



NON-CONFORMING USES, LOTS & STRUCTURES

Excerpted from the 2001 Lower Nazareth Township Zoning Ordinance

1409. NONCONFORMITIES.

- A. Registration of Nonconformities. It shall be the responsibility of a party asserting a nonconformity to provide the evidence that it is lawful. A property owner may register a nonconformity with the Zoning Officer.
- B. Continuation. A lawful nonconforming use, structure or lot as defined by this Ordinance may be continued, maintained, improved and repaired, provided it conforms to this section and other applicable ordinances of the Township (except as provided for in Section 1404.D.).
- C. Alteration or Expansion of Nonconformities.
 - 1. Nonconforming Structure.
 - a. A nonconforming structure may be altered, reconstructed or enlarged provided:
 - (i) that such alteration, reconstruction or enlargement does not increase the nonconformance or the nonconforming part of the structure, and
 - (ii) that the expansion would comply with setbacks normally required for a permitted use in that District.
 - b. In the case of a nonconforming structure which is used by a nonconforming use, any expansion or enlargement shall also meet the requirements of Section 1409.C.3.
 - 2. Nonconforming Lots.
 - a. Permitted structures and uses may be constructed or expanded on a non-conforming lot of record only in compliance with the following requirements:
 - (i) Lawfully Existing. A use may only be developed on a non-conforming lot if it is a lot of record that lawfully existed prior to the adoption of this Ordinance or an applicable subsequent amendment.
 - (ii) Setbacks. Yard setbacks and other requirements of this Ordinance shall be complied with unless a variance is granted by the Zoning Hearing Board, or unless the Zoning Hearing Board allows construction under the following waiver:
 - a) In a residential district, minimum yard setbacks may be reduced to a minimum of 75 percent of what would normally be required if the lot is deemed adequate for building under this section and if the Zoning Hearing Board determines that such reduction would result in the construction of a single family detached dwelling that would be more compatible with the character of adjacent residential areas than if the yard requirement was not reduced.

- (iii) Only one principal use and its customary accessory uses that are permitted by right in that District may be developed on a nonconforming lot.
- (iv) In an LDR District, as an absolute minimum, in no case shall a variance be granted for the development of a principal building on a nonconforming lot with minimum lot area of less than 5,000 square feet or a minimum lot width at the minimum building setback line of less than 45 feet.
- (v) For any variance or special exception request under this Section, the Zoning Hearing Board shall consider if any reasonable use could be made of the property other than a proposed use that would less significantly adversely affect the established character of an existing residential neighborhood.
- (vi) The nonconformity shall not have been self-created.
- (vii) Contiguous nonconforming lots under common or closely related ownership shall be considered one lot.
- (viii) Any lot proposed to use an on-lot septic system shall meet all D.E.P requirements, plus shall have sufficient open area that would also meet D.E.P requirements for a second drain field, for use in case the first drain field fails.

3. Expansion of A Nonconforming Use. A nonconforming use or a building used by a nonconforming use shall not be expanded or enlarged, except in accordance with the following provisions:

- a. Such expansion or enlargement shall be permitted only by special exception from the Zoning Hearing Board under the provisions of Article I.
- b. Such alteration, reconstruction, extension or enlargement shall be only upon the same lot that the nonconforming use was located upon at the time the use became nonconforming.
- c. A nonconforming use shall not be increased in total floor area of buildings, total area covered by impervious surfaces or total number of dwelling units by greater than 50 percent beyond each such measurement that existed in such use at the time such use becomes nonconforming. Whichever of these limitations is most restrictive shall apply. This maximum increase shall be measured in aggregate over the entire life of the nonconformity.
- d. Any expansion of a nonconforming use shall meet the required setbacks, unless a variance is granted by the Zoning Hearing Board.
- e. In a residential district, as a minimum, a nonconforming use proposed to expand shall meet the setback requirements that would otherwise apply to a single family detached dwelling, unless the Zoning Hearing Board determines that larger setbacks are justified. The fact that an existing lawful lot of record does not meet the minimum lot width requirements of this Ordinance shall not by itself cause such lot to be considered to be a nonconforming lot. An existing non-conforming residential use may be expanded in floor area as a permitted by right use provided that: a) the number of dwelling units is not increased, b) the expansion meets all applicable setbacks, c) no new types of non-conformities are created and d) a nonconformity is not made more severe (including the building area within the required setback area).

