

## **ARTICLE 12**

### **NONCONFORMITIES**

#### **Section 1201: Statement of Intent**

- (A) The purpose and objective of the provisions established under Article 12 of this Zoning Ordinance is to establish specific regulations pertaining to nonconforming uses, lots, land areas, building and/or structures.
- (B) Through the enactment of this Zoning Ordinance, there exists or will exist certain nonconformities which, if lawful before this Chapter of the Code was passed or amended, may be continued, subject to certain limitations, although such nonconformities would be prohibited, regulated or restricted under the terms of this Zoning Ordinance or future amendments thereto.
- (C) To avoid undue hardship, nothing in this Zoning Ordinance shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption and on which actual building construction has been diligently conducted upon.

#### **Section 1202: Nonconforming Lots of Record**

- (A) Any lot shown on a recorded subdivision or land development plan on the effective date of this Zoning Ordinance, which does not meet the minimum size or width requirements of the zoning district to which it is located, may be used for a use permitted by regulations of that zoning district, provided that all yard, height, coverage and open space requirements of the zoning district shall be met. However, when a developer or applicant has had an application for approval of a preliminary or final subdivision plan, which has been approved prior to the effective date of this Zoning Ordinance, no provision and/or regulation in this Zoning Ordinance shall be applied to affect adversely the right of the developer or applicant to commence and complete any aspect of the approved preliminary or final plan within such time periods as are established within the Pennsylvania Municipalities Planning Code.
- (B) Any lot held in single and separate ownership on the effective date of this Zoning Ordinance, which does not meet the minimum size or width requirements of the zoning district to which it is located may be used for any use permitted in that zoning district, provided that all yard, height, coverage and open space requirements of the district are met. However, if two (2) or more lots, combination of lots, or portions of lots with continuous frontage held under single ownership are of record at the time of passage or amendment of this Zoning Ordinance. If all or part of the lots do not meet the requirements established for lot width and/or area, the land involved shall be considered to be an undivided parcel for the purpose of this Zoning Ordinance, and
- (C) No portion of a nonconforming lot or parcel of land shall be used or sold in a manner which diminishes compliance with lot width and/or lot area requirements established by this Zoning Ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this Zoning Ordinance.

#### **Section 1203: Nonconforming Uses of Land**

- (A) Lawful uses of land, which at the effective date of this Zoning Ordinance or subsequent amendment thereto, that become nonconforming, such nonconforming use or uses may be continued by the present or any subsequent owner so long as it remains otherwise lawful, subject to the provision listed within this Article of this Zoning Ordinance.
- (B) A nonconforming land use shall not be enlarged, increased and/or extended in order to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Zoning Ordinance.
- (C) Whenever a nonconforming use has been discontinued for a period of twelve (12) consecutive months, such use shall not thereafter be reestablished, except if the owner of such property files within thirty (30) days of the date of discontinuance a certificate of intention to maintain such use. If such certificate is filed the time period, which a

nonconforming use may be discontinued and still be reestablished, such nonconforming use shall be extended by a twelve (12) month period.

- (D) A nonconforming use, if changed to a conforming use, shall not thereafter be changed back to any nonconforming use. A nonconforming use may be changed to a conforming use or to a nonconforming use of a less offensive nature. A nonconforming use shall not be moved in whole or in part to any portion of the lot or parcel other than that occupied by such at the effective date of adoption or amendment of this Ordinance.
- (E) No additional structures, which do not conform to the requirements of this Zoning Ordinance shall be erected in connection with such nonconforming use of land.

