

ARTICLE 11 NONCONFORMING LOTS, STRUCTURES AND USES

SECTION 11.01 INTENT OF RESOLUTION CONCERNING NONCONFORMITIES

Within the districts established by this Resolution or amendments that may later be adopted there exists lots, uses of land, structures, and uses of structures and land in combination, which were lawful before this Resolution was passed or amended, but which would be prohibited, regulated or restricted under the terms of this Resolution or future amendments, it is the intent of this Resolution to deem such uses nonconforming and to permit these nonconformities to continue until they are removed, but not to encourage their survival. The burden of establishing the legal nonconforming status of any use or structure shall be upon the owner of the use or structure.

It is further the intent of the Resolution that nonconformities shall not be enlarged upon, expanded or extended, constructed, reconstructed, moved, or structurally altered, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district, unless specified herein.

SECTION 11.02 TERMINATION OF NONCONFORMING USE

The right to a nonconforming use will terminate upon the following events:

11.02.01 Voluntary Discontinuance or Abandonment. If any such nonconforming uses of land, structures, or structures and land in combination are discontinued or abandoned for more than two (2) years (except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulations specified by this Resolution for the district in which such land is located. A nonconforming use shall be considered voluntarily discontinued or abandoned:

- a) When the intent of the owner to discontinue the use is apparent, or,
- b) When the characteristic equipment and the furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment with the two (2) year period, or,
- c) When it has been changed to another nonconforming use by first obtaining approval for a permit from the Board of Zoning Appeals.

11.02.02 Destruction by Fire, Accident, Public Enemy, or the Elements. Any structure or building existing as nonconforming use at the time this Resolution or any amendment thereto takes effect, which is destroyed by fire, accident, public enemy, or the elements to the extent of more than fifty (50) percent of the pre-existing appraised valuation of the structure (as is listed in the most current records of the County Auditor) shall have its nonconforming status terminated.

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- 11.02.03 Change to Less Nonconforming Use. Where a nonconforming use is changed to a more conforming use, the nonconforming status of the use shall terminate and the use shall not later be changed back to a less conforming use.
- 11.02.04 Determination of Public Nuisance. If a public body or court of law finds that a particular nonconforming use constitutes an actual nuisance which immediately or directly affects public health, safety, morals, or general welfare, the nonconforming status of the use shall terminate.

SECTION 11.03 COMPLETION OF A NONCONFORMING USE

11.02.01 Nonconforming Lots

- a) Single Nonconforming Lots of Record. In any district in which single family dwellings are permitted, a single family dwelling and customary accessory structures may be erected on any single lot of record existing at the effective date of adoption or amendment of this Resolution, notwithstanding limitations imposed by other provisions of this Resolution.
- 1) Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership.
 - 2) This provision shall apply even though such lot fails to meet the requirements for area and/or width that are generally applicable in the district.
 - 3) Yard dimensions and requirements other than those applying to area and/or width shall conform to the regulations for the district in which such lot is located, with the following exception. The sum of the side yard requirements of nonconforming lots of record may be reduced administratively by thirty (30) percent.
 - 4) Variances for district requirements, other than lot area or lot width, shall be obtained only through action of the Board of Zoning Appeals as provided in Section 12.06 (Variances). Variances may not be issued by the Board of Zoning Appeals for the required lot area or lot width.
- b) Nonconforming Lots of Record in Combination. If two or more nonconforming lots, or portions thereof, with continuous frontage are in single ownership, the Board of Zoning Appeals may, upon appeal of the Zoning Inspector's decision to deny a zoning permit for failure to meet the requirements of this Resolution, determine that these lots are or are not to be an undivided parcel for the purpose of this Resolution.
- 1) If considered an undivided parcel, no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Resolution, nor shall any division of said parcel be made which creates a lot with a width or area below the requirements stated in this Resolution.

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- 2) If each said parcel is developed separately, a finding shall be made by the Board of Zoning Appeals that such development and density will not be a detriment to the surrounding area.

