

NONCONFORMITIES

ARTICLE 12

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SECTION 12.01 GENERAL

Certain existing lots, structures, and uses of lots and structures were lawful before this Ordinance was adopted, but have become nonconformities 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 or, where discontinuance or removal is not feasible, to gradually upgrade such nonconformities to conforming status.

Nonconformities shall not be enlarged, expanded, or extended, except as provided herein, and shall not be used as grounds for adding other structures and uses of lots and structures which are prohibited elsewhere in the same district.

Nonconformities are declared by this Ordinance to be incompatible with the structures and uses permitted in the various districts.

SECTION 12.02 CLASSIFICATION, ESTABLISHMENT, AND DEFINITION

A. Classification

Nonconformities shall be classified in one of the following categories:

1. Nonconforming lots of record;
2. Nonconforming uses of lands without structures or with minor structures only;
3. Nonconforming uses of major structures or nonconforming uses of structures and premises in combination;
4. Nonconforming structures; or
5. Nonconforming characteristics of use.

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B. Establishment and Definition of Nonconformities

1. To be considered a nonconformity under the provisions of this Article, the lot, structure, or use must have been in compliance with the zoning requirements which were lawful when it was established, but must be, except for the provisions of this Article 12, prohibited, regulated, or restricted by the enactment of this Ordinance or subsequent amendments thereto.
2. A nonconformity shall be established by one (1) of the following methods:
 - a. The nonconformity must have been a legal nonconformity under the former zoning ordinance and continue to be designated as nonconforming under the provisions of this Ordinance or subsequent amendments thereto;
 - b. The nonconformity must have been a legal conformity under the former zoning ordinance and made nonconforming by the provisions of this Ordinance or subsequent amendments thereto; or
 - c. The nonconformity must have been created by a lawful public taking or actions pursuant to a court order having the same effect as a violation of this Ordinance.
3. Lots, structures, or uses which do not meet one of the above criteria and which are prohibited, regulated, or restricted by this Ordinance or its amendments are unlawful, shall not be permitted to continue, and shall not be entitled to any of the relief provided in this Article 12.

SECTION 12.03 CONDITIONAL USES NOT TO BE CONSIDERED NONCONFORMING

Any use lawfully existing on the effective date of adoption or amendment of this Ordinance and which is permitted as a conditional use in a district under the terms of this Ordinance shall be deemed a conforming use. Such use shall, without further action, application, or review, be considered a conforming use, but only to the extent that such use actually occupies the lot, building, and/or structure on the effective date of adoption or amendment of this Ordinance. Expansion of such use or change to another conditional use after the effective date of adoption or amendment of this Ordinance shall require a conditional use permit as provided in Article 6 ("Conditional Uses") herein.

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SECTION 12.04 NONCONFORMING LOTS OF RECORDS

A. Use of Single Nonconforming Lots for a Single-Family Dwelling

1. A single-family dwelling and customary accessory structures may be erected on any single, nonconforming lot of record that is not in continuous frontage with other lots in the same ownership (except as provided in Paragraph B(2) below) at the effective date of adoption or amendment of this Ordinance, in accord with other requirements applying in the separate zoning districts.
2. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and all requirements other than those applying to area, or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.
3. Variance of yard requirements shall be obtained only through action of the Zoning Board of Appeals in accordance with the provisions of Article 13 ("Zoning Board of Appeals") herein.

B. Combination of Residential Nonconforming Lots in Same Ownership and with Continuous Frontage

1. If two (2) or more lots or combinations of lots and portions of lots are in single ownership as of the date of this Ordinance or at any time thereafter and are in continuous frontage, and if all or part of the lots do not meet the requirements established under this Ordinance for lot width and area, the lands involved shall be combined and considered a single, undivided parcel for purposes of this Ordinance. No portion of the resulting parcel shall be used, sold, or divided in such a manner as to diminish compliance with lot width and area requirements established by this Ordinance.
2. Where the nonconforming lot(s) were created by public taking action or as a result of a court order, combination of the lots shall not be required.

C. Use of Single Nonresidential Nonconforming Lots

1. A principal structure and customary accessory structure may be erected, occupied, and used on a single, nonconforming lot of record in a nonresidential zoning district, provided that the lot is not in continuous frontage with other lots in the same ownership (except as provided in Paragraph D(2) below) and is in accord with other requirements applying in the separate districts.

