

# ARTICLE 8 NONCONFORMITY

## SECTION 800 PURPOSE

The purpose of this article is to protect the rights of property owners who have lawfully established, and continuously maintained in a lawful manner, a use, site, structure or lot prior to the adoption of this ordinance or prior to any amendment to this ordinance that otherwise renders such use, site, structure or lot unlawful. Such legal nonconformities shall be permitted to continue until they are lost or removed. Nonconformities shall not be enlarged upon, expanded or extended, except in compliance with this article, nor shall they be used as grounds for adding other structures or uses prohibited by the underlying zoning district.

Nothing in this ordinance prohibits the voluntary compliance with this or any future ordinance, regulation, or incentive.

## SECTION 810 GENERALLY

### A. Applicability

This article applies to any nonconformity. There are four categories of nonconformities as defined in Table 8-1. Nonconformity shall mean either Nonconforming Use, Nonconforming Site, Nonconforming Structure or Nonconforming Lot.

**Table 8-1  
Nonconformities**

Situation	Definition
Nonconforming uses (§ 811 Nonconforming Uses of this article)	A use that was lawfully established but that no longer complies with the use regulations applicable to the zoning district in which the property is located
Nonconforming site (§ 812 Nonconforming Sites of this article)	A lot, parcel, or development site that was lawfully established but that does not comply with the standards of Article 5, Development Standards, of this ordinance
Nonconforming structure (§ 813 Nonconforming Structures of this article)	A structure that was lawfully erected but that no longer complies with all the regulations applicable to the zoning district in which the structure is located
Nonconforming lot (§ 814 Nonconforming Lots of this article)	A lot that fails to meet the requirements for area, height, yards, buffer, or other bulk standards and regulations, generally applicable in the district because of a change in the applicable zoning district regulations, annexation, condemnation of a portion of the lot, or other governmental action

**B. Continuation**

On or after the effective date of this ordinance, a nonconformity that was lawfully operated, established, or commenced in accordance with the provisions of all ordinances, statutes, or regulations in effect at that time may continue subject to this article.

**C. Issued Land Use Permit at Effective Date**

Any land use permits issued prior to the effective date of this ordinance shall be valid, in accordance with its terms, even though not conforming to the provisions of this ordinance, provided that construction is commenced within six (6) months after the date of permit issuance and proceeds meaningfully until completion.

**D. Exception for Repairs Pursuant to Public Order**

Nothing in this article shall be deemed to prevent the strengthening or restoration to a safe condition of a building or structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders it to restoration to a safe condition, provided that such restoration is not otherwise in violation of the various provisions of this ordinance prohibiting the repair or restoration of partially damaged or destroyed buildings or structures.

**E. Loss of Nonconformity**

A legal nonconformity is lost by changing to conform to the ordinance or through vacancy, lack of operation or otherwise for twelve (12) or more successive calendar months. If lost, any future use of such premises shall be in conformity, in its entirety, with the provisions of this ordinance. Loss of a nonconformity shall terminate the right to continue the nonconformity.

**SECTION 811 NONCONFORMING USES**

**A. Applicability**

This section applies to the continuation, enlargement, or expansion of a nonconforming use.

**B. Continuance**

A legal nonconforming use of any structure may be continued, although such use does not conform to the provisions of this ordinance. Such use may be extended throughout the structure, provided that no structural alterations or additions to the structure are made.

**C. Enlargement or Expansion**

A conforming structure in which a nonconforming use is operated shall not be enlarged or expanded except as required by law or to comply with an order of the township building official.

**D. Change of Use Regulations**

**(1) Changes to Conforming Uses**

Any nonconforming use may be changed to a use conforming with the regulations established for the district in which the nonconforming use is located, provided, however, that a nonconforming use so changed shall not in the future be changed back to the former nonconforming use.

**(2) Changes to Other Nonconforming Uses**

A nonconforming use may be changed to another nonconforming use by order of the Zoning Board of Appeals, provided that the new use is determined to be more consistent with the spirit of this ordinance, the neighborhood, and the master plan than the nonconforming use which is

being replaced. The order may be made by the Zoning Board of Appeals only if it make findings in support of each of the following:

- (a) The new use will not be contrary to the public interest;
- (b) The new use will not substantially or permanently injure the appropriate use of adjacent conforming property in the same district;
- (c) The new use will be in harmony with the spirit and purpose of these regulations and the master plan goals, objectives, and policies;
- (d) The plight of the applicant for which the new use is sought is due to unique circumstances existing on the property and/or within the surrounding district;
- (e) Approval of the new use will not substantially weaken the general purposes of this article or the regulations established in this ordinance for the applicable zoning district;
- (f) The new use shall not require more off-street parking and loading space than the former nonconforming use unless additional adequate off-street parking and loading space is provided for the increment of the new nonconforming use as if the increment were a separate use;
- (g) The new use shall conform to all regulations established in Article 5, Development Standards, of this ordinance; and
- (h) The new use will not adversely affect the public health, safety, and welfare.

## **SECTION 812 NONCONFORMING SITES**

### **A. Applicability**

This section applies to the continuation, enlargement, or expansion of a nonconforming site.

### **B. Generally**

Various site design standards are established in Article 5, Development Standards, of this ordinance. Consequently, many development sites do not meet current requirements for such items as parking lot standards, landscaping, storm water requirements and other design specifications. This section requires that such nonconforming sites be brought into conformance with the site development standards prescribed by this ordinance.

