CHAPTER 9
NON-CONFORMATIES

9-1 GENERAL PROVISIONS

9-1.1 Purpose

This Chapter regulates the continued existence of uses, structures and lots lawfully established prior to the effective date of this Resolution that do not conform to the regulations of this Resolution applicable in the zoning districts in which such uses, structures and lots are located. The continued existence of nonconforming uses is frequently inconsistent with the purposes for which such regulations are established. Thus their gradual elimination is generally desirable. The regulations of this Chapter generally permit such nonconformities to continue without specific limitation of time but are generally intended to restrict further investments in such uses that would make them more permanent or less desirable. The regulations also restrict further investment in noncomplying structures and lots of record that would increase the degree of noncompliance.

This Chapter recognizes, through provisions for compatible nonconforming uses, that the improvement of a nonconforming use may be desirable in unique circumstances to achieve additional protection of adjacent property and benefit the surrounding neighborhood.

This Chapter also recognizes that new standards for landscape, buffers, height and setback requirements may conflict with the investment backed expectations of owners of developments that existed prior to the adoption of these regulations and therefore allows limited exception from such regulations to minimize the affect of these standards on existing property rights.

9-1.2 General Scope of Regulations

These regulations apply to the following categories of nonconformities:

(a) Nonconforming uses of land and of complying structures;

(b) Noncomplying structures;

(c) Noncomplying lots of record;

(d) Compatible nonconforming uses.

Development that was approved as-of-right prior to the effective date of this Resolution and only permissible as a PUD or Conditional Use by this Resolution shall not be classified as a nonconforming use.

9-1.3 Exception for Repairs Pursuant to Public Order

Nothing in this Chapter shall be deemed to prevent the strengthening or restoration to a safe condition of a nonconforming structure in accordance with an order of a public official charged with protecting the public safety who declares such structure to be unsafe and orders its restoration to a safe condition. This is provided such restoration is not otherwise in violation of the various provisions of this Chapter prohibiting the repair or restoration of partial structures or signs.

9-1.4 Nonconforming Accessory Uses and Structures

No use, structure or sign that is accessory to a principal nonconforming use or structure shall continue after such principal use or structure has been voluntarily discontinued for two (2) years or more, unless it shall thereafter conform to all the regulations of the zoning district in which it is located.

9-1.5 Burden of Establishing Legality of Nonconformity

The burden of establishing that any nonconforming use lawfully exists under the provisions of this Resolution shall, in all cases, be upon the owner of such nonconformity and not upon the Township.

9-1.6 Inventory and Notice of Nonconforming Uses

Within two (2) years after the effective date of this Resolution, or any amendment thereto creating new nonconformities, or such longer period as may be required, the Zoning Inspector shall inventory all nonconforming uses and determine the names and addresses of the owners of record thereof. For each such nonconformity inventoried, the Zoning Inspector shall determine the nature and extent of the nonconformity.

Upon making such determination, the Zoning Inspector shall notify the aforesaid owner or lessee in writing by registered mail of his determination. Such inventory and notices shall be kept on file by the Zoning Inspector and shall be a matter of public record.

The determinations of the Zoning Inspector made pursuant to this section shall be subject to appeal to the Board of Zoning Appeals pursuant to Chapter 22 in the same manner as other rulings and interpretations.

This Section does not relieve the burden establishing the legality of the nonconforming use from the property owner. It also does not relinquish the establishment of a nonconforming use if the inventory is not performed or completed.

9-1.7 Zoning Certificate for Legal Nonconformity

The owner of any nonconforming use may at any time apply to the Zoning Inspector for a Nonconforming Use Zoning Certificate to establish the legality of such nonconformity as of a specified date. Such application shall be filed and processed pursuant to the provisions of Chapter 20.

Any person receiving a notice pursuant to Section 9-1.6 above shall be required, within sixty (60) days of the receipt of such notice, to apply to the Zoning Inspector for a Nonconforming Use Zoning Certificate with respect to the identified nonconformity. Unless an appeal from the determination of the Zoning Inspector has been filed, such application shall be accompanied by an affidavit acknowledging the Zoning Inspector's determination. This affidavit shall be kept on file by the Zoning Inspector and shall be a matter of public record.