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2. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and all requirements other than those applying to area, or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.
3. Variance of yard requirements shall be obtained only through action of the Zoning Board of Appeals in accordance with the provisions of Article 13 (“Zoning Board of Appeals”) herein.

D. Combination of Nonresidential Nonconforming Lots in Same Ownership and with Continuous Frontage

1. If two (2) or more lots or combinations of lots and portions of lots are in single ownership as of the date of this Ordinance or at any time thereafter and are in continuous frontage, and if all or part of the lots do not meet the requirements established under this Ordinance for lot width and area, the lands involved shall be combined and considered a single, undivided parcel for purposes of this Ordinance. No portion of the resulting parcel shall be used, sold, or divided in such manner as to diminish compliance with lot width and area requirements established by this Ordinance.
2. Where the nonconforming lot(s) were created by public taking action or as a result of a court order, combination of the lots shall not be required.

SECTION 12.05 NONCONFORMING USES OF LOTS WITHOUT STRUCTURES OR WITH MINOR STRUCTURES

A. Restrictions

Nonconforming uses of land not involving any permanent structure or involving a permanent structure with a replacement cost not exceeding two thousand dollars (\$2,000), as determined by the Zoning Inspector, shall be subject to the following restrictions:

1. There shall be no enlargement, increase in intensity, or alterations to the use, its permanent structure, or both, and no accessory use, building, or structure shall be established therewith.
2. a. If the nonconforming use ceases for any reason for more than one hundred twenty (120) days or if a nonconforming use which is seasonal in nature is discontinued or does not open for business during a twelve- (12-) month period, or if a nonconforming use is changed to a conforming use, such nonconforming use shall lose

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its legal nonconforming status. Thereafter, subsequent use of the premises shall conform to the regulations of the district in which it is located.

- b. Cessation of use includes, but is not limited to, vacancy of the building or structure in which the nonconforming use was conducted, or discontinuance of the activities consistent with or required for the operation of such nonconforming use, irrespective of whether or not an intention to cease or abandon the nonconforming use may exist.
3. No such use shall be relocated or moved to any portion of the lot other than that occupied at the time that nonconforming status was created.
4. No such land shall be subdivided nor any structure added, except for purposes and in a manner conforming to district regulations. Subdivision that does not increase the degree of nonconformity, however, shall be permitted.

SECTION 12.06 NONCONFORMING USES OF LOTS WITH MAJOR STRUCTURES OR STRUCTURES AND PREMISES IN COMBINATION

A. Restrictions

Nonconforming use(s) of lots involving a permanent structure(s) with a value in excess of two thousand dollars (\$2,000), as determined by the Zoning Inspector, or nonconforming uses of structures and premises in combination, may be continued exactly as such use(s) existed at the time the nonconforming status was established, subject to the following restrictions:

1. A nonconforming use may not be enlarged, extended, intensified, or changed, except for a change to a use permitted in the district in which the property is located, except as provided below:
 - a. A nonconforming use may be extended through portions of a building manifestly arranged or intended for such use, after approval by the Zoning Board of Appeals in accordance with the provisions of Article 13 ("Zoning Board of Appeals") herein, provided no structural alterations are made and the floor area of the building is not increased, and provided that such use shall not extend to occupy land outside such building or any additional building not used for such nonconforming use at the time that nonconforming status was established.

