

1SECTION 1809 NON-CONFORMITIES

I. DEFINITIONS

A.Non-conforming *by use*: A lawfully established use of land, building, or structure, which is not a permitted use in the zoning district in which it is located, is nonconforming *by use*.

B.Non-conforming lot or parcel of land *by area or width*: A lot or parcel of land which fails to meet the applicable requirements for area or width, provided that setbacks and other requirements, not involving area or width, including use, shall conform to the regulations for the zoning district in which such lot or parcel of land is located.

C.Nonconforming building or structure or lot or parcel of land *by dimension*. A lawfully established building or structure, or lot or parcel of land, not in total compliance with all dimensional regulations for the zoning district in which such lot or parcel of land is located, is nonconforming *by dimension*. Dimensional regulations include all regulations relating to set-backs, buffer areas and other dimensional restrictions respecting the location of buildings or structures from other features on the lot or parcel of land, such as, by way of example only, septic systems, floodplains or slopes. A building or structure may be *partially non-conforming by dimension* if a portion of the building or structure violates the dimensional regulations, such as where only a portion of a structure is located within a prescribed set-back.

D.Nonconforming *by number of dwelling units*. A lot or parcel of land and/or a building or structure containing more dwelling units than are permitted by the use regulations of this ordinance shall be nonconforming by number of dwelling units. A building or structure containing a permitted number of dwelling units by the use regulations of this zoning ordinance, but not meeting the lot area per dwelling unit regulations, shall be nonconforming by dimension.

E.Non-conforming use, structure or dimension *by conditional use, variance or special exception*. A nonconforming building, structure, lot or parcel of land, or the use thereof, which exists by virtue of a conditional use, variance or a special exception granted by the Zoning Hearing Board or Board of Supervisors *shall not* be considered non-conforming for the purposes of this section, and shall not acquire any rights of this section. Any changes, additions, enlargements, expansions, intensifications or changes of such use, lot or parcel of land, structure or dimension, to any use other than a permitted use or other than in complete conformance with this Ordinance, shall require a further variance or special exception from the Zoning Hearing Board, or in the instance of a conditional use, permission from the Board of Supervisors.

F.Multiple non-conformities. A parcel or lot may be non-conforming with respect to multiple provisions of the Zoning Ordinance. In such event the lot, parcel of land, building

or structure shall be considered as meeting the definition of each applicable paragraph (A) – (E).

II. Continuations: A lawful use of a building, structure, lot or parcel of land, existing and lawful at the time of the enactment of the zoning regulation affecting the building, structure, lot or parcel of land, or in the case of an amendment to this Ordinance, then at the time of such amendment, may be continued except as hereinafter provided, even though such use does not conform to the current provisions of this Ordinance.

III. Non-conforming uses:

A. A non-conforming use conducted entirely outside of a building or structure *shall not* be changed to another non-conforming use.

B. A non-conforming use that is partially or completely conducted within a building or permanent or temporary structure or building may be changed to another non-conforming use by way of a special exception granted by the Zoning Hearing Board, upon proof that the proposed new use will be no more detrimental to its neighborhood and surroundings than the use it is to replace. In determining relative “detriment,” the Zoning Hearing Board shall take into consideration, among other things: traffic generated; sanitary sewage disposal; parking requirements; nuisance characteristics, such as noise and the emission of odor, dust and smoke; fire hazards; the hours and manner of operation; water consumption and any other issues deemed to be in the public interest. Any applicant for a special exception shall have the affirmative burden of proving that there shall be no detriment to the proposed change and shall present evidence addressing traffic generated; sanitary sewage disposal; parking requirements; nuisance characteristics, such as noise and the emission of odor, dust and smoke; fire hazards; the hours and manner of operation; water consumption and any other issues deemed to be in the public interest. The Applicant shall further provide proof that there shall be no additional burden on existing infrastructure within the Township or services provided by other governmental entities. All other changes of non-conforming uses that are partially or completely conducted within a permanent or temporary structure or building are expressly prohibited.

