


ARTICLE IX
NONCONFORMITIES

§500-133 Purpose, Applicability, Registration, and Continuation and Change Updates old §500-22

A. Purpose.

- (1) To recognize that if, prior to the adoption of this chapter, as amended,, property was used for a then lawful purpose or in a then lawful manner which this chapter would render thereafter prohibited and nonconforming, such property is generally held to have acquired a vested right to continue such nonconforming use or nonconforming structure. Nevertheless, this does not preclude the Borough from regulating the change, alteration, reconstruction, reestablishment, extension, destruction and abandonment of nonconforming uses in accord with the Pennsylvania Municipalities Planning Code and general case law.
- (2) To limit the injurious impact of nonconforming uses and/or structures on other adjacent properties within a particular district and the community as a whole, while recognizing that the change, alteration, reconstruction, reestablishment, or extension of nonconforming uses and/or structures may not be contrary to the public interest or the general purpose of this chapter.
- (3) To prescribe those standards which are to be applied by the Borough in determining the reasonableness of a proposal to change, alter, reconstruct, reestablish, or extend a nonconforming use.

 B. NEW Applicability. The provisions and protections of this Article IX shall apply only to those nonconforming lots, structures and uses which legally preexisted the applicable provisions of this chapter, as amended, or which are recognized by §500-135. Any lot, structure or use created, constructed or established after the effective date of the original zoning ordinance, as amended, reenacted and replaced, which does not conform to the applicable requirements shall be considered an illegal lot, structure or use subject to the penalties prescribed by this chapter, and the said lot, structure or use shall not be entitled to any of the protections afforded to legal, preexisting nonconforming lots, structures or uses.

Deleted per Solicitor:

~~C. Evidence of Nonconformity. It shall be the responsibility of the party asserting a nonconformity to provide the evidence that the nonconformity is legal. ~~From old §old 500-23:~~ Within 60 days following upon the effective date of this chapter, The owner of any nonconforming lot or structure, or the proprietor of any nonconforming use, may come forward and register said nonconforming lot, structure or use with the Zoning Officer who shall maintain record of all such nonconformities by lot and block number for use in the administration and enforcement of this chapter, and as matter of public information. The Zoning Officer shall also issue a certificate of nonconformity to the owner of the premises or proprietor of the use in question. All points of nonconformance with the regulations of this chapter shall be clearly set forth both in the records of the Zoning Official and in the certificate of nonconformity issued for each use or premises:~~

C. Continuation and Change. A lawful nonconforming lot, structure or use as defined by this chapter may be continued and may be sold and be continued by new owners. Any expansion, alteration, extension or change in a nonconformity shall only proceed in compliance with this Article.

§500-134 Definitions NEW

A. Nonconforming Lot. A lot the area or dimension of which was lawful prior to the adoption or amendment of

this ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption or amendment.

- B. **Nonconforming Structure**. A structure or part of a structure manifestly not designed to comply with the applicable use or extent of use provisions of this ordinance or amendment heretofore or hereafter enacted, where such structure lawfully existed prior to the enactment of this ordinance or amendment or prior to the application of such ordinance or amendment to its location by reason of annexation. Such nonconforming structures include, but are not limited to, nonconforming signs.
- C. **Nonconforming Structure, Alteration or Expansion**. As applied to a nonconforming structure, a change or rearrangement in the structural parts or in the existing facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another
- D. **Nonconforming Structure, Reconstruction**. The rebuilding of a nonconforming structure damaged or destroyed by casualty to the exact or less nonconforming condition which existed prior to the casualty
- E. **Nonconforming Use**. A use, whether of land or of structure, which does not comply with the applicable use provisions of this ordinance or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of such ordinance or amendment, or prior to the application of this ordinance or amendment to its location by reason of annexation.
- F. **Nonconforming Use, Change**. The conversion of a nonconforming use to a different use classification as enumerated on the Schedule of Uses.
- G. **Nonconforming Use, Extension**. The expansion of a nonconforming use throughout the structure which the said use partially occupies; or the expansion of a nonconforming use onto property not already occupied by the said use.
- H. **Nonconforming Use, Reestablishment**. The reopening or reinstatement of a nonconforming use which has been discontinued by the owner of the said use, such reopening effected prior to the abandonment of the nonconforming use as determined under the provisions of this chapter.