If, upon reviewing an application for a Nonconforming Use Zoning Certificate for a nonconformity, the Zoning Inspector determines that the use in question was lawfully existing at the time of the adoption of the provision creating the nonconformity in question, and remains lawful existing subject only to such nonconformity at the time of such application, and that any required affidavit is in order, the Zoning Inspector shall issue a Nonconforming Use Zoning Certificate evidencing such facts and setting forth the nature and extent of the nonconformity. Otherwise, the Zoning Inspector shall decline to issue such certificate and shall declare such use of land or structure to be in violation of this Resolution.

9-2 NONCONFORMING USES OF LAND AND STRUCTURES

9-2.1 Authority to Continue

Any lawfully existing use of land or of any structure which becomes nonconforming through an amendment of this Resolution or the Zoning Map, may be continued. So long as no structural alterations are made, it may be changed to another nonconforming use or a more restricted use permitted as-of-right in the zoning district in which it is located.

9-2.2 Nonconforming Use Discontinued

If a lawfully existing nonconforming use of land or of any structure is voluntarily discontinued for two (2) years or more, any future use shall conform to all the regulations of the zoning district in which it is located, unless approved by the Board of Zoning Appeals according to the provisions of Section 9-5.

9-2.3 Ordinary Repair and Maintenance of Structures

Normal maintenance and incidental repair, replacement and installation or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring or plumbing may be performed on any structure that is devoted in whole or in part to a nonconforming use or that is accessory to a nonconforming use of land.

9-2.4 Structural Alteration

Except as authorized by the Board of Zoning Appeals pursuant to Section 9-5, no structure that is devoted in whole or in part to a nonconforming use, or that is accessory to a nonconforming use of land, shall be structurally altered unless the use thereof shall thereafter conform to the use regulations of the zoning district in which it is located. No such alteration shall create a new parking, loading, bulk, yard, space or other nonconformity or increase the degree of any existing parking, loading, bulk, yard, space or other nonconformity of such structure.

9-2.5 Enlargement of Structure

Except as authorized by the Board of Zoning Appeals pursuant to Section 9-5, no structure that is devoted in whole or in part to a nonconforming use or that is accessory to a nonconforming use of land, shall be enlarged or added to in any manner, including the interior addition for floor area, unless the use of such structure shall thereafter conform to the use regulations of the district in which it is located. Except as authorized by the Board of Zoning Appeals, no such enlargement shall create any new parking, loading, bulk, yard, space or other nonconformity or increase the degree of any existing parking, loading, bulk, yard, space or other nonconformity of such structure.

9-2.6 Extension of Use Prohibited

Except as authorized by the Board of Zoning Appeals pursuant to Section 9-5, a nonconforming use of land or of a structure shall not be extended. Such prohibited activity, unless otherwise authorized by the Board, shall include:

(a) An extension of such use, including its accessory uses, to any structure or land area other than that occupied by such nonconforming use on the effective date of this Resolution or any amendment thereto that causes such use to become nonconforming;

(b) An extension of such use, including its accessory uses, within a building or other structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of this Resolution or any amendment hereto that causes such use to become nonconforming; and

(c) An extension of the hours of operation of such use beyond the normal hours of operation on the effective date of this Resolution, or any amendment hereto that causes such use to become nonconforming.

9-2.7 Moving

No nonconforming use of land shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot, unless such use shall thereafter conform to all regulations of the zoning district in which it is located after being so moved. No structure that is accessory to a nonconforming use of land, and is devoted in whole or in part to a nonconforming use shall be moved in whole or in part, for any distance whatsoever, to any location on the same or any other lot, unless the entire structure and the use thereof shall thereafter conform to all regulations of the zoning district in which it is located after being so moved.

9-2.8 Damage or Destruction

If a structure, housing a nonconforming use, is completely destroyed, by any means, the structure shall not be restored and the nonconforming use shall not be resumed without authorization by the Board of Zoning Appeals pursuant to Section 9-5 by the grant of a Zoning Certificate following a public hearing. The restored nonconforming use shall be accomplished without increasing the degree of any parking, loading, bulk, yard, space or other nonconformity existing prior to such damage or destruction.

9-3 NONCOMPLYING STRUCTURES

9-3.1 Authority to Continue

Any noncomplying structure that is devoted to a use that is permitted in the zoning district in which it is located may be continued so long as it remains otherwise lawful, subject to the restrictions of this Chapter.

9-3.2 Repair, Maintenance, and Alterations

Any noncomplying structure may be repaired, maintained or altered (including expansion); provided, however, that any such repair, maintenance or alteration shall not create any new nonconformity nor increase the degree of the existing nonconformity of all or any part of such structure.

