

Article 13: Nonconformities¹¹⁶

13.01 PURPOSE

Within the districts established by this resolution, some lots, uses of lands or structures, or combinations thereof may exist which were lawful prior to the effective date or amendment of this resolution, but that are prohibited, regulated, or restricted under the terms of this resolution. The legitimate interest of those who lawfully established these nonconformities are herein recognized by providing for the continuance of such uses, subject to regulations limiting their completion, restoration, reconstruction, extension, and/or substitution. Nevertheless, while it is the intent of this resolution that such nonconformities be allowed to continue until removed, they should not be encouraged to survive, unless otherwise allowed in this article or specifically addressed in this resolution.

13.02 GENERAL PROVISIONS

- (A) The lawful use of any use, building, structure, or of any land or premises as existing and lawful at the time of enactment of this resolution may be continued although such use, building, structure, or of any land does not conform to the provisions of this resolution.
- (B) Passage of this resolution in no way legalizes any illegal uses existing at the time of its adoption.
- (C) An applicant for any development review that includes a nonconformity shall bear the burden of proof in demonstrating that the use was a legal nonconformity on the effective date of this resolution.
- (D) **Repair and Maintenance**
 - (1) On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, provided that the footprint and height of the structure as it existed, when it became nonconforming, shall not be increased unless in accordance with this article.
 - (2) Nothing in this section shall be deemed to prevent the strengthening or restoring to safe condition of any building, or part thereof, declared to be unsafe by any official charged with protecting the public safety, upon order of such official. Where appropriate, a building permit for such activities shall be required.

13.03 DETERMINATION OF NONCONFORMITY STATUS

- (A) At the time of application for a zoning certificate or request for variance regarding a nonconforming lot, building, structure or use, the property owner shall submit sufficient evidence for the Zoning Inspector or BZA, as applicable, to determine that such lot, building, structure, or use was lawfully created or established in accordance with the zoning regulations in existence at that time.

¹¹⁶ Boardman Township had very basic regulations for nonconformities that focused on nonconforming uses, that is, uses that were legally established but a subsequent zone change made them a prohibited use. There were also some basic regulations for nonconforming lots. We have incorporated a new, broader approach that makes clear distinctions between nonconforming uses, structures, and lots. See the current Article XII J and K for current regulations.

- (B) If the evidence submitted indicates the lot, building, structure or use was legally established and has since become nonconforming because of the establishment of or amendment to this resolution, the Zoning Inspector shall issue a zoning certificate identifying it as a legal nonconformity. A copy of such certificate shall be kept on file in the township zoning office.

13.04 NONCONFORMING USES AND VARIANCES

- (A) Whenever a nonconforming use has been changed to a conforming use, such use shall no longer be defined as a nonconforming use nor shall the property be returned to the former nonconforming use.
- (B) The granting of a variance for a use that otherwise complies with this resolution, shall not create a nonconformity when the variance is granted.
- (C) When a property owner or authorized agent is granted a variance for a nonconformity that addresses the nonconformity, the use, structure, or lot, shall no longer be considered nonconforming.
- (D) If a property owner or authorized agent is granted a variance for a nonconformity that addresses some nonconformities but additional nonconformities continue, the use, structure, or lot shall still be subject to the provisions of this article

13.05 NONCONFORMING USES

Where, at the time of adoption of this resolution, lawful uses of land or structures exist that would not be permitted by the regulations of this resolution, the uses may be continued, changed, or expanded so long as they remain otherwise lawful and provided:

- (A) No such nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land that was occupied at the effective date of adoption or amendment of this zoning resolution unless it complies with the provision of [Section 13.05\(E\): Expansion of a Nonconforming Use](#).
- (B) 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 uses at the effective date of adoption or amendment if this zoning resolution.
- (C) No additional structures shall be constructed on a lot with a nonconforming use unless such new structure complies with the requirements of this resolution and the applicable zoning district.
- (D) **Change or Substitution of Nonconforming Use**
- (1) A nonconforming use of a building, structure, or land shall not be changed or substituted to another nonconforming use unless the BZA, as part of a variance, finds that the use proposed is equally appropriate or more appropriate to the district than the existing nonconforming use, and that the use proposed is in less conflict with the character of uses permitted in the applicable zoning district than the existing nonconforming use. In permitting such change or substitution, the BZA may require appropriate conditions and safeguards in accordance with other provisions of this resolution.
- (2) Whenever a nonconforming use is changed to a less intensive use, such use shall not thereafter be changed to a more intensive nonconforming use.

(E) Expansion of a Nonconforming Use

- (1)** Notwithstanding the foregoing provisions to the contrary, the usable area of a nonconforming residential use may be increased or improved, regardless of the applicable zoning district.
- (2)** Notwithstanding the foregoing provisions to the contrary, the usable area of a nonconforming, nonresidential use may be increased or improved, regardless of the applicable zoning district, where the owner of such use can demonstrate through application to the BZA that the manner in which the useable area of the nonconforming use will be increased or improved will have minimal adverse impact upon adjacent properties and other permitted land uses in the surrounding neighborhood or can be made compatible with the adjacent properties and the uses in the surrounding neighborhood upon compliance with specified conditions.¹¹⁷
- (3)** Variances to expand a nonconforming use into a required setback or to otherwise vary a regulation that applies to the subject site shall be prohibited.
- (4)** The BZA shall review a request to expand a nonconforming use pursuant to the variance procedure in Section [3.05: Variance or Conditional Use](#), and shall be subject to the review criteria of this section.

