

PART 10

NON-CONFORMITIES REGULATIONS

Section 1001. Continuation of Non-Conformities.

- A. Unless otherwise specified herein, all lawful uses existing on the effective date of this Chapter may be continued, altered (extended, expanded, and enlarged), restored, reconstructed, sold, or maintained in accordance with the provisions of this Chapter.
- B. All lawful non-conforming lots of record, due to lot areas and/or dimensions, existing on the effective date of this Chapter or created by an amendment to this Chapter, may be continued although such lots do not conform to the lot requirements for the zoning district in which they are located.

Section 1002. Registration of Non-Conformities.

- A. Non-conformities may be reported to the Zoning Officer by the owner, user, lessor, or lessee, and be registered by the Zoning Officer within one (1) year of the effective date of this Chapter. The Zoning Officer, upon proof of a legal non-conformity, may certify the existence of the non-conformities.
- B. Should a non-conformity not be reported or identified within one (1) year, the owner of the non-conformity shall have the right to show by a preponderance of the evidence to the Zoning Officer that the non-conformity existed upon the effective date of this Chapter.

Section 1003. Existing Non-Conforming Lots of Record.

- A. Any existing lot of record held in sole and separate ownership different from the ownership of abutting lots may be used for the establishment of a use and/or erection of a structure which will contain a use permitted by the applicable zoning district in which it is located, even though its dimensions are less than the minimum requirements of this Chapter, except as set forth herein.
- B. Otherwise, the following requirements apply to the development and use of a non-conforming lot.
 - 1. To the maximum extent feasible, contiguous non-conforming parcels under common ownership should be combined to create conforming lots.
 - 2. No provision of this Chapter relating to front, side and/or rear setback requirements shall prevent the reasonable use of a non-conforming lot of record. The Zoning Officer may grant a reduction in the requirement for side or rear setbacks for lots of record which lack required lot width or depth. However, in no event may such setback dimensions be reduced by more than twenty five (25) percent of that which is required without the approval of the Wormleysburg Zoning Hearing Board.
 - 3. For front setback reductions for lots of record which lack required lot depth see Part 7 of this Chapter relating to *Yard and Setback Exceptions and Alterations*.

Section 1004. Existing Non-Conforming Uses and Structures.

- A. Alterations and Reconstruction.
 - 1. Repairs, routine maintenance, and/or structural alterations not constituting an extension, expansion, or enlargement may be made to a non-conforming use or structure or to a structure

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occupied by a non-conforming use provided such repairs, maintenance, and/or structural alterations do not change the use or the exterior dimensions of the structure, building, or use.

B. Restoration of Structure or Use.

1. When a non-conforming use or structure has been damaged or destroyed to the extent of whereby the cost of restoring the use or structure to its before-damaged condition would equal or exceed fifty (50) percent or more of the market value of the use or the structure before the damage occurred shall not be restored except in conformity with the regulations of the zoning district in which it is located and all other applicable standards of this Chapter.
2. A non-conforming use or structure which has been damaged or destroyed to the extent of whereby the cost of restoring the use or structure to its before-damaged condition would be less than fifty (50) percent of the market value of the use or the structure before the damage occurred, may be repaired or reconstructed and used as it was before the time of the damage, provided that:
 - a. Such repairs or reconstruction are commenced within one (1) year of the date of such damage; and
 - b. The reconstructed use or structure does not exceed the height, area, and volume of the use or structure destroyed.

C. Extensions, Expansions, and Enlargements.

1. All extensions, expansions and enlargements of lawful non-conforming uses and structures shall be reviewed by the Zoning Officer to determine compliance with the following standards:
 - a. Any extension, expansion, or enlargement of a non-conforming structure or use shall be permitted as long as the maximum impervious lot coverage is not exceeded.
 - b. Any extension, expansion, or enlargement of a non-conforming structure or use shall not exceed twenty five (25) percent of the total gross floor area of the non-conforming structure or use at the time it became non-conforming.
 - c. Any extension, expansion, or enlargement shall conform to the building height, area/footprint, setback, and impervious lot coverage regulations of the zoning district in which it is located.
 - (1). If an existing structure or use has a legally non-conforming setback, additions and expansions may occur to increase the height above such setback or to extend other portions of the structure or use out to the non-conforming front, side and/or rear setback line, provided that:
 - (a). The use or structure shall not be extended beyond the existing non-conforming setback line.
 - (b). No additional non-conformity shall be created.
 - (c). The new non-conforming extension shall not be greater than twenty five (25) percent of the existing floor area.
 - (d). All other requirements of this Part are met.