#### **Section 1204: Nonconforming Buildings and Structures**

- (A) Lawful nonconforming structures or buildings, which at the effective date of this Zoning Ordinance becomes nonconforming by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the building or structures, may be continued as long as they remain otherwise lawful, subject to the provisions listed in the following subsections.
- (B) A nonconforming use, building or structure shall not be enlarged or increased upon land not owned, leased or under option to purchase at the time of the enactment of this Zoning Ordinance.
- (C) A nonconforming building or structure shall not be enlarged, increased, repaired, maintained or modified in any manner, which will further violate any applicable dimensional requirements imposed by this Zoning Ordinance.
- (D) Total future expansion of a nonconforming building or structure shall not exceed the following provisions:
  - (1) The expansion may be permitted by right, provided that such expansion does not exceed fifty (50) percent of the gross floor area or ground area occupied by the building or structure at the time of the effective date of this Zoning Ordinance.
  - (2) The expansion may be permitted to exceed fifty (50) percent of the gross floor area or ground area occupied by the building or structure at the time of the effective date of this Zoning Ordinance, provided that a special exception is permitted by the Zoning Hearing Board.
  - (3) Unless otherwise permitted by Upper Bern Township, the expansion shall be limited to a single occurrence.
- (E) Any lawful nonconforming building or other structure which has been involuntarily damaged or destroyed by fire, explosion, windstorm or other similar active cause may be reconstructed in the same location, provided that:
  - (1) The reconstructed building or structure shall not exceed the height, area or volume of the damaged or destroyed building or structure.
  - (2) Reconstruction shall begin within one year from the date of damage or destruction and shall be carried on without interruption
- (F) A nonconforming building or structure which has been damaged by fire, explosion, accident and/or calamity may be reconstructed and used for the same nonconforming use, provided that the reconstructed building or structure does not exceed the area, volume and height of the destroyed buildings or structure. The reconstruction shall be started within one (1) year from the date the building or structure was destroyed and shall be carried through without interruption.
- (G) No nonconforming structure or building shall be, for any reason, moved for any distance unless it shall thereafter conform to the regulations for the district in which it is located after it is moved.

### **Section 1205: Nonconforming Use of Structures or Buildings**

- (A) Lawful nonconforming structures or buildings, or structures or buildings and land in combination, which exist at the effective date of this Ordinance that would not be allowed in the district under the terms of this Zoning Ordinance, may be continued so long as it remains otherwise lawful, subject to the provisions contained within this Article of this Zoning Ordinance.
- (B) An existing structure devoted to a use not permitted by this Zoning Ordinance within the zoning district where it is located may be enlarged, extended, constructed, reconstructed or structurally altered up to but not more than twenty five (25) percent of its gross floor and/or use area as it existed at the time of the passage of this Zoning Ordinance or subsequent amendment, provided that the lot or lots upon which the nonconforming structure is situated, were held under single ownership or long-term lease (10 years or more) and purchased or leased prior to the enactment of this Zoning Ordinance. Unless otherwise permitted by Upper Bern Township, the expansion shall be limited to a single occurrence.
- (C) Any enlargement, extension, construction, reconstruction or structural alteration must conform to all other regulations of the zoning district to which it is located. This provision may be used only once for each nonconforming structure.
- (D) Any nonconforming use may be extended throughout the building, which was in use for the nonconforming use at the time of adoption of this Zoning Ordinance, but no such use shall be extended to occupy any land outside such building unless provided for under this Article of this Zoning Ordinance.
- (E) A nonconforming use of a structure, or premises and structure, may be changed to another nonconforming use provided that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. Such determination shall be made by a special exception granted by the Zoning Hearing Board, which shall take into consideration the following issues: the intent of the provisions for the zoning district; the ability to change the use to a conforming use; traffic generation and congestion; noise, smoke, dust, fumes, vapors, gases, heat, odor, glare, vibration, or other nuisances; external storage; solid waste disposal; sewer and water facilities; and the general impact of the use compared to the uses within 500 feet of the property lines.
- (F) 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 for the district, and the nonconforming use may not thereafter be resumed. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for twelve (12) consecutive months, the structure or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
- (G) Where a building or structure occupying a nonconforming use is damaged or destroyed, the status of the nonconforming use shall be eliminated at that point in time. For the purpose of this subsection, damage or destruction shall be defined as a loss of more than seventy-five (75) percent of the market value at the time of the damage or destruction.

### **Section 1207: Registration of Nonconformities**

The burden of proof that the use, lot, structure or building is a nonconformity shall be the responsibility of the property owner. All known nonconformities shall be a matter of public record and shall constitute sufficient notice and the limitations therein express and implied to any transferee acquiring any right to use or own such property.