11.03.02 Rights of Holders of Zoning Permits

- a) Nothing herein contained shall require any change in the overall layout, plans, construction, size or designated use of any development, building, structure, or part thereof, for which official approval and required Permits have been granted before the enactment of this Resolution, the construction of which, conforming with such plans, shall have been started prior to the effective date of this Resolution and completion thereof carried on in a normal manner within the subsequent six (6) month period and not discontinued until completion, except for reasons beyond the builder's control.
- b) Substantial construction shall require significant progress in the placement and fastening of construction materials in permanent position, or where demolition or removal of an existing building has been substantially begun preparatory to rebuilding.

SECTION 11.04 RECONSTRUCTION OF A NONCONFORMING USE

Any structure or building existing as a legal nonconforming use at the time this Resolution or any amendment thereto takes effect, which is damaged by fire, accident, public enemy, or weathered by the elements to the extent of not more than fifty (50) percent of the pre-existing appraised valuation of the structure (as is listed in the most current records of the County Auditor), may be reconstructed and restored provided the same is done within two (2) years from the date of said destruction and is rebuilt as nearly as possible to conform with the zoning requirements within the district in which it is located.

- a) Removal or Destruction. Where nonconforming use status applies to a structure and land in combination, destruction of the structure shall eliminate the nonconforming stature of the land.
- b) Should such nonconforming structure or nonconforming portion of structure be damaged so extensively that such structure is rendered unfit for occupancy by any means, it shall not be reconstructed except in conformity with the provisions of this Resolution.

SECTION 11.05 RESTORATION OF A NONCONFORMING USE

11.05.01 Removal. Where nonconforming use status applies to a structure and land in combination, removal of the structure shall eliminate the nonconforming status of the land.

11.05.02 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.

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SECTION 11.06 ALTERATION

- 11.06.01 No nonconforming structure may be altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.

SECTION 11.07 EXPANSION OR EXTENSION OF A NONCONFORMING USE

- 11.07.01 Extension of Nonconforming Uses of Land. No such nonconforming uses of land shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Resolution.
- 11.07.02 Extension of Nonconforming Use within a Structure. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Resolution, but no such use shall be extended to occupy any land outside such building.
- 11.07.03 Extension of Nonconforming Use to Additional Structures. Additional structures which do not conform to the requirements of this Resolution shall not be erected in connection with such nonconforming use of land.
- 11.07.04 Nonconforming Signs and Structures
- a) Loss of Legal Nonconforming Status. A legal nonconforming sign shall immediately lose its legal nonconforming status, and therefore must be brought into conformance with this Article or be removed, if the sign structure is altered; or if it is enlarged, relocated, or replaced; or if it is structurally damaged to an extent greater than one half of its estimated replacement value. Similarly, any legal nonconforming advertising structure so damaged must be brought into compliance or be removed.
 - b) A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this Resolution by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of nature which would be generally prohibited in the district in which such use is located.

SECTION 11.08 RELOCATION OF A NONCONFORMING USE

- 11.08.01 Relocation of Nonconforming Uses of Land. No such nonconforming uses shall be moved in whole or in part of any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this Resolution.
- 11.08.02 Relocation of Nonconforming Structures. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

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SECTION 11.09 SUBSTITUTION OF NONCONFORMING USES

11.09.01 If no structural alterations are made, any nonconforming use of a structure or structure and land, may, upon appeal to the Board of Zoning Appeals, may be changed to another nonconforming use provided that the Board of Zoning Appeals shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. The appeal procedure requires that the request for substitution be made first to the Zoning Inspector, who must deny the zoning permit. The appeal is then taken to the Board of Zoning Appeals pursuant to Article 12 (Administration, Appeals, and Variances) for the final determination. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accord with other provisions of this Resolution. However:

- a) In all Troy Township Zoned Districts, no change shall be authorized by the Board to any use which is not a permitted or conditional use.
- b) Section 11.09.01 does not apply to nonconforming manufactured/mobile homes. These structures are only allowed in registered Ohio Department of Commerce manufactured home parks.

SECTION 11.10 REPAIR OF A NONCONFORMING USE

All legal, nonconforming structures and land uses shall be maintained in good repair. Ordinary repairs or repair/replacement of non-bearing walls, fixtures, wiring, or plumbing, may be performed provided that the floor area existing when it became nonconforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.