

ARTICLE: 7.0-NONCONFORMITIES

**ARTICLE 7.0
NONCONFORMITIES****SECTION 7.01 - INTENT**

Certain lots, structures, and uses of lots and structures may exist within districts established by this Ordinance or amendments thereto which were lawful before this Ordinance was adopted or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance and its amendments. It is the intent of this Ordinance to permit such nonconformities to remain until they are discontinued or removed, but not to encourage their survival. It is further the intent of this Ordinance that such nonconformities be steadily upgraded to conforming status. It is further the intent of this Ordinance that nonconformities shall not be enlarged, expanded, or extended, except as provided herein, and that nonconformities shall not be used as grounds for adding conformities which are declared by this Ordinance to be incompatible with the structures and uses permitted in the various districts.

SECTION 7.02 - NONCONFORMING LOTS OF RECORD

A permitted principal structure and uses and customary accessory structures and uses may be erected or placed on any single lot of record at the effective date of adoption or amendment of this Ordinance. 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 both, that are applicable in the district, provided that yard dimensions and requirements other than these applying to area or width or both of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Zoning Board of Appeals.

If two or more lots or combination of lots and portions of lots, which are continuous and in single ownership, are of record at the time of adoption or amendment of this Ordinance and if all or part of the lots, which are contiguous and in single ownership, are of record at the time of adoption or amendment of this Ordinance, 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 Ordinance. No portion of said parcel or lot shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of any parcel or lot be made which creates a lot with width or area less than the minimum requirements stated in this Ordinance.

SECTION 7.03 - NONCONFORMING USES OF PARCELS AND LOTS

Where, on the effective date of adoption or amendment of this Ordinance, a lawful use of a parcel or lot exists that is no longer permissible under the provisions of this Ordinance, such use may be continued so long as it remains otherwise lawful subject to the following provisions.

- A. No such nonconforming use of a parcel or lot shall be enlarged, expanded, or extended, to occupy a greater area of land than was occupied on the effective date of adoption or amendment of this Ordinance and no accessory use, building or structure shall be established therewith.
- B. No such nonconforming use of a parcel or lot shall be moved in whole or in part to any other portion of such parcel or lot not occupied on the effective date of adoption or amendment of this Ordinance.

SECTION 7.04 - NONCONFORMING STRUCTURES

Where, on the effective date of adoption or amendment of this Ordinance, a previously lawful structure exists that will become non-conforming under the regulations of this Ordinance by reason of restrictions upon lot area, lot area per dwelling unit, lot width, lot coverage, floor area ratio, height, transition and landscape strips, off-street parking, loading spaces, and setback requirements, such structure may be continued so long as it remains otherwise lawful subject to the following provisions.

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- A. Such building or structure may be enlarged, expanded, extended or altered only if such enlargement, expansion, extension, or alteration is approved by the Board of Appeals, in conformance with Section 7.08 EXPANSION AND SUBSTITUTION, herein.
- B. Should any such building or structure be damaged by any means to an extent of more than fifty (50) percent of its replacement cost at the time of such damage, it shall not be reconstructed except in conformity with the provision of the district in which it is located. Should any such building be damaged to an extent of fifty (50) percent or less or its replacement cost, it may be replaced in its location and term existing prior to such damage, provided such replacement is commenced within three (3) years of the date of damage, and if replacement is diligently pursued to completion. Failure to complete replacement shall result in loss of legal, nonconforming status.
- C. Should any such building or structure be moved for any reason for any distance, it shall thereafter conform to the regulations of the district in which it is located after it is moved.

SECTION 7.05 - NONCONFORMING USES OF STRUCTURES

Where, on the effective date of adoption or amendment of this Ordinance, a lawful use of a structure exists that is no longer permissible under the regulations of this Ordinance, such use may be continued so long as it remains otherwise lawful subject to the following provisions:

- A. A nonconforming use shall not be extended into any portion of a structure not occupied by such use at the effective date of adoption or amendment to this Ordinance.
- B. A nonconforming use shall not be expanded or increased in area or intensity.
- C. An existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall not be enlarged, constructed, reconstructed, moved, or structurally extended or altered except in changing the use of such building or structure to a use permitted in the district in which such building or structure is located.
- D. Where a nonconforming use of a structure, or structure and premises in combination, is discontinued for more than one (1) year except where government action impedes access to the premises, the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.
- E. 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 of the district in which situated, and the nonconforming use may not thereafter be resumed.
- F. Where a nonconforming status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconformance status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than fifty (50) percent of the replacement cost at the time of damage.