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2.
 - a. If a nonconforming use of a structure, or structure and premises in combination, ceases for any reason for more than one hundred twenty (120) consecutive days, or if a nonconforming use which is seasonal in nature is discontinued or does not open for business during a twelve- (12-) month period, or if a nonconforming use is changed to a conforming use, the structure or structure and premises shall lose its legal nonconforming status. Thereafter, subsequent occupancy and use of the land, the building, and the structure shall conform to the regulations of the district in which the property is located and any structural alterations necessary to conform the structure or building to the regulations of the district in which the property is located shall be required.
 - b. Cessation of use includes, but is not limited to, vacancy of the building or structure in which the nonconforming use was conducted, or discontinuance of the activities consistent with or required for the operation of such nonconforming use, irrespective of whether an intention to cease or abandon the nonconforming use may exist.
3.
 - a. If a building(s) or structure(s) devoted to a nonconforming use is destroyed or damaged by any means to the extent of fifty percent (50%) or more of the current assessed taxable value of the building(s) or structure(s) comprising the nonconforming use, such building(s) or structure(s) shall not be reconstructed except in conformity with the regulations of the district in which it is located, unless the lot is a nonconforming lot of record, in which case Section 12.04 herein will apply.
 - b. If a building(s) or structure(s) devoted to a nonconforming use is damaged to an extent of less than fifty percent (50%) of the current assessed taxable value of the building(s) or structure(s) comprising the nonconforming use, such building(s) or structure(s) may be replaced at its location existing prior to such damage, provided such replacement is commenced within one (1) year of the date of damage and is completed within two (2) years after the date of damage. Failure to complete replacement within the stated time period shall result in the loss of legal, nonconforming status.
 - c. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the legal nonconforming status of the land.

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SECTION 12.07 NONCONFORMING STRUCTURES

A. Restrictions

A structure that is nonconforming because of noncompliance with the dimensional requirements of the official schedule of district regulations of this Ordinance and that is used for a use permitted in the district in which it is located may remain, provided that:

1. Structural changes which decrease or do not affect the degree of nonconformity shall be permitted. Structural changes which increase the degree of nonconformity shall not be permitted, with the following exceptions:
 - a. Nonconforming buildings used in farm operations may be expanded if approved by the Zoning Inspector, subject to the following requirements:
 - 1) Farming shall be a permitted use in the district in which the use is located and the intended use of the structure shall be a permitted use in the district in which the structure is located; and
 - 2) The expansion shall meet all requirements of the zoning district in which it is located. The existing structure(s) and the expansion shall not exceed the ground floor coverage or floor area ratio limits of the district in which they are located.
 - b. A single-family detached dwelling unit and accessory buildings may be expanded if approved by the Zoning Inspector, subject to the following requirements:
 - 1) The single-family residence, or accessory building, shall be a permitted use in the district in which it is located; and
 - 2) The expansion shall meet all yard requirements of the zoning district in which it is located.
 - c. All other nonconforming structures, in any zoning district, may be expanded only after approval of the Zoning Board of Appeals, in accordance with Article 13 ("Zoning Board of Appeals") herein.
2. a. A nonconforming structure or a portion thereof, if destroyed or damaged by any means to the extent of fifty percent (50%) or more

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of its current assessed taxable value shall not be reconstructed except in conformity with the regulations of the district in which it is located, unless the lot is a nonconforming lot of record, in which case Section 12.04 above shall apply.

- b. Any structure which is damaged to an extent of less than fifty percent (50%) of its current assessed taxable value may be replaced at its location existing prior to such damage, provided such replacement is commenced within one (1) year of the date of damage and is completed within two (2) years after the date of damage. Failure to complete replacement within the stated time period shall result in the loss of legal, nonconforming status.

B. Relocation

A nonconforming structure that is moved within a site or to another site shall thereafter conform to the regulations of the district in which it is located.

SECTION 12.08 NONCONFORMING CHARACTERISTICS OF USE

Nonconforming characteristics of use, which may include, by way of illustration but not limitation, inadequate parking or loading facilities or inappropriate landscaping or lighting, may continue to operate but shall not be expanded, altered, changed, or relocated in such a manner as to increase the degree of nonconformity.

SECTION 12.09 ALTERATIONS AND REPAIRS

- A. Except as provided in Sections 12.06 and 12.07 herein, alteration or repair work may be done on a nonconforming structure or a structure containing a nonconforming use in any period of twelve (12) consecutive months to an extent not to exceed ten (10) percent of the current assessed taxable value of the nonconforming structure at the time of the repair, provided that the floor area or volume of such building, or the number of families housed therein, or the dimensions, height, or number of stories of such structure as it existed on the date of adoption or amendment of this Ordinance shall not be increased. No other alterations or repairs shall be permitted unless the structure or use is made to conform to all requirements of this Ordinance.
- B. A nonconforming structure or portion thereof, or a structure or portion thereof containing a nonconforming use which has structurally deteriorated to an extent that it has been condemned by any duly authorized official and the cost of repair to meet standards for occupancy exceed fifty percent (50%) of the structure's

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current assessed taxable value shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

SECTION 12.10 CHANGE OF TENANCY OR OWNERSHIP

There may be a change of tenancy, ownership, or management of any existing nonconforming uses of land, structures, and premises, provided there is no change in the nature or character of such nonconforming uses except in accordance with the provisions of this Article.

