

ARTICLE 26

EXISTING AND NONCONFORMING USE

SECTION 2601 CONFORMANCE REQUIRED

2601.01 Except as hereinafter specified, no land, building, structure or premises shall hereafter be used, and no building or part thereof, or other structure, shall be located, erected, moved, reconstructed, extended, enlarged or altered except in conformity with the regulations herein specified for the district in which it is located.

2602 INTENT

2602.01 The legitimate interests of those who lawfully established these nonconformities are recognized in this article by permitting such nonconformities to continue, subject to regulations for and limitations upon their completion, restoration, reconstruction, extension, and substitution. It is recognized, however, that nonconformities substantially and adversely affect the orderly development, maintenance, use, and taxable value of other property in the district, property that is itself subject to the regulations of this Zoning Resolution. In order to secure eventual compliance with the standards of this chapter, it is necessary to regulate non-conformities strictly and to prevent the reestablishment of non-conformities that have been discontinued.

SECTION 2603 NONCONFORMING VACANT LOTS

2603.01 NONCONFORMING VACANT LOTS IN RESIDENTIAL DISTRICT

In any district where dwellings are permitted, a single family detached dwelling may be erected on any lot of official record as of the effective date of the Zoning Resolution of Jackson Township, when by reason of its lot area, width or depth it does not meet minimum requirements for a lot under these regulation; provided, however, that no lot shall be deemed to be less than forty (40) feet wide for the calculation of yard requirements and provided, further:

A. The sum of the side yard widths on any such lot of record shall be at least twenty-five (25) percent of the width of the lot.

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B. In no case shall the width of any side yard be less than ten (10) percent of the width of the lot, except that on a

corner lot, the width of side yard adjoining the side street lot line shall be no less than ten (10) feet.

- C. The depth of the rear yard of any such lot need not exceed twenty (20) percent of the depth of the lot, but in no case shall it be less than twenty (20) feet.
- D. If the width of such lot meets the standards of this Resolution but the depth is such that the total area is less than seven thousand five hundred (7,500) square feet, the rear yard for such lot shall have a minimum of thirty (30) percent of the depth of the lot but in no case shall it be less than thirty (30) feet.

2603.02 NONCONFORMING VACANT LOTS IN OTHER DISTRICTS

In any district, other than a Residential District, a building designed for any permitted use in such district may be erected on any lot of official record as of the effective date of the Zoning Resolution of the Township, provided that:

- A. Such building shall comply with all regulations applicable in the district in which the lot in question is located; provided, however, the width of any required side yard need not be greater than that derived by applying the following equation, where "X" = the required side yard width:

$$X = \frac{\text{Minimum side yard required by district regulations}}{\text{Actual Lot Width} - \text{Minimum lot width required by district regulations}}$$

SECTION 2604 NONCONFORMING STRUCTURES

2604.01 CONTINUATION

Any structure which is devoted to a use which is permitted in the zoning district in which it is located, but which is located on a lot which does not comply with the applicable lot size requirements and/or development standards, may be continued, so long as it remains otherwise lawful, subject to the restrictions of 2604.02 through 2604.04

2604.02 ENLARGEMENT, REPAIR, ALTERATIONS

Any such structure described in Subsection 2603.01 may be enlarged, maintained, repaired or structurally altered; provided, however, that no such enlargement, maintenance, repair or structural alteration shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structures; except that as to structures located on a lot that does not comply with the applicable lot size requirements, the side yard requirements shall be determined by Subsection 2603.01 or 2603.02, whichever is applicable.

2604.03 DAMAGE OR DESTRUCTION

In the event that any such structure described in Subsection 2604.01 is damaged or destroyed, by any means, to the extent of more than fifty (50) percent of the current replacement cost of the entire structure, such structure shall not be restored unless it shall thereafter conform to the regulations for the zoning district in which it is located; provided, that structures located on a lot that does not comply with the applicable lot size requirements shall not in any event be required to provide a side yard that exceeds the yard requirements in Subsection 2602.01 or 2602.02, whichever is applicable. When a structure is damaged to the extent of fifty (50) percent or less, no repairs or restoration shall be made unless a zoning certificate is obtained and restoration is actually begun within one year after the date of such partial destruction.

2604.04 MOVING

No structure described in Subsection 2604.01 shall be moved in whole or in part for any distance whatever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it will be located after being moved.

SECTION 2605 NONCONFORMING USES

2605.01 CONTINUATION

Any lawfully existing nonconforming use of part or all of a structure or any lawfully existing nonconforming use of land, not involving a structure, may be continued, so long as otherwise lawful, subject to the restriction of Subsection 2605.02 through 2605.09.

2605.02 REPAIR, MAINTENANCE, AND STRUCTURAL ALTERATION

- A. Normal maintenance of a building or other structure containing or related to a lawful nonconforming use is permitted, including necessary nonstructural repairs and incidental alterations which do not physically extend or intensify the nonconforming use. This paragraph shall not be deemed to authorize any violation of Subsections 2605.03 through 2605.09.
- B. Nothing in this Resolution shall be deemed to prevent the strengthening or restoring to a safe condition any building or there structure (other than a damaged or destroyed building or other structure subject to the provisions of 2605.05 of this section) in accordance with the order of a public official who is charged with protecting the public safety and who declares such building or other structure to be unsafe and orders its restoration to a safe condition.
- C. All nonconforming residential buildings in a Business or Industrial District may be maintained, repaired, improved, modernized or enlarged in accordance with the development standards of Section 804.02; provided, however, that no increase in the number of dwelling units shall be permitted. A dwelling may not, however, be demolished and a new dwelling constructed unless the new dwelling is in full compliance with this Resolution.

