

ARTICLE XXVII *NONCONFORMING USES, STRUCTURES, LOTS AND SIGNS*

Section 2700 *APPLICABILITY AND PURPOSE*

- A. The following regulations shall apply to all existing uses, structures, lots and signs, which do not conform to the provisions of this Ordinance or to the provisions of any subsequent amendment thereto, but were in lawful existence prior to the effective date of this Ordinance or any amendment thereto shall be known and regarded as nonconforming uses, structures, and lots, as defined below:
1. Nonconforming Use – A use, whether of land or structure, which does not comply with the applicable use provisions in this Ordinance or amendments hereafter enacted where such use was lawfully in existence prior to the effective date of this Ordinance or amendments.
 2. Nonconforming Structure – A building or structure which does not comply with the applicable dimensional regulations, including those relating to density, impervious surfaces, building coverage, building height, and setbacks in this Ordinance or amendments hereafter enacted where such structure was lawfully in existence prior to the effective date of this Ordinance.
 3. Nonconforming Lot – A lot or site in single or separate ownership which does not comply with the applicable dimensional regulations, including those related to site area, lot area, and lot width, in this Ordinance or amendments hereafter enacted where such lot was lawfully in existence prior to the effective date of this Ordinance.
 4. Nonconforming Sign – As per Section 2605.
- B. Where lawful nonconforming uses, structures, lots or signs exist within the Borough of Malvern, recognizing that to require discontinuance could result in hardship to property owners, it is the policy of this Ordinance to permit the continuation of same, subject to restrictions as are herein imposed in this Article on change, extension or enlargement of such nonconformities or otherwise referenced herein. It is further the policy of this Ordinance to encourage elimination and/or improvement of such nonconformities over time as otherwise referenced herein.
- C. The owner of a nonconforming use, structure or building does not have an inherent right to deviate from design and area standards of this Ordinance. It is the duty of the owner of a nonconforming property to comply with area and performance standards of the district in which the use is located.

Section 2701 *CONTINUATION*

Except as hereinafter provided in this Article, any lawful building or structure or the lawful use of a building, structure, land, lot, or sign existing at the time of the effective date of this Ordinance or any subsequent amendment, at the time of a change in the Zoning Map, or as authorized by a building permit issued prior thereto may be continued in the form evident at the effective date of this Ordinance although such use, structures, lot, or sign does not conform to the provisions hereof or of any subsequent amendment.

Section 2702 NONCONFORMING USES**A. Change of Use.**

1. Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use.
2. No nonconforming use in a residential zone may be changed to a new or different nonconforming use.
3. Nonconforming uses in commercial and industrial zones may be changed to new or different uses, as provided herein.
4. A nonconforming use conducted in whole or in part in enclosed premises may be changed to another nonconforming use by grant of a special exception only upon determination by the Zoning Hearing Board, after public hearing, that the proposed new use will be similar to or less detrimental to its neighborhood and surroundings than the use it is to replace. In determining the effect of the proposed change, the Zoning Hearing Board shall use these standards, among others: traffic generated and congestion, nuisance characteristics (such as emission of noise, dust and smoke), fire hazards, hours and manner of operation, availability of sufficient on-site parking facilities, storage and manner of waste disposal, area and height of the building, and suitability of the building for conversion to a conforming use. The applicant shall demonstrate that a nonconforming use cannot reasonably be changed to a use permitted by right.
5. The Zoning Hearing Board may condition the grant of a special exception to change a nonconforming use to another nonconforming use. Where the proposed nonconforming use requires a lesser area of utilization than the existing nonconforming use, the Board is authorized to require a reduction in the area of the building, and, if relevant, unenclosed portion of the lot to be utilized for the nonconforming use, and may impose additional conditions or restrictions as authorized in this Ordinance.

B. Extensions or Enlargement. The nonconforming use of a building or of a lot shall not be extended or enlarged, and a nonconforming building housing any such use shall not be extended or structurally altered, except insofar as is required by law to assure the structural safety of the building, unless the Zoning Hearing Board shall, as a special exception, authorize the extension of a nonconforming use or building which houses a nonconforming use on a lot. The Zoning Hearing Board may grant such special exception, provided that:

1. It is clear that such extension is not materially detrimental to the character of the surrounding area or the interest of the Borough.
2. The area devoted to the nonconforming use shall, in no case, be increased by more than twenty-five (25) percent, nor shall there be more than one (1) extension to a nonconforming building or building housing a nonconforming use be granted.
3. Any extensions of a building or lot having a nonconforming use shall conform to the area and bulk regulations of the district in which it is situated and all other applicable regulations.

