformities tend to disrupt the harmony of neighborhoods and adversely affect the public health, safety and welfare, it is the intent of this Ordinance to permit them to exist only conditionally. Thus, the continuance of nonconformities is discouraged and most changes to lots, structures and uses shall, if possible, eliminate the nonconformity. Nevertheless, proposed changes which would not increase the degree of nonconformity may be accommodated.
- C. It is further the intent of this Ordinance that the nonconforming characteristics of nonconforming lots, structures and uses shall not be enlarged upon, expanded or extended, nor shall they be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.
- D. To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building for which a building permit has been issued and on which actual construction shall have been diligently carried on for 30 days preceding the date of adoption of this Ordinance. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation, demolition, or removal of an existing building has been substantially begun preparatory to rebuilding, such activity

Pine Grove Township Zoning Ordinance

shall be deemed to constitute actual construction, provided that works shall be carried on diligently.

E. The following table summarizes the nonconforming regulations contained in this Article:

Summary of Nonconformity Regulations

| <i>Issue</i> | <i>Requirements</i> |
|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| Period of non-use before nonconformity must cease | Nonconforming use of open land: 180 days Nonconforming use of structure or building: 12 months |
| Establishment of new conforming use | Nonconforming use must cease |
| Change in ownership | No effect on nonconformity |
| Nonconforming single family use | May be enlarged, subject to conditions (see 10.03 H.) |
| Nonconforming contiguous lots under same ownership | Must be combined if vacant |
| Expansion of nonconforming use within building | Permitted subject to conditions |
| Expansion of nonconforming use beyond existing building | Not permitted |
| Enlargement of nonconforming structure | Not permitted |
| Maintenance; structural repairs | Generally permitted (see 10.05 C.) |
| Renovation; modernization | Maximum value: 50% of assessed value |
| Rebuilding after catastrophe | Permitted if damage is less than 50% of pre-catastrophe fair market value (except as permitted in 10.03 G.) |

Section 10.02 Definitions

For the purposes of this Article, the following words and phrases shall have the meaning ascribed to them:

Pine Grove Township Zoning Ordinance

A. Effective Date

Whenever this Article refers to the "effective date," the reference shall be deemed to include the effective date of any amendments to this Ordinance if the amendments created a nonconforming situation.

B. Nonconforming Building or Nonconforming Structure

A building, structure, or portion thereof that does not meet the limitations on building size, location on a lot, or other regulations for the district in which such building or structure is located.

C. Nonconforming Lot

A lot existing at the effective date of this Ordinance, or amendments thereto, that does not meet the minimum area or dimensional requirements of the district in which the lot is located.

D. Nonconforming Sign

A sign that on the effective date of this Ordinance does not conform to one or more regulations set forth in the Ordinance.

E. Nonconforming Use

A use which was lawfully in existence at the effective date of this Ordinance, or amendment thereto, and which does not now conform to the use regulations of this Ordinance for the zoning district in which it is now located.

F. Structural Nonconformity

A nonconformity that exists when the height, size, or minimum floor space of a structure, or the relationship between an existing building and other buildings or lot lines, does not conform to the standards of the district in which the property is located. Also sometimes referred to as a *dimensional nonconformity*.

Section 10.03 General Requirements

The following regulations shall apply to all nonconforming uses, structures, and lots:

Pine Grove Township Zoning Ordinance

A. Continuation of Nonconforming Uses and Structures

Any lawful nonconforming use existing on the effective date of this Ordinance or amendment thereto may be continued and shall not be considered to be in violation of this Ordinance, provided that (unless otherwise noted in this Article) the use shall not be enlarged or extended to occupy a greater area of land, nor moved in whole or in part to another portion of the lot. A nonconforming use may not be changed to another nonconforming use. Whenever a nonconforming use has been changed to a conforming use, such use shall not thereafter be re-established.

Any lawful building or structure existing on the effective date of this Ordinance or amendment thereto may be continued and shall not be considered in violation of this Ordinance, provided that (unless otherwise noted in this Article) the building or structure involved shall not be structurally altered, enlarged, or moved unless such modifications conform to the provisions of this Ordinance for the district in which it is located.

Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by an official charged with protecting the public safety, upon order of such official.

B. Buildings Under Construction

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been diligently carried on. "Actual construction" is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has begun preparatory to rebuilding, such work shall be deemed to be actual construction, provided that such work shall be diligently carried on until completion of the building involved.

C. Discontinuation of Nonconforming Uses

1. Nonconforming Uses of a Structure

When a nonconforming use of a structure, or structure and land in combination, is discontinued or abandoned for 12 consecutive months without a present intention to reinstate the nonconforming use, the structure (or structure and land in combination) shall not thereafter be used except in conformance with the provisions of the district in which it is located.

2. Nonconforming Uses of Open Land

If any nonconforming use of open land ceases for any reason for a period of more than 180 days, any subsequent use of such land shall conform to the provisions set forth of the district in which it is located.

3. Seasonal Uses

In applying this subsection to seasonal uses, the time during the off-season shall not be counted.