2605.03 STRUCTURAL ALTERATION

Structural alterations to nonconforming single family residences within any zoning district shall be permitted in accordance with the development standards of Section 804.02, provided, however, that no increase in the number of dwelling units shall be permitted.

2605.04 EXTENSION AND ENLARGEMENT

The Board of Zoning Appeals may permit a nonconforming building or structure to be extended, expanded, enlarged, or increased in intensity subject to the following conditions:

- A. A nonconforming use may be extended throughout any part of such building or other structure that was lawfully

and manifestly designed or arranged for such use on the effective date of this Resolution.

- B. The Board may permit either an expansion of a nonconforming building or structure, or a substitution of a nonconforming use in such a building or structure, but not both.
- C. A building or structure that is devoted to a nonconforming use may be extended or enlarged upon the lot occupied by such building on the effective date of this Resolution or on an adjoining lot, provided such lot was under the same ownership as the lot in question on the effective date of this Resolution. Such building may be enlarged or extended to an extent not exceeding twenty-five (25) percent of the gross floor area of such structure or building lawfully existing at the time of the adoption of this Resolution.
- D. The extension or enlargement of a building or structure may not occupy ground space suitable and otherwise available for meeting the off-street parking requirements of this Resolution.
- E. A nonconforming use of land may not be extended, enlarged or increased in intensity.
- F. Nothing contained in this section shall in any way prohibit a nonconforming use from acquiring additional off-street parking space.
- G. Application for an extension or enlargement in accordance with paragraphs A and F shall be noticed and heard in the manner prescribed for appeals in Section 404 hereof.
- H. In granting an extension or enlargement, the Board may impose such reasonable safeguards and restrictions upon the premises benefited by the extension or enlargement as may be necessary to reduce or minimize any potentially injurious effect of such extension or enlargement upon other property in the neighborhood and to carry out the general purpose and intent of this chapter.

2605.05 DAMAGE OR DESTRUCTION

- A. Nothing in this Resolution shall be deemed to prevent the total restoration of any legal nonconforming single family

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residence, so long as such restoration is actually begun within one year after the date of its damage or destruction.

- B. In the event that any building or structure that is devoted in whole or in part to a nonconforming use, other than that of a single family residence, is damaged or destroyed by any means, to such an extent that the cost of restoration to the condition in which it was before such damage or destruction exceeds fifty (50) percent of the current replacement cost of the entire building or other structure, exclusive of foundation, such building or other structure shall not be restored unless such building or other structure and the use thereof shall thereafter conform to the regulations of the district in which it is located. Moreover, even if such damage is fifty (50) percent or less, no repair or restoration shall be made unless a building permit is obtained, and restoration is actually begun, within one year after the date of such partial destruction.

2605.06 MOVING

No structure devoted in whole or in part to a nonconforming use, shall be moved to any other location on the same lot or any other lot unless the entire structure and the use thereof shall thereafter conform to the regulations of the district in which it will be located after being so moved. Moreover, no nonconforming land use shall be relocated, in whole or in part, to any other location on the same or any other lot unless such use shall thereafter conform to the regulations of the district in which it is located after being moved.

2605.07 CHANGE

The Board of Zoning Appeals may permit a substitution for a nonconforming use in a building or structure lawfully existing at the time of the adoption of this Resolution subject to the following conditions:

- A. The Board may permit either an expansion of a nonconforming building or structure or a substitution of a nonconforming use, but not both.
- B. A nonconforming use of land (as opposed to a building or structure) may not be changed.

- C. Application for a substitution in accordance with paragraph "A" shall be noticed and heard in the manner prescribed for appeals in Section 404 hereof.

- D. The proposed use shall be of no greater intensity and shall be more compatible with the surrounding neighborhood than the existing nonconforming use.
- E. The Board shall not grant a substitution unless it shall, in each specific case, make specific findings of fact directly based upon the particular evidence presented to it, that support conclusions that:
 - 1. Adequate utilities, drainage, and other such necessary facilities have been or will be provided.
 - 2. Adequate access roads or entrance and exit drives shall be provided and will be designed so as to prevent traffic hazards and to minimize traffic conflicts and congestion in public streets.
 - 3. All exterior lighting fixtures are shaded wherever necessary to avoid casting direct light upon any property located in a residential district.
 - 4. The proposed substitution will not cause substantial injury to the value of other property in the neighborhood in which it is located and will contribute to and promote the convenience and welfare of the public.
 - 5. In granting a substitution, the Board may impose such reasonable safeguards and restrictions upon the premises benefited by the substitution as may be necessary to comply with the above standards and to reduce or minimize any potentially injurious effect of such substitution upon other property in the neighborhood and to carry out the general purpose and intent of this chapter.
- F. If a nonconforming use is changed to any use other than a conforming use without obtaining approval pursuant to this paragraph, that change shall constitute a discontinuance of the nonconforming use, and the property involved shall thereafter be used only for conforming uses.

- A. Discontinuance of nonconforming use of land: In the event that operation of a nonconforming use of land is voluntarily discontinued for a period of two (2) years, such nonconforming use shall not thereafter be reestablished and any subsequent use or occupancy of such land shall conform to the regulations of the district in which it is located.
- B. Discontinuance of nonconforming use of buildings or structures: In the event that operation of a nonconforming use of all or part of a building or other structure is voluntarily discontinued for a period of two (2) years, such nonconforming use shall not thereafter be reestablished, and any subsequent use or occupancy of such building or other structure shall conform to the regulations of the district in which it is located.
- C. When any lawful nonconforming use of any structure or land in any zoning district has been changed to a conforming use, it shall not thereafter be changed back to any nonconforming use.

2605.09 NONCONFORMING ACCESSORY USES

No nonconforming accessory use shall continue after the principal use to which it is accessory has been discontinued.