

## **ARTICLE 13**

### **NONCONFORMITIES**

#### **SECTION 1301      INTENT AND PURPOSE**

- A. It is the intent and purpose of this Article to provide for the continuance of lawful uses of land or structures in the Township of Fulton (“Township”) that existed before the enactment of the Fulton Township Zoning Ordinance (“Ordinance”) or before the effective date of an amendment to this Ordinance. It is not the intent of the Article to encourage the survival of such nonconforming use or structure in an expanded and intensified manner.
  
- B. Nonconformities shall not be enlarged, expanded, or extended, except as provided herein. The enlargement, expansion and extension shall not be used as grounds for implementation of similar and like uses on other properties in the immediate vicinity, nor as a basis for amending district boundaries. Nonconformities are declared by this Ordinance to be incompatible with conforming structures and uses permitted in the various districts.

#### **SECTION 1302      CLASSIFICATION OF NONCONFORMITIES**

- A. Use of structures or land existing at the effective date of this Ordinance that were established without approval of a zoning permit or without a valid building permit under previous or existing Ordinance, or those uses which cannot be proved conclusively as existing prior to the effective date of this Ordinance shall be declared illegal uses and are not entitled to the status and rights accorded legally established uses.
  
- B. An existing use of land, lot, parcel or structure that does not fully comply with the provisions of this Ordinance, as amended, and either was lawfully established, created, commenced during a period of time when no valid zoning ordinance was in effect, or approved during a period of time under a previously adopted Ordinance, and remains in compliance with the terms of a permit issued at that time shall be a considered a legal nonconformity.

#### **SECTION 1303      REGULATION OF NONCONFORMITIES**

- A. The following provisions are provided for addressing the continuation of a legal nonconforming use.
  - 1. Any legal nonconforming use of land or structure that remains discontinued for a period of one (1) year shall be conclusively presumed to be abandoned and shall lose all rights to continuance as a legal nonconformity. Any future

use of land or structure must be in conformance with this Ordinance and future amendment thereof.

2. No legal nonconforming use shall be permitted to expand in intensity, expand or enlarge the size of any building or structure, or extend the land area occupied by the nonconforming use. The “expansion of the intensity” of non-residential uses includes the following:
  - a. an increase in the number of employees;
  - b. a material change in the product or production conducted by the use;  
or
  - c. similar such changes that may increase traffic, congestion, and continuance of the use.
3. A legal nonconforming use shall not be changed in use to another nonconforming use. A legal nonconforming use that is succeeded by a conforming use in compliance with this Ordinance shall lose its vested right as a legal nonconformity and the land or structure shall thereafter continue in compliance with the provisions of this Ordinance.

B. The following provisions shall be considered in addressing legal nonconforming structures and lots.

1. Structural change in a nonconforming structure requiring a zoning or building permit is not permitted except as follows:
  - a. Building, mechanical, electrical, plumbing, sewage disposal, and well permits may however be issued for purposes of strengthening or restoring to safe condition of any building, structure, or part thereof declared to be unsafe by any public official charged with protecting the public health or safety.
  - b. If approved by the Board of Appeals, subject to the conditions and standards under Section 1304, below.
2. Any existing lot or parcel lawfully created prior to this Ordinance or under previous Ordinance that fails to meet the minimum lot area and minimum lot frontage requirements contained in this Ordinance shall be considered buildable as long as other dimensional requirements, such as front, side and rear yard setbacks can be met.
  - a. The lot must be proven to be a legal nonconformity by examination of either a legal instrument of transfer of property, or property tax rolls prior to issuance of zoning permit for development of property.

3. A legally nonconforming structure may be occupied by a legal conforming use as long as the nonconformity does not increase the potential of the legal conforming use to have negative impacts on the use and personal enjoyment of adjacent property. A special land use may not be implemented where specific dimensional requirements and conditions set forth in provisions for a particular special land use cannot be met by the legal nonconforming structure.
4. There exists in the Township legally nonconforming structures, legally nonconforming uses, and a combination of legal nonconforming uses and structures on the same property. The following shall apply to these nonconformities:
  - a. A legal nonconforming structure that is damaged by fire, collapse, explosion, natural processes or weather may be replaced or repaired to its former condition. The replacement structure or repaired structure must fit within the footprint of the previously existing structure and not exceed the previous bulk dimensions, height, density or lot coverage requirements.
  - b. A legally nonconforming residential use in a non-residential district that is damaged by fire, collapse, explosion, natural processes or weather may be replaced or repaired to its former condition. The replacement structure or repaired structure must fit within the footprint of the previously existing structure and not exceed the previous bulk dimensions, height, density or lot coverage requirements.
  - c. A legally nonconforming nonresidential use in a residential district that is damaged by fire, collapse, explosion, natural processes or weather may not be replaced or repaired to its former condition and nonconforming status.
- C. An illegal nonconformity shall be corrected to comply with the provisions of this Ordinance or be discontinued. Illegal nonconforming uses and structures shall be subject to enforcement action pursuant to this Ordinance.

**SECTION 1304      EXPANSION OF NON-CONFORMING USE AND/OR  
STRUCTURE**

- A. Nonconforming uses, buildings or structures may be structurally changed, altered, or enlarged with the approval of the Board of Appeals when the Board finds that the request is a case of exceptional hardship in which failure to grant the relief requested would unreasonably restrict continued use of the property or would restrict valuable benefits that the public currently derives from the property or structure as used in its nonconforming status. Any approval for structural changes, alteration or enlargement may be granted only with a finding by the Board of Appeals that approval will not

have an adverse affect on surrounding property and that it will be the minimum necessary to relieve the hardship.

- B. Approval of an expansion of a nonconforming use or structure by the Board of Appeals does not relieve the petitioner of the responsibility of meeting other provisions of the Ordinance. The intended development must be reviewed and approved through the appropriate process and by the appropriate authority prior to issuance of a zoning permit and/or a building permit.