SECTION 7.06 - REPAIRS AND MAINTENANCE

On any nonconforming structure or only structure housing a nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing to an extent not to exceed ten (10) percent of the then current replacement cost of the nonconforming structure or nonconforming portion of the structure as the case may be, provided that the floor area or volume of such building, or the number of families housed therein, or the size of such structures as it existed on the date of adoption or amendment of this Ordinance shall not be increased.

If a nonconforming structure, or a portion of a structure, containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located, unless such duly authorized official shall order such structure restored to a safe condition.

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Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition, of any building or structure or part thereof declared to be unsafe by any official charged with protecting the public safety upon order of such official.

SECTION 7.07 - CHANGE OF TENANCY OR OWNERSHIP

There may be a change of tenancy, ownership, or management of an existing nonconforming use, building or structure.

SECTION 7.08 - EXPANSION AND SUBSTITUTION

A. The Zoning Board of Appeals shall determine if a nonconforming building or structure may be enlarged, expanded, extended, or altered, and the conditions under which such improvements shall be made. The following provision shall apply:

1. **LIMITATIONS:** The reasons for a nonconformity shall be limited to a minimum lot area, lot width, required yards, off-street loading and parking requirements, and transition strip and landscape strip requirements. In no case shall a building or structure that is nonconforming because of lot coverage, floor area ratio, lot area per dwelling unit, or height requirements be permitted to expand without removing the nonconformity, except as permitted under a variance.
2. **PERMITTED USED:** The proposed uses of such buildings and structures shall be among those permitted in the district in which situated.
3. **CONFORMANCE REQUIRED:** The proposed improvement shall conform to all requirements of the district in which situated.
4. **DETERMINATIONS:** The Zoning Board of Appeals shall determine the following in approving a request:
 - a. that the retention of the nonconforming building or structure is reasonably necessary for the proposed improvement or that requiring removal of such building or structure would cause unnecessary hardship.
 - b. that the proposed improvement is reasonably necessary for the continuation of activities on the property.
 - c. that the enlarged or otherwise improved nonconforming building or structure will not adversely affect the public health, safety and welfare.
5. **AUTHORITY OF BOARD:** The Board of Appeals shall have the authority to require modification of the nonconformity where such is reasonable, as a condition for approval. The Board of Appeals may attach other conditions for its approval which it deems necessary to protect the public health, safety and welfare.
6. **SITE PLAN APPROVAL REQUIRED:** All expansions permitted under this Section shall meet all requirements of ARTICLE 5, SITE PLAN REVIEW, herein, if a site plan is required. The site plan may be a final site plan and shall be first reviewed by the Planning Commission. Upon completion of its review, the Planning Commission shall transmit the site plan and a summary of its review to the Zoning Board of Appeals. The Board of Appeals shall then act upon the request and return the site plan and the Board's findings on the request to the Planning Commission for its action.

B. A nonconforming structure shall not be substituted for, or replace, any conforming or nonconforming structure.

C. A nonconforming use of a structure may be substituted for another nonconforming use upon permission by the Zoning Board of Appeals as set forth in Section 7.08, herein, provided that no structural alterations are made, and

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provided, further, that such other nonconforming use is more appropriate than the existing nonconforming use in the district in which it is located. In permitting such change, the Planning Commission may require appropriate conditions and safeguards in accordance with the provisions and intent of this ordinance. A nonconforming use, when superseded by a more appropriate use as provided in this sub-section, shall not thereafter be resumed.

SECTION 7.09 - NONCONFORMING EXTRACTION OPERATIONS

All extraction operations must meet the conditions described in Ordinance #23, The Freedom Township Sand and Gravel Extraction Ordinance.