9-3.3 Moving

No noncomplying structure shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

9-3.4 Damage or Destruction

Any noncomplying structure that is damaged or destroyed by any means not within the control of the owner, thereof, to the extent of more than sixty percent (60%) of the cost of replacement of such structure new shall not be restored unless its restoration has been authorized by the Board of Zoning Appeals pursuant to Section 9-5 by the grant of a Zoning Certificate following a public hearing. However, no repairs or restorations shall be made unless restoration pursuant to the Zoning Certificate is actually begun within one (1) year after the date of such partial damage or destruction and is diligently pursued to completion. The determination of the extent of damage or destruction under this Section 9-3.4 shall be based on the ratio of the estimated cost of restoring the structure to its condition before the damage or destruction to the estimated cost of duplicating the entire structure as it existed prior to the damage or destruction. The estimate for this purpose shall be made by the Zoning Administrator.

Section 9-3.4 shall not apply to any residential dwellings, to any structures accessory to such dwellings, nor to any signs as provided in Section 13-4.3.

9-4 NONCOMPLYING LOTS OF RECORD

9-4.1 Authority to Utilize for Dwellings

In any district in which dwellings are a permitted use, notwithstanding the regulations imposed by any other provisions of this Resolution, a dwelling of the type permitted in the district in which the lot is located and that complies with the restrictions of Section 9-4.2 may be erected on a legal nonconforming lot.

9-4.2 Regulations for Single Family Use of Noncomplying Lots

Any lot of record on the initial effective date of this Resolution may be used for any single family dwelling when such use is permitted in the district, irrespective of the width or area of said lot; the width of the side yard of any such lot need not exceed ten (10%) percent of the width of the lot; the depth of the rear yard of any such lot need not exceed twenty (20%) percent of the depth of the lot, provided, however, that in no instance shall the minimum dimensions of the side and rear yards be less than three (3) feet and ten (10) feet respectively. Accessory structure yards shall be as required by the district regulations.

9-4.3 Other Uses of Nonconforming Lots

In any district in which dwellings are not permitted as-of-right, a legal nonconforming lot of record may be used for any use permissible in the district in which it is located if, but only if, the development of such lot meets all requirements of the district in which it is located, including impervious surface ratio and yard requirements, except lot area, width and depth requirements.

9-5 COMPATIBLE NONCONFORMING USES

Notwithstanding the foregoing provisions to the contrary, the usable area of a nonconforming use may be increased or improved where the owner of such use can demonstrate through application to the Board of Zoning Appeals that the manner in which the usable area of the nonconforming use will be increased or improved will have no adverse impact upon adjacent property owners and other permitted land uses in the surrounding neighborhood or can be made compatible with the adjacent property owners and the uses in the surrounding neighborhood upon compliance with specified conditions.

9-5.1 Application

The owner shall submit a development plan application to the Board of Zoning Appeals (BZA) on a form provided by the Planning & Zoning Department pursuant to the hearing procedures of Section 22-4. The application shall address site plan features and considerations, including but not limited to:

(a) The location and size of the property including setbacks and lot dimensions;

(b) The use of the property on the effective date of this Resolution;

(c) All uses adjacent to the property and within the surrounding neighborhood;

(d) All existing structures, yards, utility easements, rights-of-way, floodplains and wooded areas on and adjacent to the property;

(e) The density (in terms of dwelling units per acre) and the intensity (in terms of impervious surface ratio or gross square footage) of the nonconforming use;

(f) Landscaping;

(g) Architectural treatment;

(h) Traffic impact;

(i) The reasons why the nonconforming use is compatible with and will have no adverse impact on the land uses permitted in the district in which it is located; and

(j) Nature and extent of additional protection from adverse impacts afforded to adjacent property owners.

9-5.2 Review and Decision

On the basis of the completed application and consideration of the elements set forth in Section 9-5.1, the Zoning Administrator shall prepare and submit to the Board of Zoning Appeals a report that sets forth findings and recommendations. Upon receipt of the Administrators written report, the Board of Zoning Appeals shall approve or deny the application in accordance with its public hearing procedures as outlined in Section 22-4. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards to assure that the nonconformity does not adversely affect orderly development and the value of nearby property including, but not limited to: required improvement of, or modifications to existing improvements on, the property; limitations on hours of operations; and limitations on the nature of operations.