

**ARTICLE 5.00  
NON-CONFORMING USES AND BUILDINGS**

**Section 5.01 NON-CONFORMING USES**

Any lawful non-conforming use existing at the time of passage of this Ordinance may be continued, provided, however, that the building or the lot or land involved shall neither be structurally altered, repaired nor enlarged unless such revised structure shall conform to the provisions of this Ordinance for the district in which it is located. Provided further, that this Section shall not prohibit structural alterations required by law. No non-conforming use shall continue to exist whenever a conforming use is added to the land involved. No Certificate of Occupancy for such conforming use shall be issued unless such non-conforming use is discontinued.

**Section 5.02 VIOLATION OF ORDINANCE DOES NOT VEST THE PROPERTY AS A NON-CONFORMING USE**

If the Building Official shall find, upon reviewing an application for any purpose, that the existing use is illegal, in violation of any other ordinance or law, was not a Principle Permitted Use at the time of establishment of the use, was a Use Subject to Special Conditions which did not receive appropriate approval at the time of establishment of the use or the Building Official finds that the building for which the application is requested has been constructed or altered for the existing use or any other use without full compliance with the Building Code or the Zoning Ordinance in effect at the time of construction or alteration, he shall not issue any approvals, but shall declare such use to be in violation of this Ordinance.

**Section 5.03 FORFEITURE OF RIGHT TO CONTINUE NON-CONFORMING USE**

When non-conforming use of property is discontinued through vacancy, lack of operation, or other similar condition, for a period of twelve (12) months or more, thereafter no right shall exist to maintain on said property a non-conforming use unless the Board of Appeals with approval of the Township Board grants such privilege within six (6) months after such discontinuance. No non-conforming use, if changed to a use permitted in the district in which it is located, shall be resumed or changed back to a non-conforming use.

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**Section 5.04 RECONSTRUCTION OF DAMAGED NON-CONFORMING BUILDINGS AND STRUCTURES**

Nothing in this Ordinance shall prevent the reconstruction, repair or restoration and the continued use of any non-conforming building or structure damaged by fire, collapse, explosion, acts of God or acts wherein the expense of such reconstruction does not exceed sixty (60%) per cent of the fair valuation of the entire building or structure at the time such damage occurred; provided that such valuation shall be subject to the approval of the Building Official, whose decision shall be subject to the Board of Appeals, and provided that such restoration and resumption shall take place within six (6) months of the time of such damage and that it be completed within one (1) year identical with the non-conforming use permitted and in effect directly preceding said damage. Where pending insurance claims require an extension of time, the Building Official may grant a time extension provided that the property owner submits a certification from the insurance company attesting to the delay. The site must be fenced until such time as the debris or other potentially dangerous conditions are abated.

**Section 5.05 NON-CONFORMING LOTS OR PARCELS OF RECORD**

**Section 5.05.1 MINIMUM REQUIREMENTS FOR NON-CONFORMING LOTS OR PARCELS OF RECORD**

In any district in which single-family use is permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot or parcel of record, existing at the effective date of this Ordinance, provided the lot or parcel width is not less than fifty (50') feet and the area is not less than six thousand (6,000) square feet. The purpose of this provision is to permit utilization of recorded lots which lack adequate required width or depth as long as reasonable living standards can be provided.

**Section 5.05.2 MINIMUM REQUIRED YARD SETBACKS FOR NON-CONFORMING LOTS OR PARCELS OF RECORD**

Where non-conforming lots or parcels of record can not meet width, depth and/or size requirements of this Ordinance for the particular district in which the lot or parcel is located, the following minimum yard requirements shall apply:

- Front Yard-----Twenty (20') feet.
- Rear Yard-----Twenty-five (25') feet.
- Side Yard-----Six (6') feet, Total of two  
fifteen (15') feet.
- Corner Yards-----Twenty (20') feet.

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Maximum lot coverage-----Shall not exceed 50 percent.

