

CHAPTER 33 LAWFUL NONCONFORMITIES

SECTION 33.10 INTENT

A. INTENT

It is recognized that there may exist certain uses, buildings, structures, lots, sites, fixtures, signs, and streets that were lawfully created or commenced before this Ordinance was passed or amended but are now prohibited, regulated, or otherwise restricted under the terms of this Ordinance. It is the intent to permit these legal nonconformities to continue without expansion until removed but not to encourage their survival.

B. INCOMPATIBILITY

Lawful nonconforming uses, buildings, structures, lots, sites, signs, fixtures, and streets are hereby declared to be incompatible with the provisions of the zoning district in which they are located or this Ordinance generally. Such lawful nonconformities shall not be enlarged upon, expanded, or extended, except as otherwise permitted in this chapter, and shall not be used as grounds for adding other uses, buildings, structures, and signs prohibited elsewhere in the district.

C. LAWFUL CONSTRUCTION

Nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building or structure on which actual substantial construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been diligently conducted.

D. ILLEGAL NONCONFORMITY

Nothing in this Ordinance shall be interpreted as authorization for, or approval of, continuing the use of a building, structure, or lot that was not legally created and lawfully in existence at the time of the adoption or amendment of this Ordinance. Should any lot, use, structure, building or activity violate any Township ordinance, code or regulation or any state or federal law at the time of enactment of this Ordinance (or any amendment thereto) that makes such lot, use, building or structure nonconforming or noncomplying with this Ordinance (or any amendment thereto), then thereafter such lot, use, building or structure shall not constitute a lawful nonconforming lot, use, building or structure and shall be illegal.

SECTION 33.20 LAWFUL NONCONFORMING USES

A. CONTINUATION

Land uses lawfully established on or prior to the effective date of this ordinance, or amendment to this ordinance, may be continued, even though the use does not conform with the current use requirements for the applicable zoning district within Chapters 4-13 or does not comply with specific use requirements established in Chapter 18 or elsewhere in this Ordinance.

B. ABANDONMENT

1. **Within Structures and Buildings.** When a lawful nonconforming use of a structure or building is discontinued or ceases to exist for 12 consecutive months or longer, with an intent to abandon the use, then the structure or building shall no longer be used except in full conformance with the regulations of

the zoning district in which it is located and other applicable requirements of this Ordinance.

2. **Use Not Involving Structure and Buildings.** If any lawful nonconforming use of land ceases for any reason for more than 12 months, any subsequent use of the land shall fully conform to the requirements of this Ordinance. Maintenance of the land or buildings or structures, including the provision of maintaining utility service or postal service, shall not constitute a continuation of the use of land.
3. **Determination.** A determination that a lawfully nonconforming use has ceased, with an intent to abandon the use, shall be made by the Zoning Administrator based on any one or more of the following:
 - a. Government records, such as inspection reports, dated photographs/aerial photographs, or notarized statements, provide clear evidence that the nonconforming use has ceased.
 - b. Changes to listings in telephone directories or online information provide clear evidence that the nonconforming use has ceased.
 - c. Changes to utility records provide clear evidence that the nonconforming use has ceased.
 - d. Dated advertising or other information published in a newspaper, magazine, or website, such as a "going out of business sale," "moving sale," or "grand opening" at a new location, providing clear evidence that the nonconforming use has ceased.
 - e. The property, buildings, and grounds have fallen into disrepair.
 - f. Signs, structures, or other indications of the existence of the prior lawfully nonconforming use have been removed.
 - g. Removal of equipment or fixtures that are necessary for the operation of the prior lawfully nonconforming use.
 - h. Other actions, which, in the opinion of the Zoning Administrator, constitute an intention on the part of the property owner or lessee to abandon the prior lawfully nonconforming use.

C. GENERAL CHANGES, RE-ESTABLISHMENT, AND SUBSTITUTION

1. **Changes of Tenancy, Ownership, or Management.** There may be a change of tenancy, ownership, or management of any existing lawful nonconforming use of land, structures, and premises; however, there shall be no change in the nature or character of the lawful nonconforming use without the approval of the Zoning Board of Appeals in accordance with this section.
2. **Re-establishment of Lawful Nonconforming Use.** If a lawful nonconforming use of any structure or building, or via special land use approval, is terminated and replaced by a permitted use, a nonconforming use shall not be later re-established.
3. **Substitution of a Lawful Nonconforming Use.** A lawful nonconforming use shall not be changed to another lawful nonconforming use except if permitted by the Planning Commission. The following additional standards shall be met, and the proposed use shall:
 - a. Be as compatible as or more compatible with the surrounding neighborhood;
 - b. Not have a substantially detrimental effect on the use and enjoyment of adjacent uses or properties;
 - c. Not negatively impact public health, safety, and welfare;
 - d. Not result in traffic safety concerns; and
 - e. Not cause a serious impact on the natural environment.