§500-135 Nonconformities Under Development Updates old §500-22D

For the purposes of this Article IX, a building, structure or use, legally permitted, planned and substantially under construction in compliance with existing regulations prior to the effective date of this chapter, or any amendment hereto, and completed within a one-year period after the effective date of this chapter or amendment hereto, shall be considered nonconforming.

§500-136 Reserved

§500-137 Maintenance; Condemned Structures Updates old §500-28

- A. **Maintenance**. Normal maintenance and repair, such as painting, replacement of siding, and similar activities is allowed, as well as those interior renovations which do not structurally alter the building or area or result in increased use of the building or area, or a change of nonconforming, or otherwise create more incompatibility with the surrounding permitted uses. Such maintenance and repair activities shall comply with all other applicable standards and permit requirements of this chapter.
- B. **Condemned Structures**. A nonconforming structure which has been legally condemned shall not be rebuilt or

used except in accord with the provisions of this chapter.

§500-138 Changes of Nonconforming Uses Updates old §500-27C & D

A. Special Exceptions. All changes of nonconforming uses shall be considered special exceptions subject to the specific procedures and review criteria contained in §500-176 and the review factors in §500-144.

- (1) More Restrictive Classification. A nonconforming use may only be changed to a use of equal or less nonconformity (i.e. more restrictive classification) as determined by the Zoning Hearing Board in accord with classification of the uses in the Schedule of Uses.
- (2) General Standard. The general standard shall be that no change of a nonconforming use shall be permitted if such change will result in the establishment of a use which is materially different from the existing use in terms of negative effects on the community and the long term application of this chapter to eliminate incompatible uses from specific zoning districts. (For example, a change from a nonconforming retail store in a Residential District to a bank may be permitted; however, a change to a manufacturing use would not be permitted.)

B. Conforming Changes and Conversions.

- (1) Change. A change in a nonconforming use to a conforming use shall not be considered a special exception unless the proposed use is classified as a special exception by the Schedule of Uses. A change of a nonconforming use to a conforming use shall be considered an abandonment of the nonconforming use which shall not thereafter revert to a nonconforming use.
- (2) Conversion. The conversion of a nonconforming use to a nonconforming use of like classification shall not be considered a special exception. For example, a nonconforming retail establishment selling groceries proposed for conversion to a shoe store would not be considered a change in nonconforming use.

**§500-139 Reserved Nonconforming Uses of Land or Land with Minor Structures Only Same as old §500-25
Does not address restoration.**

~~Where at the time of passage of this chapter lawful use of open land exists in nonconforming signs, billboards, outdoor storage areas and similar nonconforming use not permitted under the regulations imposed by this chapter, the use may be continued so long as it remains otherwise lawful, provided:~~

- ~~A. Increase Prohibited. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this chapter.~~
- ~~B. Moving Prohibited. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this chapter.~~
- ~~C. Discontinued or Abandoned. If any such nonconforming use of land is discontinued and abandoned for a period of more than one year, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located. **Addressed by §500-142 below.**~~
- ~~D. Additional Structures. No additional structure not conforming to the requirements of this chapter shall be erected in connection with such nonconforming use of land.~~