D. Damaged or Destroyed Nonconformities.

1. A nonconforming structure that has been destroyed or damaged equal to 50 percent or more of its total value by fire, windstorm, lightning or a similar cause deemed to be not the fault of the owner may rebuild in a nonconforming fashion only if the application for a building permit is submitted within 30 days after the date of damage or destruction, and work begins in earnest within 12 months afterwards. A nonconformity may not be increased by any reconstruction.
2. No rebuilding shall be undertaken as provided herein until plans for rebuilding have been presented to and approved by the Zoning Officer. Any change of one nonconforming use to another nonconforming use shall comply with the provisions of this section.

E. Ownership. Whenever a nonconforming use, structure or lot is sold to a new owner, a previously lawful nonconforming use may be continued by the new owner, within the requirements of this Ordinance.

F. Abandonment of a Nonconformity.

1. If a nonconforming use of a building or land is discontinued, razed, removed or abandoned for 12 months, except as provided for in Section 1409.F.3., subsequent use of such building or land shall conform with the regulations of the district in which it is located.
2. The applicant shall be responsible to provide evidence that the nonconformity was not abandoned. Abandonment and the intent to abandon shall be presumed to commence on the date when customary efforts to continue the use cease. Such efforts shall be limited to the following:
 - a. for a residential use, actual habitation of the premises,
 - b. for a business use, actual conduct of business on the premises,
 - c. active attempts to sell the property for such a use or to formally apply for financing for such a use,
 - d. actual purchase of a property for such a use,
 - e. substantial financial and/or labor investment in a property for such a use, and
 - f. actual application to the Zoning Hearing Board for a use.
3. Nonconforming Use of Open Land. All nonconforming off-premise signs, junkyards, outside storage areas and similar nonconforming uses of open land, when discontinued for a period of 90 days or damaged to an extent of 50 percent or more of replacement cost, shall not be continued, repaired or reconstructed. For parking of commercial vehicles, see Section 1704.

G. Changes from One Nonconforming Use to Another.

1. Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use. However, Special Exception approval is not needed for a simple change within an existing building from one lawful nonconforming retail store use to another retail store use or from one lawful nonconforming personal service use to another personal service use provided that the new use complies with

any Zoning Hearing Board conditions that applied to the previous use and is not more objectionable in external effects than the previous use.

2. A nonconforming use may be changed to another nonconforming use only if permitted as a Special Exception by the Zoning Hearing Board after the following conditions are met:
 - a. The applicant shall show that the nonconforming use cannot reasonably be changed to a conforming use.
 - b. The applicant shall show that the proposed change will be equally or less objectionable in external effects than the existing nonconforming use with regard to:
 - (i) Traffic generation (especially truck traffic),
 - (ii) Noise, dust, fumes, vapors, gases, odor, glare, vibration, fire and explosive hazards,
 - (iii) Amount and character of outdoor storage, Hours of operation and
 - (iv) Compatibility with the character of the surrounding area.
3. A nonconforming use which is found to meet the criteria (2 above) as a Special Exception by the Zoning Hearing Board after the above conditions are met shall not be considered a non-conforming use because it did not predate the enactment of the zoning ordinance. No natural expansion shall occur as the doctrine of natural expansion does not apply as the use did not predate the ordinance.

H. District Changes. Whenever the boundaries of a district are changed so as to transfer an area from one district to another district, the provisions of this Section shall also apply to any nonconforming uses or structures existing in the district to which the area was transferred.

I. Floodplain Area. In the Floodplain Area, as defined by the Township Floodplain Ordinance, all nonconforming structures and uses, including agricultural, shall be subject to the following:

1. Existing nonconformities located in such district shall not be extended, expanded or enlarged.
2. Any modification, alteration, repair, reconstruction or improvement of any kind to an existing nonconformity, to an extent or amount of less than 50 percent of its market value, shall be elevated and/or floodproofed at least 1-1/2 feet above the standard project flood or the 100-year flood, whichever is greater, to the greatest extent possible.
3. Any modification, alteration, reconstruction or improvement of any kind to an existing nonconformity, to an extent or amount of 50 percent or more of its market value shall be undertaken only in full compliance with the provisions of this ordinance and all other applicable Township, State and Federal ordinances and regulations.