### **C. Authority to Continue**

Any legal nonconforming site may be continued so long as it remains otherwise lawful subject to this section.

### **D. Extension**

#### **(1) Generally**

A nonconforming site on which there is a conforming use shall not be expanded or contracted unless the site is brought into conformance with the provisions of this ordinance.

#### **(2) Single Family Residential Exception**

A single-family residential structure that is located on a legally nonconforming site with respect to required yards, areas, or height may be structurally altered or enlarged, providing the portion of the structure that is altered or enlarged conforms with the provisions of this ordinance.

### **E. Relocations**

No structure shall be relocated within a nonconforming site until the site is brought into conformance with the provisions of this ordinance.

**F. Change in Use**

No existing structure located on a nonconforming site shall be changed from one use classification to another use classification until the site is brought into conformance with the provisions of this ordinance or a nonconforming site variance has been approved by the Zoning Board of Appeals.

**SECTION 813 NONCONFORMING STRUCTURES**

**A. Applicability**

This section applies to the continuation, repair, replacement, enlargement, or expansion of a nonconforming structure.

**B. Continuance of Nonconforming Structures**

Subject to all limitations in this section, and the provisions of § 810.D. Exception for Repairs Pursuant to Public Order of this article, any nonconforming structure may be occupied, operated, and maintained in a state of good repair, but no nonconforming structure shall be enlarged or extended unless in accordance with § 813.E. Enlargement or Expansion provided that such maintenance does not exceed an aggregate cost of thirty (30) percent of the assessed value of the structure.

**C. Repair and Maintenance of Nonconforming Structures**

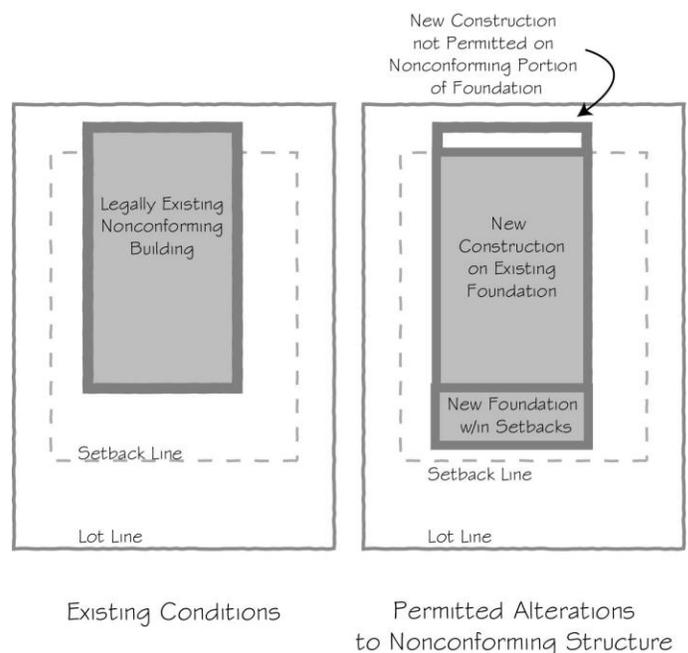
Nothing in this ordinance shall prevent the repair, reinforcement, improvement or rehabilitation of any nonconforming structure, or any part thereof, which results from wear and tear, deterioration, fire, windstorm, snowstorm, rainstorm, flood or other casualty damage, nor shall it prevent compliance with the provisions of the State Construction Code Act, relative to the maintenance of buildings or structures. Such repair and maintenance shall not be so extensive as to constitute a replacement of the structure by replacing an exterior wall(s). For the purposes of this subsection, the determination of whether proposed repairs and maintenance constitute replacement shall be made by the Zoning Administrator. The determination of the Zoning Administrator shall be appealable to the Zoning Board of Appeals provided that no approval under this subsection shall permit the replacement of a structure.

**D. Replacement of Damaged Nonconforming Structures**

Nothing in this ordinance shall prevent the replacement of any nonconforming building or structure damaged or destroyed by fire, windstorm, snowstorm, rainstorm, flood or other casualty damage beyond the control of the owner, provided such replacement utilizes the original structure footprint and does not increase the original usable floor area or volume of such structure. Such replacement shall commence within twelve (12) months of the damage or destruction.

**E. Enlargement or Expansion**

A nonconforming structure in which only permitted uses are operated may be enlarged or expanded provided that the area of nonconformance is not increased and provided further that compliance with all of the provisions



of this ordinance established for structures in the district in which the nonconforming structure is located. Such enlargement shall also be subject to all other applicable township ordinances.

#### **SECTION 814 NONCONFORMING LOTS**

##### **A. Applicability**

This section applies to the continuation, enlargement, or expansion of a nonconforming lot.

##### **B. Development**

Any lawfully established nonconforming lot may be developed and used for any permitted use specified by the zoning district in which the lot is located, whether or not such lot complies with the lot area and lot width requirements of this ordinance, provided that all other requirements of this ordinance are complied with. This section does not require the replatting or combination of lots under the same ownership.

#### **SECTION 815 TERMINATION OF NONCONFORMITIES**

##### **A. Violation of Article**

The violation of this article shall immediately terminate a nonconformity.

##### **B. Specific Acts of Termination**

Any of the following specific acts of termination shall immediately terminate a nonconformity:

- (1) Changing a nonconformity to a conforming use or a more conforming use pursuant to § 811.D.(2). This type of termination applies only to the nonconforming use existing prior to any change; or
- (2) Nonuse of a nonconformity for a period of twelve (12) or more successive calendar months.