C. Expansions: The non-conforming use of a building, structure or parcel of land may be extended or expanded by no more than a total of fifty (50%) percent of the total area of the building, structure or parcel of land that was *exclusively* used in a non-conforming fashion at the time the non-conformity first arose. Areas of buildings, structures or lot or parcels of land not exclusively used in a non-conforming fashion *shall not* be considered in the calculation of the maximum expansion. All dimensional limitations on the expansion of the use, including set-backs and buffers shall be fully respected. **This is a cumulative maximum.**

1. Illustration 1: In a one-thousand (1000) square foot building, where one-hundred (100) square feet is devoted exclusively to a valid non-conforming use, the total area so used, in whole or in part, on all floors of the building, may be expanded a total maximum of fifty (50) square feet so that the cumulative total of area devoted to a valid non-conforming use is a total of one-hundred-fifty (150) square feet.

2. Illustration 2: On a one (1) acre parcel of land, with one-half ($\frac{1}{2}$) acre of the land totally devoted to a valid non-conforming use, the area devoted to the non-conforming use may be expanded by a maximum of one-quarter ($\frac{1}{4}$) acre, for a cumulative total of three-quarters of an acre ($\frac{3}{4}$) that may be used in a non-conforming fashion. *The expansion of the area may not be made onto adjacent parcels of land even if the parcels have common ownership and common non-conformity and all dimensional limitations on the expanded use, including setbacks and buffers, shall be fully respected.*

3. Illustration 3: A one (1) acre parcel of land totally devoted to a non-conforming use may not be expanded to adjacent parcels of land even if the parcels have common ownership.

IV. Non-conforming lot *by area or width*: A non-conforming lot or parcel of land by area or width *may not* be expanded by consolidation with other parcels, provided, however, that a non-conforming lot by area or width may be consolidated with other contiguous parcels in order to more fully conform with the applicable requirements for area or width regulations for the zone in which such lot or parcel is located even though the resultant lot is still not conforming.

1. Illustration: Two contiguous, validly existing, non-conforming, one-quarter ($\frac{1}{4}$) acre lots are located within a zoning district with a minimum lot size of one (1) acre. These lots may be consolidated to create a non-conforming one-half ($\frac{1}{2}$) acre lot.

V. Non-conforming buildings or structures *by dimension*: Expansions of or changes to dimensionally non-conforming buildings or structures *are not permitted* except to the limited extent set forth below only.

A. Expansions or changes of a ***totally*** non-conforming building or structure that has one or more dimensional non-conformity may be changed or expanded in order to fully, or more fully, conform with all applicable dimensional requirements for the zone in which such non-conforming building or structure is located. The total area of the totally non-conforming building or structure may, at the same time, be increased provided that the expanded area shall not exceed a cumulative maximum of 50% of the footprint of the totally non-conforming building or structure.

1.Illustration: If a building or structure is located on a property in such a way that the building or structure is ***totally*** non-conforming, dimensionally (i.e. e.g. where the structure is entirely within the scenic road set-back) the building or structure may be modified to such that the non-conforming area is reduced. For example, a porch area that is encroaching into the set-back by 20 feet may be modified such that the encroachment is lessened to 10 feet. If the totally non-conforming building or structure has a footprint area of 500 square feet, the total, cumulative maximum expansion shall not exceed 250 square feet. In no instance may the dimensional non-conformity be increased, meaning that the encroachment shall not be increased. Therefore, where a porch area that is encroaching into the set-back by 20 feet, it may not be expanded so that any portion of the porch area encroaches 21 feet.

B.Buildings and structures with ***partial dimensional non-conformities***, that is, if a building or structure is located on a property in such a way that the building or structure is only “partially” conforming and “partially” non-conforming, (for example where a setback line runs “through” the building or structure), the partially non-conforming building or structure may be expanded to a cumulative maximum of 50% of the footprint area of that portion of the building or structure that is partially dimensionally non-conforming, provided that no new non-conformities are created by the expansion or change. Buildings or structures with more than one floor will be permitted to expand vertically provided that the second floor has a footprint equal to, or less than the footprint of the first floor. Those areas or portions of buildings and structures with ***partial dimensional non-conformities*** that are not within the dimensionally non-conforming area may be expanded in conformity with all other limitations in the Ordinance without area limitations.