D. Purchase or Condemnation

In order to accomplish the elimination of nonconforming uses and structures which constitute a nuisance or are detrimental to the public health, safety and welfare, Pine Grove Township may acquire, by purchase, condemnation or otherwise, private property for the purpose of removal of nonconforming uses pursuant to Section 208(3) of Public Act 110 of 2006, as amended.

E. Recording of Nonconforming Uses and Structures

The Township shall be responsible for maintaining records of nonconforming uses and structures as accurately as is feasible, and for determining legal nonconforming uses and structures in existence on the effective date of this Ordinance. Failure on the part of a property owner to provide the Township with necessary information to determine legal nonconforming status may result in denial of required or requested permits.

F. Change of Tenancy or Ownership

In the event there is a change in tenancy, ownership, or management, an existing nonconforming use or structure shall be allowed to continue provided there is no change in the nature or character of such nonconformity.

G. Unlawful Nonconformities

No building, structure, or use shall be permitted to continue in existence if it was unlawful at the time it was established.

H. Nonconforming Single-Family Uses

Notwithstanding the limitations outlined in this article, any structure used for single family residential purposes and maintained as a nonconforming use may be replaced with a similar structure of a larger size, so long as the enlargement or replacement does not

create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements.

I. Change of Location

Should a nonconforming structure be moved to another parcel or to another location on the same parcel for any reason whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

Section 10.04 *Nonconforming Lots of Record*

The following regulations shall apply to any nonconforming lot of record or nonconforming lot described in a deed or land contract executed and delivered prior to the effective date of this Ordinance or amendment thereto:

A. Use of Nonconforming Lots

Any nonconforming lot shall be used only for a use permitted in the district in which it is located. Notwithstanding limitations imposed by other provisions of this Ordinance, a permitted use may be erected on any single lot of record in existence at the effective date of adoption or amendment thereto. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, provided that the lot can be developed as proposed without any significant adverse impact on surrounding properties or the public health, safety, and welfare.

B. Area and Bulk Requirements

No division of any parcel shall be made which creates a lot with area or frontage less than the area or bulk requirements of this Ordinance for the zoning district in which it is situated. If the use of nonconforming lot requires a variance from the area or bulk requirements, then such use shall be permitted only if a variance is granted by the Zoning Board of Appeals.

C. Nonconforming Contiguous Lots Under the Same Ownership

If a nonconforming lot of record abuts one or more nonconforming lots of record in the same ownership, such lots shall be combined and considered as one lot for the purposes of this Ordinance. No portion of the combined lots shall be used, occupied, or sold in a manner which diminishes compliance with lot area or frontage requirements of this Ordinance, nor shall any division of the combined lot be made which creates a lot with area or frontage less than the requirements stated in this Ordinance. These provisions shall not apply to contiguous lots in single ownership where each of the lots is occupied by an existing home.

D. Combination of Nonconforming Lots

The Township Assessor may permit the combination, in whole or in part, of nonconforming lots of record into building sites less than the size requirements established by this Ordinance, provided that the combination of lots reduces the degree of nonconformity and results in a parcel which is capable of accommodating a structure that is in conformance with the building area and setback requirements of this Ordinance.

Section 10.05 Modification to Nonconforming Uses or Structures

No nonconforming use or structure shall be enlarged, extended, or structurally altered, nor shall any nonconformity be changed to a different nonconformity which increases the intensity of use or nonconformity, except as permitted in this Section.

A. Enlargement, Extension, or Alteration

1. Nonconforming Use

The area, density, and/or manner of operation of a nonconforming use shall not be altered by expansion, extension, or enlargement. Any such alteration shall be determined to result in an increase in nonconformity.

2. Nonconforming Building/Structure

A nonconforming building/structure shall not be altered by expansion, extension, or enlargement unless a special land use permit is granted pursuant to Article 12.00. Any such alteration shall not result in an increase in any nonconformity.

B. Repairs, Improvements, and Modernization

1. Such ordinary repairs and maintenance work as may be necessary to keep a nonconforming use or building/structure in sound condition or as may be required to conform with federal, state or local law, may be made provided that no such work shall expand, extend or enlarge the nonconforming use or building/structure.

2. If a nonconforming use or building/structure is damaged or destroyed by fire, flood, wind, or other calamity to the extent of 50 percent or more of its fair market value at the time of such damage or destruction, said use or building/structure shall not be continued or reestablished unless a special land use permit is granted pursuant to Article 7.00. Any such replacement shall not result in an increase in nonconformity.

Pine Grove Township Zoning Ordinance

3. If a nonconforming use or building/structure is damaged or destroyed by fire, flood, wind, or other calamity to the extent of less than 50 percent of its fair market value at the time of such damage or destruction, the use or building/structure may be repaired or otherwise restored and reconstructed so as to be no more nonconforming than at the time of the damage or destruction. Any such reconstruction right shall be considered terminated by abandonment if reconstruction is not started within 12 months from the time of the damage or destruction and completed within 18 months from the time the building permit is issued.