**Section 5.05.3            APPROVAL TO CONSTRUCT ON NON-CONFORMING LOTS OR PARCELS OF RECORD**

An application for construction of a single family residence on non-conforming lots or parcels of record shall be submitted to the Building Official for review and approval prior to the issuance of a building permit. In reviewing the application the Building Official shall determine that all requirements or criteria related to the non-conforming aspect of the lot or parcel are met. Further the Building Official shall determine what additional information and/or approvals must be submitted or obtained to insure compliance with this Ordinance and that the general public health, safety and welfare of the existing and future residences of the area will be preserved.

**Section 5.06            NON-CONFORMING STRUCTURES**

Where a lawful structure exists at the effective date of adoption of this Ordinance that could not be built under the terms of this Ordinance 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:

**Section 5.06.1            NO ENLARGEMENT OR ALTERATION OF NON-CONFORMING STRUCTURES**

No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, except were the Zoning board of Appeals determines that said enlargement or alteration will be consistent with the spirit and intent of this Ordinance and will not negatively impact adjacent properties. Any structure or portion thereof may be altered to decrease its non-conformity.

**Section 5.06.2            NON-CONFORMING STRUCTURES SHALL CONFORM IF MOVED**

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

**Section 5.06.3            NON-CONFORMING STRUCTURES CEASED BEING USED**

If any such non-conforming structure ceases being used for any reason for a period of more than twelve (12) months, any

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subsequent use of such structure shall conform to the regulations specified by this Ordinance for the district in which such structure is located.

**Section 5.07 NON-CONFORMING USES OF LAND**

Where at the time of passage of this Ordinance, a lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, and where such use involves no individual structure with an assessed value exceeding Five thousand (\$5,000) Dollars, the use may be continued so long as it remains otherwise lawful provided:

**Section 5.07.1 NO ENLARGEMENT OR INCREASE OF NON-CONFORMING USES OF LAND**

No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of this Ordinance.

**Section 5.07.2 NON-CONFORMING USES OF LAND MOVED ON LOT OR PARCEL**

No such non-conforming 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 this Ordinance.

**Section 5.07.3 CEASE NON-CONFORMING USES OF LAND**

If any such non-conforming use ceases for any reason for a period of more than twelve (12) months, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which the land is located.

**Section 5.07.4 ADDITIONAL STRUCTURES RELATED TO NON-CONFORMING USES OF LAND**

No additional structures shall be erected in connection with such non-conforming use of land except a non-conforming single-family residential use may erect accessory buildings customary to single-family uses in accordance with all provisions of this Ordinance governing such accessory uses.

**Section 5.08 NON-CONFORMING USES OF STRUCTURES**

If a lawful use involving individual structures with a State equalized value of five thousand (\$5,000) dollars or more, or of structure and premises in combination, exists at

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the effective date of adoption of this Ordinance that would not be allowed in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

Section 5.08.1 ENLARGEMENT, EXTENSION, ETC. OF NON-CONFORMING USES OF STRUCTURES

No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.

Section 5.08.2 EXTENSION THROUGHOUT ANY PART OF A STRUCTURE USED FOR NON-CONFORMING USES

Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption of this Ordinance, but no such use shall be extended to occupy any land outside such building.

Section 5.08.3 CHANGE IN USE

A non-conforming use may be changed to another non-conforming use of the same or greater restriction, as determined by the Board of Zoning Appeals, provided no structural changes are made in the building. Whenever a non-conforming use has been changed to a conforming use, or to a use permitted in a district of greater restriction, it shall not thereafter be changed to a non-conforming use. Whenever a non-conforming use has been changed to or substituted by a use permitted in a district of greater restriction, it shall not thereafter be changed to a use of lesser restriction.

Section 5.08.4 DESTRUCTION STRUCTURE

Where non-conforming use status applies to a structure and premises in combination, removal or destruction of the entire structure shall eliminate the non-conforming status of the land.

Section 5.08.5 NON-CONFORMING SINGLE FAMILY USE OF STRUCTURES

Structures used for non-conforming single family use may be expanded or increased in floor area by fifty percent (50%) of the existing floor area at the effective date of this Ordinance, provided

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all of the minimum required yard setbacks for non-conforming lots or parcels of record as found in Section 5.05.2 of this Ordinance.