(F) Existing Use Reclassified as a Conditional Use

In the event an existing use that was permitted by right at the time the use was established is thereafter reclassified as a conditional use for applicable district due to a zoning text amendment, such use shall be considered to be an approved conditional use without any further action. However, any subsequent change to such use shall require review and approval by the BZA in accordance with this article.

(G) Termination of Nonconforming Uses

(1) Termination of Use through Discontinuance

When any nonconforming use is voluntarily discontinued or abandoned for two years or more, any new use shall not thereafter be used except in conformity with the regulations of the district in which it is located, and the nonconforming use may not thereafter be resumed. The intent to continue a nonconforming use shall not be evidence of its continuance.

(2) Termination of Use by Damage or Destruction

- (a)** If a nonconforming residential use in a nonresidential district is damaged or destroyed to any extent, such structure and use may be reestablished, restored, or reconstructed on the same lot. Such reestablishment, restoration, or reconstruction of the use shall require the issuance of a zoning certificate.¹¹⁸

¹¹⁷ The township currently sets a threshold of a maximum of 25% of expansion area. This language would give the township the broadest flexibility without a specific threshold, while still placing the burden on the owner.

¹¹⁸ This provision is new and allows the rebuilding of a nonconforming residential use, regardless of how much the structure is destroyed. This will help people to be able to finance homes that happen to be nonconforming.

- (b) If a nonconforming, nonresidential use in a residential district is damaged, but not to an extent greater than 60%¹¹⁹ of the principal structure's value, such structure and use may be reestablished, restored, or reconstructed on the same lot to the same size and intensity of use as was previously existing immediately prior to the damage or destruction. Such reestablishment, restoration, or reconstruction of the use shall require the issuance of a zoning certificate.
- (c) If a nonconforming, nonresidential use in a residential district is damaged beyond 50% of the principal structure's value, such structure and use may only be reestablished, restored, or reconstruction with approval by the BZA after consideration of surrounding uses and the impact of the nonconforming use.

13.06 NONCONFORMING STRUCTURES AND SITES

A nonconforming building or structure may continue to be used or occupied by a use permitted applicable zoning district so long as it remains otherwise lawful and does not constitute a public nuisance, subject to the following provisions:

- (A) Any nonconforming structure or site may be enlarged, maintained, repaired, or altered provided, however, no such enlargement, maintenance, repair or alteration shall either create an additional nonconformity or increase the degree of the existing nonconformity of all or any part of such structure or site, unless otherwise specified in this resolution.
- (B) A nonconforming structure shall not be relocated in whole or in part to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the applicable zoning district after being relocated.
- (C) The principal use of a nonconforming building may be changed to any other use permitted in the applicable zoning district as long as the new use complies with all regulations of this resolution specified for such use, except the regulations to which the building did not conform prior to the change in use.
- (D) The governmental acquisition of a portion of a lot for a public purpose that results in reduction in a required yard or building setback below that required in the applicable zoning district shall not render a structure nonconforming.
- (E) **Damage or Destruction of a Nonconforming Structure Containing a Conforming Use**
 - (1) If a nonconforming structure is damaged and/or completely destroyed, the owner may rebuild the structure to the same height, and setbacks as the original nonconforming structure as it existed prior to the damage or destruction. Such work shall require the owner to submit an application for, and receive an approved, zoning certificate.
 - (2) If an owner rebuilds a legally nonconforming structure, they may expand the structure provided any expansion or change does not increase the nonconformity that existed prior to the damage.
 - (3) If the owner voluntarily removes the structure or reduces the nonconformity, that owner shall not be permitted to rebuild the structure to the original height, size, or setback and shall be required to bring the structure into compliance with these regulations to the maximum extent feasible.

¹¹⁹ The township currently sets this threshold to 75%, which is considerably higher than most communities that set the threshold between 50% and 60%.

13.07 NONCONFORMING LOTS OF RECORD

A nonconforming lot of record may be used in accordance with this section.

(A) Nonconforming Lots of Record in Residential Districts

- (1)** If an existing lot of record in residential district is occupied by a dwelling, such dwelling shall be maintained and may be repaired, modernized or altered, provided that:
 - (a)** The building shall not be enlarged in floor area unless the enlarged section(s) complies with all regulations of this resolution, with the exception of the lot area and the lot width regulations.
 - (b)** The number of dwelling units shall not be increased unless in conformance with this resolution.
 - (c)** Dwelling units may be expanded without requiring any additional garage space or parking space provided the addition does not occupy space that could be used for parking or a garage in compliance with these regulations.
- (2)** In any residential district, a single-family dwelling and its customary accessory uses may be erected on a vacant single lot of record after the effective date of this resolution provided the buildings comply with the following:
 - (a)** The width of the side yard of any such lot need not exceed 10 percent of the width of the lot, provided, however, that there shall be a minimum side yard setback of five feet.
 - (b)** The rear yard setback of any such lot need not exceed 20 percent of the depth of the lot, provided, however, that the minimum rear yard setback shall be 10 feet.

(B) Nonconforming Lots of Record in Nonresidential Districts

In any nonresidential district, a use that is permitted in the applicable district, and its customary accessory uses, may be erected on a vacant single vacant lot of record provided the buildings comply with the following:

- (1)** The width of the side yard of any such lot need not exceed 10 percent of the width of the lot, provided, however, that there shall be a minimum side yard setback of five feet.
- (2)** The rear yard setback of any such lot need not exceed 20 percent of the depth of the lot, provided, however, that the minimum rear yard setback shall be 10 feet.
- (3)** In no case shall a nonresidential use on a nonconforming lot of record be exempt from the provisions of [Article 10: Landscaping Standards](#).

13.08 NONCONFORMING SIGNS

See Section <>, for the regulation of nonconforming signs.