§500-139 Extension of Nonconforming Uses

- A. Special Exceptions. All extensions of nonconforming uses into more area of a structure or onto more area of property shall be considered special exceptions subject to the specific procedures and review criteria contained in §500-176 and the review factors in §500-144.
- B. Extension onto Other Properties of Record in the Same Ownership; New Structures. Extensions of a nonconforming use shall be limited to the same parcel of property on which the nonconforming use is situated as said parcel existed on record at the time of the adoption of this chapter. For any nonconforming uses not involving a nonconforming structure, no new structures shall be permitted as part of an extension.
- C. Extension Limitation. An extension of land or structure utilized for the nonconforming use shall be limited to a total increase not to exceed 50 percent of land and 50 percent of structure beyond what existed at the time the use became nonconforming. All such extensions of a nonconforming use may be permitted in successive increments for a total up to the increase permitted; and each increment shall be a separate application. Applications for successive increments shall only be entertained by the Borough upon the completion of the previously approved addition or extension.
- D. Prohibited Extensions. Should the use proposed for extension be one which is specifically prohibited as a new use in the Borough or is a use judged by the Zoning hearing Board to be one similar to such a use or of such a nature as to impose health, safety or welfare concerns which cannot be satisfied by the imposition of the conditions permitted under this chapter, the requested extension shall be denied. The Zoning Hearing Board shall consider past operating performance in making its decision.

§500-140 Nonconforming Structures Same as old §500-26 with edits shown

Where a lawful structure exists at the effective date of adoption or amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. Enlargement. A nonconforming structure may not be enlarged by more than 50 percent of its existing floor area. Such enlargement shall not exceed the maximum height or maximum building coverage requirements for the district in which such nonconforming structure is located.
- B. Restoration.
- (1) A nonconforming structure that has been damaged or destroyed by fire, windstorm, lightning or a similar cause deemed to be no fault of the owner may be rebuilt to the same dimensions, or others which are deemed less nonconforming by the Zoning Officer ~~Hearing Board~~.
 - (2) No rebuilding shall be undertaken as provided herein until plans for rebuilding have been presented and approved by the Zoning Officer. ~~or by the Zoning Hearing Board when a change in building dimensions is requested.~~ Approval shall be for the same use or for an other use permitted in the district.
 - (3) All permits and approvals required for rebuilding the structure must be obtained within one year from the date of damage or destruction.

- C. Removal. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

~~§500-141~~ Nonconforming Uses of Structures or of Structures and Premises in Combination

~~If a lawful use involving principal use or major structures, or of structure and premises in combination, exists at the effective date of adoption or amendment of this chapter that would not be allowed in the district under the terms of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:~~

~~A and B below addressed by ALTERNATIVE §500-139 above if that section is used:~~

- A. ~~Enlargement. No existing structure devoted to a use not permitted by this chapter in the district in which it is located shall be enlarged by more than 50 percent of its existing floor area. Such enlargement shall not exceed the maximum height or maximum building coverage requirements of this chapter for the district of location.~~
- B. ~~Extension through Building. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this chapter, but no such use shall be extended to occupy any land outside such building.~~
- C. ~~If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may as a special exception be changed to another nonconforming use, provided that the Zoning Hearing Board, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Zoning Hearing Board may require appropriate conditions and safeguards in accord with the provisions of this chapter. Included in §500-138 above.~~
- D. ~~Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed. Included in §500-138 above.~~
- E. ~~When a nonconforming use of a structure, or structure and premises in combination, is discontinued and abandoned for 12 consecutive months (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located; Addressed by §500-142 below.~~
- F. ~~When a structure housing a nonconforming use has been damaged or destroyed by fire, windstorm, lightning or a similar cause deemed to be no fault of the owner, such structure may be rebuilt to its previous dimensions, or dimensions which conform to district regulations, as long as the structure is occupied by the same use, or a use which is less nonconforming for the district in which it is located. Addressed by §500-140B above.~~

§500-142 Abandonment and Reestablishment of Nonconformities

- A. Abandonment. Unless extended in accord with §500-141B, if a nonconforming use of structure or land ceases operations, is discontinued, is vacated or is otherwise abandoned for a period of one year or more, then this shall be deemed to be an intent to abandon such nonconforming use, and any subsequent use of the land or structure shall be for conforming purposes only and said use shall in all respects conform to the applicable provisions of this chapter. A change of a nonconforming use to a conforming use shall be considered an abandonment of the nonconforming use which shall not thereafter revert to a nonconforming use.
- B. Extension. The Zoning Officer may for good cause grant a one-time extension of not more than one year for the re-establishment of the use of a nonconforming structure or a one-time extension of not more than 90 days for

the re-establishment of a nonconforming use of land. Said extension shall only be considered upon written application for same submitted by the property owner.