**Section 5.09 REPAIRS AND MAINTENANCE**

**Section 5.09.1 ORDINARY REPAIRS**

On any non-conforming structure or portion of a structure containing a non conforming 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, fixture, wiring, or plumbing, to an extent not to exceeding thirty (30%) percent of the State Equalized Value of the non-conforming structure or non-conforming portion of the structure as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.

**Section 5.09.2 PHYSICALLY UNSAFE OR UNLAWFUL DUE TO A LACK OF REPAIRS AND MAINTENANCE**

If any portion of a non conforming structure or any portion of a structure containing a non conforming use becomes physically unsafe or unlawful due to a lack of repairs and maintenance, and is declared by the Building Official or his designated representative to be unsafe or unlawful by reason of physical condition, and the cost of making the structure safe exceeds five thousand (\$5,000.00) dollars, it shall not thereafter be restored, repaired, or rebuilt except in conformity with all zoning regulations of the district which the structure is located, including but not limited to uses permitted, setbacks, height, minimum floor area, lot width and minimum lot area unless a variance is first obtained from the Zoning Board of Appeals. In determining the cost to make the structure safe, the Building Official shall compute the average cost of labor of licensed builders and the average retail cost of necessary materials. In determining whether a variance shall be granted in each case, the following shall be considered and determined by the Zoning Board of Appeals:

Section 5.09.2(a) The continuance of the non-conforming use or structure would not create an immediate danger to the public health, safety, or welfare of the neighborhood and the community as a whole.

Section 5.09.2(b) Continuance of the non-conforming use or structure does not and is not likely to significantly depress the value of nearby property or properties.

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- Section 5.09.2(c) Continuation of the non-conforming use or structure does not and is not likely to create a general nuisance to the nearby property or properties.
- Section 5.09.2(d) The proposed alteration or replacement will not have a negative impact on the neighboring property or properties and will bring the use or structure into greater conformity with the spirit and intent of the Township Zoning Ordinance.
- Section 5.09.2(e) No useful purpose would be served by the strict application of the provisions of this Ordinance with which the use or structure does not conform.
- Section 5.09.2(f) In no event shall the cubic content of a structure cited under this Section 5.09.2 be increased.

### **Section 5.10 DISTRICT BOUNDARY CHANGES**

Ordinarily, when district boundaries shall hereafter be changed, any non-conforming use may still be continued but subject to all other provisions of this Ordinance. However, if a property owner voluntarily petitions for rezoning of his property on which there exists a land use or structure which would not be permitted in the proposed new zoning district for said property, then said non-conforming land use or structure shall not retain its legal non-conforming status and shall be removed or discontinued within six (6) months after the said rezoning has become effective.

### **Section 5.11 JUNK YARD OR USED MATERIAL YARD IN NON-CONFORMING USE**

Any junk yard or used material yard in existence on the effective date of this Ordinance, which is located in a district other than a General Manufacturing District, shall be listed as a "Valid Non-Conforming Use" and may continue to operate subject to the provisions of this Ordinance governing non-conforming use. It is further provided that continuance of operation of such yards shall depend upon the maintenance of an orderly appearance, the minimizing of noise, odors, smoke and absence of material number of justified and proven complaints that such yard is a nuisance.

### **Section 5.12 ACQUISITION OF NON-CONFORMING USE AND/OR STRUCTURE**

The Township Board may acquire, by purchase, condemnation, or otherwise private property for the removal of non-conforming uses. The cost and expense, or a portion thereof, of acquiring the private property may be paid from the general funds or assessed to a special district in accordance with the applicable statutory provisions relating to the

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creation and operation of special assessment districts for public improvements in townships. The elimination of the non-conforming uses and structures in a zoning district is declared to be for a public purpose and for a public use. The Township Board may institute and prosecute proceedings for condemnation of non-conforming uses and structures under the power of Eminent-Domain or other applicable statutes.