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- (e). Such addition shall not be permitted for a structure proposed for use by a non-residential use on a lot that abuts a lot with an existing permitted residential use in the Residential Zoning Districts.
- d. All loading and/or parking spaces for any extension, expansion, or enlargement shall comply with the requirements of Part 9 of this Chapter.
- e. Any extension, expansion, or enlargement of a non-conforming structure or use shall not be permitted to extend into vacant parcels of land adjacent to the parcel containing the non-conforming structure or use, where such vacant parcels have been separately recorded or acquired prior to the effective date of this Chapter.
- f. The intensity of a non-conforming use and resulting nuisances (e.g., air pollution, noise, glare, vibrations, delivery traffic, hazards, etc.) shall not be increased.

Section 1005. Change of Non-Conforming Use.

- A. Whenever a non-conforming use has been changed to a conforming use, such use shall not thereafter be changed to a non-conforming use.
- B. Whenever a non-conforming use has been changed to a more restricted classification (e.g. business office to single family residential) or to a conforming use, such use shall not hereafter be changed to a use of less restricted classification (e.g. single family residential to retail store) unless in compliance with the rules for such change as outlined by this Part.
- C. A non-conforming use may be changed to another non-conforming use only by the granting of a Special Exception by the Zoning Hearing Board in compliance with Part 12 of this Chapter relating to *Zoning Hearing Board*. Where a Special Exception approval is required, the Zoning Hearing Board shall determine whether the applicant has provided sufficient proof to show the following:
 - 1. The proposed use is in general conformity with the most recent version of the Wormleysburg Borough comprehensive plan Comprehensive Plan, and/or other applicable plans adopted by Wormleysburg Borough, and will be in harmony with the zoning district, neighborhood, and area in which it is proposed to be located.
 - 2. The external impacts associated with the proposed use would be equal to or less intensive than external impacts associated with the existing non-conforming use.
 - 3. The character of the proposed use would be similar to the character of the existing non-conforming use.
 - 4. The location of the proposed use would not endanger the public health and safety, and the use will not deteriorate the environment or generate nuisance conditions (e.g., traffic congestion, noise, dust, smoke, glare or vibration).
 - 5. The applicant shall furnish evidence that the disposal of materials will be accomplished in a manner that complies with state and federal regulations.
 - 6. The proposed use must comply with Borough building, health, housing, rental, safety, property and other applicable local, county, state, and federal code and licensing requirements. All such licensed, certificates, and permits shall have been obtained and presented to the Borough, or shall be a condition of approval.

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7. The applicant shall provide:
 - a. The information required in Part 7 of this Chapter relating to Hours of Operation and Management Plan.
 - b. A detailed description of how the proposed use and development complies with items 1. – 6. in this subsection above.
 - c. A plot / site plans required in Part 12 of this Chapter relating to *Applications for Zoning Permits*.
 - d. A schematic architectural drawing of the principal building(s) front façade(s).

Section 1006. Abandonment and Discontinuance of Non-Conformities.

- A. A non-conforming use shall be presumed abandoned when operations associated with the non-conforming use have ceased by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within one (1) year from the date the activity stopped and the use is not actively advertised for sale or lease. Such non-conforming use shall not thereafter be reinstated except in conformance with this Chapter.
- B. A non-conforming use, which is actively marketed, but has not been sold or leased, shall not be considered abandoned. The applicant shall be responsible to provide evidence that the non-conformity was not abandoned
- C. Except for in a mobile / manufactured home park, the removal of a non-conforming mobile / manufactured home from the site it occupied and if such site is not leased, actively marketed, or purchased within one (1) year or less, shall constitute abandonment of the site, and any occupation or subsequent use of said site shall conform with the provisions of this Chapter.
- D. The removal of a mobile / manufactured home from a residential lot already occupied by a residential structure shall constitute abandonment of the non-conforming use and such use shall not thereafter be permitted.
- E. Mobile / manufactured home parks which are non-conforming under the terms of this Chapter shall be operated in accordance with Public Health Regulations, Commonwealth of Pennsylvania, DEP, under the provisions of Act 175 of April 9, 1929, P.L. 177, as amended, and all other applicable laws.

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