D. EXPANDING A LAWFUL NONCONFORMING USE

1. **Within Structures and Buildings.** Any lawful nonconforming use may be extended throughout any parts of a building that were manifestly arranged or designed for the use at the effective date of this ordinance or amendment to this ordinance, but no such use shall be extended to occupy any portion of a building which was not manifestly arranged or designed for the use, nor shall the use be extended to occupy any land or other structure outside the building.
2. **Not Involving Structure and Buildings.**
 - a. No lawful nonconforming use shall be intensified, enlarged, or increased, nor extended to occupy a greater area of land than was occupied on the effective date of this ordinance or amendment to this ordinance.
 - b. No lawful nonconforming use shall be moved in whole or in part to any other portion of the lot occupied by the use on the effective date of this ordinance or amendment thereto.
3. **Planning Commission Approval.** Notwithstanding the limitations of this subsection, the Planning Commission may approve the expansion of lawful nonconforming uses through the special land use process up to 50 percent of the area dedicated to the use at the time the use became nonconforming.

SECTION 33.30 LAWFUL NONCONFORMING BUILDINGS AND STRUCTURES

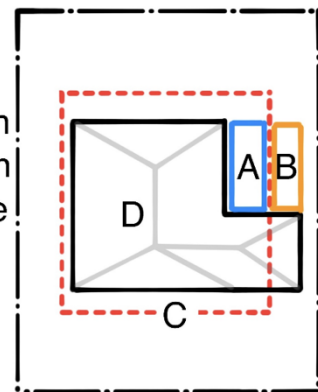
A. APPLICABILITY

Buildings and structures that do not conform to the spatial and dimensional requirements of this ordinance, or amendment thereto, are subject to the following restrictions.

B. ALTERATION OF LAWFUL NONCONFORMING BUILDINGS AND STRUCTURES

Except as otherwise permitted in this chapter, lawful nonconforming buildings and structures shall not be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in conformance with the spatial and dimensional requirements of this ordinance, including upper stories. In Figure 33-1, addition A is allowable without a variance, but addition B requires a variance.

- A. Proposed Addition
 B. Proposed Addition
 C. Building Envelope
 D. Existing Building



Horizon Community Planning

Figure 33-1 Nonconforming Building Expansion

C. RECONSTRUCTION AND RESTORATION AFTER DAMAGE

1. Lawful Nonconforming Non-Residential Buildings and Structures.

- a. In the event that a lawful nonconforming building or structure is damaged or destroyed to the extent of more than 50 percent of its reconstruction (i.e. replacement) cost, it shall be reconstructed only in conformity with the provisions of this ordinance. If the reconstruction cost is 50 percent or less, the building or structure may be reconstructed as it existed prior to the damage. If construction has not commenced within 12 months, the building or structure shall only be rebuilt in full compliance with this Ordinance.
- b. The estimated reconstruction cost shall be determined by the Township Building Inspector upon advice from the Township Assessor. Persons aggrieved by the determination of the estimated replacement cost or the estimated reconstruction cost by the Building Inspector may appeal such determination to the Zoning Board of Appeals
- c. A lawful nonconforming non-residential building in a residential zoning district that was constructed in accordance with commercial building code requirements is a lawful nonconforming building even if it complies with all other dimensional, building, and zoning requirements.

2. Nonconforming Residential Buildings.

- a. A principal or accessory residential building that is destroyed or damaged may be reconstructed as it existed prior to destruction or damage (i.e. the same footprint, height, size, etc.). If construction has not commenced within 12 months, the building shall only be rebuilt in full compliance with this Ordinance. However, the Planning Commission may grant a 12-month extension if there are unexpected or unforeseen circumstances impacting the timing of the reconstruction.
- b. A residential building in a non-residential zoning district that was constructed in accordance with residential building code requirements is a lawful nonconforming building even if it complies with all other dimensional, building, and zoning requirements.

D. MOVEMENT OF A LAWFUL NONCONFORMING BUILDING OR STRUCTURE

If a nonconforming building or structure is moved for any reason and for any distance, it shall be moved to a location that complies with the requirements of this ordinance.

E. REPAIRS AND MAINTENANCE

1. **Basic Repairs.** Ordinary repairs or repair or replacement of non-bearing walls, fixtures, wiring, mechanical equipment, or plumbing of lawful nonconforming buildings and structures are permitted, provided that the structure is not enlarged, extended, moved, or structurally altered.
2. **Safety Improvements.** Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public health upon order of the official.

SECTION 33.40 LAWFUL NONCONFORMING LOTS

A. EXISTING LOTS

In any zoning district, notwithstanding limitations imposed by other provisions of this ordinance, where an existing lot that does not abut any lot in the same ownership fails to meet minimum area, width, depth-to-width ratio, and frontage requirements of the zoning district in which it is located, the lot may be used for the permitted and special uses authorized by the zoning district, provided that all other dimensional and setback

requirements for buildings and structures can be met.