SECTION 12.11 EXPANSION AND SUBSTITUTION

A. Nonconforming Uses

Nonconforming uses shall not be enlarged or expanded in any respect, except as provided in Section 12.06A(1)(a) herein.

B. Nonconforming Structures

Where the Zoning Board of Appeals is required to determine whether a nonconforming structure may be enlarged or expanded, the following provisions shall apply, in addition to the required standards and findings contained within Article 13 ("Zoning Board of Appeals") herein:

1. The nonconformity must result from noncompliance with district regulations regarding minimum lot area, minimum lot width, required yards, off-street parking and loading requirements, or transition or landscape strip requirements. In no case shall a 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.
2. The existing and proposed uses of such buildings and structures shall be permitted in the district in which they are located.
3. The proposed improvement shall conform to all requirements of the district in which it is located.
4. The Zoning Board of Appeals shall make the following findings of fact before approving such a request:

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- a. that the retention of the nonconforming structure is reasonably necessary for the proposed improvement or that requiring removal of such structure would cause undue hardship;
 - b. that the proposed enlarged or otherwise improved nonconforming structure would not adversely affect the public health, safety, and welfare; and
 - c. that the proposed improvement is reasonably necessary for continuation of the use on the lot.
5. The Zoning Board of Appeals shall have authority to require modification of the nonconformity, if 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. All expansions permitted under this Section shall meet all requirements of Article 10 ("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.

C. Substitution of Uses

A nonconforming use may be substituted for another nonconforming use upon permission of the Zoning Board of Appeals, provided that no structural alterations are made, and provided further, that such other nonconforming use is more appropriate than the existing nonconforming use in the district in which it is located. The Board of Appeals may require appropriate conditions and safeguards in accordance with the intent of this Ordinance. A nonconforming use, when superseded by a more appropriate use as provided in this subsection, shall not thereafter be resumed.

D. Substitution of Structures

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

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SECTION 12.12 ACQUISITION OF NONCONFORMITIES

Superior Township may acquire private property or an interest in private property to remove a nonconformity, as provided in Act 184 of the Public Acts of 1943, as amended.

SECTION 12.13 NONCONFORMING EXTRACTION OPERATIONS

- A. A nonconforming extraction operation legally existing on the effective date of adoption or amendment of this Ordinance may be extended, subject to the following provisions:
1. Extraction may be extended within the property based upon the property lines of record at the time this Ordinance was adopted or amended, provided, however, that such extension shall not cross a public road.
 2. All extensions to be commenced following the effective date of adoption or amendment of this Ordinance shall first comply with all provisions of this Section, and Section 5.10 herein.
 3. Any extension of operations shall not exceed the depth of extraction existing at the effective date of adoption or amendment of this Ordinance, unless extraction to a greater depth is specifically approved by the Township Planning Commission. An increase in the depth of extraction shall not result in pollution of subsurface water or otherwise alter water supplies in the vicinity, and shall not create unstable soil conditions, or health or safety hazards.
 4. A site plan as provided in Section 5.10 herein for the extension of operations and restoration of the site shall be filed with the Township Planning Commission.
- B. If a nonconforming extraction operation ceases for a period of twelve (12) or more consecutive months, the extraction operation shall not be resumed and the subsequent use of the lot shall thereafter conform to the regulations of the district in which it is located.
- C. The equipment and processes of a nonconforming extraction operation may be upgraded periodically in order to maintain the operation in a modern condition and in order to meet contemporary environmental and pollution control standards. Such changes shall be permitted, even if they will result in an increase of production, provided the following conditions are met:

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1. The changes in equipment and processes shall not have the effect of changing the nature or character of the operation into a use prohibited in the district in which it is located.
2. The noise, dust, odors, and other objectionable attributes of the operation shall not be increased beyond the levels existing at the effective date of operation or amendment of this Ordinance.
3. The owner of the extraction operation shall notify the Township Planning Commission in writing of each change prior to the installation of such change.
4. Building Permits for any structure shall be obtained prior to installation or construction.