C. Restoration. No building devoted to a nonconforming use shall, in the event of destruction or serious damage by fire, flood or similar cause, be reconstructed for the purpose of carrying on the

nonconforming use unless the Zoning Hearing Board shall, as a special exception, authorize such reconstruction. The Zoning Hearing Board shall not grant such special exception unless the applicant shall prove that the nonconforming use to be carried on in the reconstructed building will have no substantial adverse impact on the use or development of adjacent property, nor be otherwise detrimental to the public health, safety, morals or welfare. "Serious damage" shall be defined as damage which reduces the value of any structure by more than half of its prior value. The reconstructed building or structure shall conform with all area and bulk regulations in the applicable zoning district, except as provided by Section 2303. Reconstruction shall commence within one (1) year from the date the building was damaged or destroyed, and shall be completed within one (1) year of the starting date.

- D. **Unenclosed Premises.** Where a nonconforming use is conducted entirely on an unenclosed premises, no structure to house or enclose such use, whether or not such structure would otherwise conform to zoning regulations, shall be permitted to be erected on the premises, and no such use shall be extended or expanded unless authorized by the Zoning Hearing Board as a special exception, pursuant to Article XXVIII, and no such use shall be changed to another nonconforming use.
- E. **Abandonment.** Whenever a nonconforming use of land, premises, building or structure, or any part or portion thereof, has been discontinued for a period of six (6) months, such discontinuance shall be presumed to constitute an intention to abandon such use and any subsequent use of the property shall be in conformity with the provisions of this Ordinance.

Section 2703 NONCONFORMING STRUCTURES

The continuation, alteration or extension of a nonconforming structure shall be in compliance with the following requirements:

- A. **Extension or Enlargement.** A nonconforming structure being used, or proposed to be used, for a conforming purpose may continue and may be altered or enlarged, unless the alteration or enlargement would increase the nonconformity of the structure with respect to the setbacks, area, heights, width, building coverage, lot coverage, building placement or distance between building regulations of this Ordinance, or any subsequent amendment in effect at the time such alteration or enlargement is proposed to be made. In the case of a nonconforming structure which is occupied by a nonconforming use, such alteration, renovation or enlargement shall also meet the requirements of Section 2702.A. In the case of a nonconforming structure which is located on a nonconforming lot, such alteration, renovation or enlargement shall also meet the requirements of Section 2704 of this Article.
- B. **Restoration.** A nonconforming structure being used, or proposed to be used, for a conforming purpose which has been seriously damaged or destroyed by fire or other casualty shall not be reconstructed, except as a conforming building, unless the Zoning Hearing Board shall, as a special exception, authorize the reconstruction of the structure to its former, nonconforming dimensions. "Serious damage" shall be defined as damage which reduces the value of any structure by more than half of its prior value. The reconstructed building or structure shall not exceed the height, area, and volume of the original building. Any such application for special exception shall commence within one (1) year from the date of damage or destruction, and shall be completed within one (1) year of the starting date.

Section 2704 NONCONFORMING LOTS

Nonconforming lots shall be in compliance with the following requirements:

- A. No lot area shall be so reduced that the area or width of the lot or the dimensions of the open space shall be smaller than herein prescribed.
- B. The owner of two (2) or more contiguous lots, at the time of the effective date of this Ordinance, when combined, would create a lot of conforming size, shall be required to combine such lots to create conforming lots prior to the issuance of a building permit.
- C. **Alteration or erection of buildings.** A building may be altered or erected on any nonconforming lot which was lawful when created and which, prior to the effective date of this Ordinance, was in separate ownership duly recorded by plan or deed, subject to the following provisions:
 - 1. Where all applicable setbacks of the existing zoning district can be met, construction shall be permitted by right, following the issuance of the required building permit.
 - 2. Where applicable setbacks and coverage requirements cannot be met by proposed building, construction shall only be permitted when a variance is authorized by the Zoning Hearing Board.
 - 3. In all cases, the use of the nonconforming lot shall be required to conform to the permitted uses within the district in which the nonconforming lot lies.

Section 2705 NONCONFORMING SIGNS

Nonconforming signs shall be regulated under Section 2605.