B. ABUTTING NONCONFORMING LOTS UNDER SINGLE OWNERSHIP

1. If two (2) or more adjoining lots of record or combination of lots and portions of lots of record, in lawful existence at the time of the passage of this Ordinance, or an amendment thereto, with continuous frontage and under single ownership do not meet the requirements established for lot width, dimension, or lot area, the lands involved shall be considered to be an undivided single lot for the purposes of this Ordinance, and no portion of such lot shall be used or divided in a manner which diminishes compliance with lot width, dimension, and area requirements established by this Ordinance.
2. Where two (2) or more lawful nonconforming adjacent lots are in the same or similar ownership and each contain less than minimum required area, dimension, or width of the zoning district in which it is located, the lots shall be considered a single lot for zoning purposes. These lots may not be used individually, but shall be deemed automatically combined to create a lot that conforms as closely as possible to the zoning district regulations.

C. SUBSTANDARD WIDTH RESIDENTIAL LOTS

Side setbacks may be reduced by the same percentage that the width is lawfully nonconforming based on the applicable zoning district, provided that no side setback shall be less than five (5) feet. All other setback requirements shall be met.

SECTION 33.50 LAWFUL NONCONFORMING SITE DEVELOPMENT

A. APPLICABILITY

This section applies to multi-family residential developments and non-residential developments that do not comply with the requirements of Chapters 17 to 23, as applicable.

B. GENERAL PROVISIONS

The use of lawful nonconforming sites may be continued, and the sites are not required to be upgraded to conform with this ordinance so long as no site development improvements are initiated.

C. CONFORMANCE

Conformance with all applicable site development requirements shall be demonstrated during site plan amendment review or plan reviews for the complete redevelopment of sites. However, for site plan amendments, only the affected area of a site must be brought to conformance.

SECTION 33.60 LAWFUL NONCONFORMING SIGNS

A. CONTINUATION

A lawfully established sign that does not conform to the type, setback, height, area, location, or any other requirements of Chapter 24 as of the effective date of this Ordinance is determined to be lawful nonconforming. The intent of this section is to permit the continuance of lawful nonconforming signs until they are removed, moved, abandoned, or destroyed, and to encourage overall compliance with Chapter 24.

B. ILLEGAL NONCONFORMING SIGNS

Signs installed without sign permits that do not conform to the requirements of Chapter 24 or permitted signs that have been constructed in a nonconforming location are considered illegal nonconforming signs and shall

be either removed or made to conform to Chapter 24, and a permit shall be required.

C. CHANGE OR REPLACEMENT

Lawful nonconforming signs shall not be changed to another nonconforming sign or replaced with a nonconforming sign.

D. RELOCATION

Lawful nonconforming signs shall not be moved completely or in part to another location unless the sign at the new location conforms to Chapter 24.

E. ALTERNATIONS, REFACING, REPAIR, AND MAINTENANCE

1. **Alteration.** Structural alterations that prolong the life of the sign or change the shape, size, or type of sign are prohibited. The replacement of a sign cabinet is considered an alteration.
2. **Refacing.** The face of a lawful nonconforming sign may be replaced as long as the nonconforming nature of the sign is not expanded or increased.
3. **Repair.** Any lawful nonconforming sign, sign structure, frame, or standard damaged by any means shall not be repaired, replaced, or rebuilt if the damage exceeds 50 percent of present-day replacement value, considering a sign of equal and similar size, building materials, construction, and quality. The sign owner shall provide an estimate acceptable to the Zoning Administrator for an official determination concerning restoration and repair eligibility.
4. **Normal Maintenance.** Lawful nonconforming signs may be painted, cleaned, and maintained.

SECTION 33.70 LAWFUL NONCONFORMING PRIVATE STREETS AND DRIVEWAYS

A. CONTINUATION OF USE

All existing lawful lots that are accessed by existing lawful nonconforming private streets may continue to be accessed by the nonconforming private street.

B. NO NEW LOTS SHALL ACCESS LAWFUL NONCONFORMING STREETS

1. A lawful nonconforming street shall not be used to meet frontage requirements for new lots.
2. No new lot shall have access to a lawful nonconforming street.

C. NORMAL MAINTENANCE

The requirements of this chapter do not prohibit the normal maintenance of lawful nonconforming private streets.

D. SERVING UNDEVELOPED LOTS

Construction of a building on a lot that is accessed by a lawful nonconforming private street is permitted, so long as the surface condition of the street or driveway is determined by the Zoning Administrator and Fire Department to be freely passable for normal traffic and emergency service vehicles year-round.

E. EXTENSION

A lawful nonconforming private street shall only be extended if the entire length is upgraded to comply with all of the current requirements of Chapter 22.

SECTION 33.80 ERRORS AND VIOLATIONS

The issuance or granting of a permit or approval of plans or specifications shall not be considered as approval for any violation of any provision in this ordinance. No permit presuming to give the authority to violate or cancel any provision of this ordinance shall be valid.

SECTION 33.90 ILLEGAL NONCONFORMITIES

Any lot, use, site development, building, or structure established in violation of the provisions of this ordinance or any prior Zoning Ordinance or amendment shall not be considered a legal nonconformity and shall not be entitled to the provisions, remedies, and safeguards of this chapter.

SECTION 33.100 BURDEN OF PROOF

The burden of proof for establishing or proving the existence or any aspect of a lawful nonconforming structure, lot, or use (as well as the size, scope, type, intensity, and extent thereof) is on the owner of the property involved.

This page is intentionally blank