§500-143 Use of Nonconforming Lots of Record From old §500-24

- A. Adjacent Property. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this chapter, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this chapter, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this chapter, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this chapter.
- B. Single and Separate Ownership.
 - (1) ~~In any district in which single-family dwellings are permitted, a single-family dwelling~~ any use permitted in that district and customary accessory buildings may be erected on any single lot of records at the effective date of adoption or amendment of this chapter, provided all other applicable requirements are satisfied. ~~notwithstanding limitations imposed by other provisions of this chapter.~~
 - (2) Any use for which an increased lot size is required by this chapter shall not be permitted on a nonconforming lot.
 - (3) ~~Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or front, rear or side yards that are generally applicable to the district, providing the lot meets the standards of the chapter in effect prior to this one.~~

 **§500-144 Review Factors NEW**

In addition to all other applicable requirements, the Zoning Hearing Board shall consider any nonconformity special exception application in terms of the effect on the following factors:

- A. Nuisance Considerations.
 - (1) Traffic generation
 - (2) Noise, dust, fumes, gases, odor, glare, vibration, fire and explosion hazards and other nuisances.
 - (3) Amount and nature of outdoor storage.
 - (4) Hours of operation.
 - (5) Compatibility with the character of the surrounding neighborhood
 - (6) Potential of the expansion to reduce existing congestion and alleviate parking shortages by improved site design, addition of parking and improved loading areas.
- B. Specific Considerations.
 - (1) Neighborhood Character. The proposed change will be less objectionable in external effects than the previous nonconforming use and will be more consistent physically with its surroundings and neighborhood.
 - (2) Storage of Materials. There shall be no increase in the amount of materials, supplies and/or products that are stored outside a nonconforming facility excepting those types of uses outlined in §500-144B(3).

- (3) Screening. Where the nonconforming activity is one which necessarily results in the storage of large quantities of material, supplies or products outside (such as a sawmill, farm machinery sales operation or similar operation), the use may only be expanded if a solid fence of wood and/or buffer, not less than six feet in height, is present on all sides of the immediate area in use. Stored material shall not exceed the height of the screening material and nine feet at the maximum. Setbacks and buffers shall be provided in accord with §500-60.
- (4) Setbacks. No addition, change or expansion of a nonconforming use shall further violate setback and/or height regulations of the district in which it is located
- (5) Parking and Access. In no case will a change, addition or expansion of a nonconforming use be allowed which would result in the diversion of traffic, or relocation of a driveway on the site to any point nearer a residential property, or result in violation of any of the parking and unloading requirements of this chapter. The Borough may require vegetative screening of the parking area from nearby residential areas in accord with §500-60.
- (6) Average Daily Traffic. The applicant shall show how the proposed change will affect Average Daily Traffic (ADT) pursuant to the standards set forth in the most current Trip Generation Manual published by the Institute of Transportation Engineers, or its successor. If ADT will increase the applicant shall document to the satisfaction of the Zoning Hearing Board how any community impacts will be addressed.

 §500-145 Survey NEW

- A. Required in All Cases. In the case of any proposed reconstruction or any proposed alteration or expansion of a nonconforming structure, the Applicant shall provide a survey prepared by a Professional Land Surveyor showing the position of the existing nonconforming structure with the entire proposed structure superimposed over the position of the existing nonconforming structure in addition to all other information required by this chapter.
- B. Required by Borough. A survey prepared by a Professional Land Surveyor may also be required by the Borough in any case as necessary to determine compliance.
- C. Survey Information. In addition to the information required in §500-145A, the survey shall show all details required to determine compliance, including, but not limited to, existing and proposed improvements, existing and proposed building height, existing and proposed lot coverage, minimum required setback lines, nonconforming setback lines, nonconforming setback areas, and existing and proposed nonconforming footprint areas.

§500-146 - §500-153 Reserved

**ARTICLE X
RESERVED**