1.Illustration 1. If a building with a 1,000 square foot footprint is encroaching in the side-yard set back by ten (10) feet, with the area of encroachment being 500 square feet, the non-conforming structure may be expanded by up to 250 square feet (i.e. 50% of the 500 square feet), (not 500 square feet (50% of the total area of the building including the conforming areas), provided that the expansion stays within the existing ten (10) foot encroachment and all other limitations in the Ordinance are also met.

2.Illustration 2. If a building with a 1,000 square foot footprint has a second floor, each of which is encroaching in the side-yard set back by ten (10) feet, with the area of encroachment being 500 square feet, each floor of the non-conforming structure may be expanded by up to 250 square feet (i.e. 50% of the 500 square feet per floor) provided that the expansion stays within the existing ten (10) foot encroachment and all other limitations in the Ordinance are also met.

3.Illustration 3. If a building is encroaching in the front-yard set back by ten (10) feet, the rear portion of this partially non-conforming structure may be expanded without limitation in area so long as the expanded area is in total conformity with all other limitations in the Ordinance.

C.No expansions or extensions otherwise permitted hereby may be made within or into dimensionally restricted areas if the expansion will be in greater violation of the dimensional limitation.

1.Illustration 1: If a building is encroaching in the side-yard by ten feet (10'), a proposed expansion of the non-conforming structure shall be prohibited if the expansion will encroach greater than ten feet even if the maximum expansion has not been met or exceeded.

2.Illustration 2: If a building encroaches into a 10 foot side yard by 2 feet, no expansion can encroach further than 2 feet.

D.A building or structure that is dimensionally non-conforming because of its height shall not be expanded to increase its height.

E.Any expansion of a structure that has multiple floors will be reviewed on a floor by floor basis for conformity.¹

1.Illustration 1: If a non-conforming building encroaches by 10 square feet on each of 3 floors, the building may not be expanded by more than 5 square feet on each of the three floors; the total expansion cannot be accumulated and the total of 15 square feet of expansion cannot be applied to one or two floors of the structure. Each floor is to be examined separately and has a cumulative maximum expansion of five feet (5') per floor.

F.A lot or parcel of land that is nonconforming by number of dwelling units may not be expanded with the addition of a building or structure containing more dwelling units.

VI. Parcels, lots, buildings or structures with multiple non-conformities. Any proposed expansion of a building, structure, lot or parcel of land that is nonconforming by more than one factor, (i.e. use, dimensional limitations or area) shall comply with every restriction and regulation of this section. Where the regulations conflict, the most restrictive regulations shall apply.

VII. Reconstruction of Damaged or Destroyed Non-conforming Structures and Buildings .

¹ “Floor area” is a specifically-defined term in Section 201 of the Zoning Ordinance. The term “floor area” relies on other defined terms “gross floor area” and “net floor area.” “Gross floor area” is defined as “the sum of the horizontal areas of all floors of a building measured from the exterior face of exterior walls . . . but not including interior parking spaces, loading space for motor vehicles, or any space where the average floor- to-ceiling height is less than six (6) feet.”

A. Any nonconforming building or structure destroyed or damaged, in whole or in part, may be reconstructed on the foot print of the nonconforming building or structure, and to the height and dimensions that building or structure had immediately prior to the destruction or damage. The relocation of the destroyed or damaged nonconforming building or structure to other areas on the lot or parcel of land is not permitted unless the relocated building or structure shall thereafter be made to fully conform to all provisions of the Zoning Ordinance. Any expansion of a destroyed or damaged nonconforming building or structure shall be limited as otherwise provided in this Section.

VIII. Prior illegal establishment. Any building, structure, lots or parcel of land illegally established prior to the effective date of this Ordinance, or any amendments thereto, shall not be granted nonconformance status nor shall it become legally established subsequent to the effective date of this Ordinance or any amendment thereto.

IX. Abandonment

A. If a non-conforming use of a building or land is voluntarily abandoned and ceases for a continuous period of one (1) year, or more, as determined by the Zoning Hearing Board, all subsequent uses of such building, structure or land shall be in conformity with the provisions of the Ordinance.

X. Change of Tenancy or Ownership

A. There may be a change of tenancy, ownership, or management of any existing non-conforming uses of land, structures, and premises provided there is no change in the nature or character of such non-conforming uses except in conformity with the provisions of this Ordinance.