

ARTICLE 10 Nonconformities

10.1 Overview

Any nonconforming lot, building, structure or use legally existing at the time of adoption of this Ordinance, or which is created whenever a district is changed by amendment hereafter, may be continued, altered, reconstructed, sold, or maintained even though it does not conform to the regulations of the district in which it is located, except as provided below. It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, discontinued, or abandoned.

10.2 Non-conforming Lots, Uses, and Structures

10.2.1 Nonconforming Lots – A non-conforming lot may be used for a permitted use in the district in which it is located even though such a lot fails to meet the requirements for lot area or dimensions or both. However, all other applicable requirements including building lines and setbacks shall apply. The variance of setback requirements shall be obtained only through the action of the Zoning Hearing Board.

If two or more lots with common ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements for lot width and area established by this Ordinance, the lands involved shall be considered an undivided parcel, and no portion of such parcel shall be occupied or sold which does not meet lot width and area requirements established by this Ordinance.

10.2.2 Nonconforming Uses – A use legally existing at the time of adoption of this Ordinance which becomes a non-conforming use in the district where it is existing upon adoption of this Ordinance or amendment hereafter, may be continued as it exists upon adoption or future amendment of this ordinance. Thereafter, the use shall only be modified minimally to uses that are generally consistent with the use that became nonconforming. The use shall not be permitted to change to any use that is different from the nonconforming use and not in compliance with the use regulations for the district where the use is located.

10.2.3 Nonconforming Structures – A structure legally existing at the time of adoption of this Ordinance which becomes a non-conforming structure in the district where it is existing upon adoption of this Ordinance or amendment hereafter, may be continued as it exists upon adoption or future amendment of this ordinance. Thereafter, the structure shall only be modified minimally in accordance with the provisions of this Ordinance. The structure shall not be permitted to change in such a fashion as to make the nonconforming structure a greater non-conformity to adversely affect the character of the neighborhood or district in which it is located.

10.3 Abandonment

If any nonconforming use or building or structure occupied by a nonconforming use is abandoned for a period of one (1) year, the future use of such building or land shall be in conformity with the district regulations. A nonconforming use shall be deemed to be abandoned when the use or activity ceases by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within a period of one (1) year from the date of cessation or discontinuation.

In the event of destruction or total casualty loss to a nonconforming building or structure, a one (1) year extension may be granted by the Zoning Officer provided that the owner shall, prior to the expiration of the initial one (1) year period provided for in the forgoing paragraph, file a notice of intent to reconstruct with the Zoning Officer.

10.4 Repairs and Reconstruction

10.4.1 – Repairs, non-structural alterations, and other general maintenance may be made to a nonconforming building or structure, or a building or structure occupied by a nonconforming use, but such repairs shall be subject to all applicable Zoning and Building Code requirements.

10.4.2 – A nonconforming building or structure or a building or structure occupied by a nonconforming use which is damaged by fire, flood, or other natural causes may be reconstructed, restored, and used as before provided that:

10.4.2.1 – The reconstruction starts within one (1) year of the damage;

10.4.2.2 – The reconstruction shall not exceed the size, bulk, and area that existed prior to the damage, unless approved by the Zoning Hearing Board;

10.4.2.3 – The location of the reconstruction does not create a safety hazard;

10.4.2.4 – The reconstruction of a nonconformity located in the 100 year floodplain shall comply with the section dealing with Existing Structures in the Nippenose Township Floodplain Ordinance (Ordinance 2016-79).

10.5 Extension or Enlargement

10.5.1 – A nonconforming use of a building or structure may be extended throughout the interior of the building provided that no structural alterations are made thereto. Prior to initiation of such extension, however, a Zoning Permit shall be obtained from the Zoning Officer.

10.5.2 – Structural alterations proposed to extend a nonconforming structure may be authorized as follows:

10.5.2.1 By the Zoning Officer, provided that –

(a) The extensions or enlargements shall conform to the yard, height, off-street parking, coverage, and other requirements of the Zoning District in which the use or structure is located; and

(b) The proposed extension or enlargement of the nonconforming use shall not exceed 50 percent of the gross floor area of the structure or use, with such gross floor area to be measured at such time that the use became nonconforming.

10.5.2.2 By the Zoning Hearing Board upon application for a variance, provided that –

(a) The extensions or enlargements shall conform to the yard, height, off-street parking, coverage, and other requirements of the Zoning District in which the use or structure is located; and

(b) The proposed extension or enlargement of the nonconformity which exceeds 50 percent of the gross floor area of the structure or use is approved by a variance issued by the Zoning Hearing Board.

10.5.3 – For nonconforming uses whose normal operations involve natural expansion (i.e. quarries, junk yards, cemeteries, etc.), an expansion not exceeding 25% of the volume or area of the nonconformity which existed at the effective date of this Ordinance may be authorized by the Zoning Hearing Board.

10.5.4 – A nonconforming use shall not be extended to displace a conforming use, unless authorized by the Zoning Hearing Board.

10.5.5 – Any nonconforming building or structure or building or structure occupied by a nonconforming use which is moved for any reason must meet all requirements of the district in which it is located.

10.6 Change of Use

10.6.1 – Any non-conforming use may be changed to another non-conforming use by Special Exception provided that the Zoning Hearing Board shall find the proposed use to be equally appropriate or more appropriate to the Zoning District in which it is located.

10.6.2 – A non-conforming use that is replaced by a permitted use shall not be allowed to revert to any non-conforming use.

10.7 Registration of Non-conforming Uses, Structures and Lots

To facilitate the administration of this Chapter, it shall be the duty of the Zoning Officer to develop and maintain an accurate listing of all non-conforming uses, structures, and lots identified during the performance of his duties as zoning officer. The listing shall identify the nonconforming aspect of the property.