

**CHAPTER 27
ZONING
NONCONFORMITIES**

**ARTICLE IX
NONCONFORMITIES**

901 Purpose, Applicability, Registration, and Continuation and Change

901.1 Purpose

It is the purpose of this Article to recognize that if, prior to the adoption of the original Borough of Clarks Summit Zoning Ordinance as amended, reenacted and replaced, property was used for a then lawful purpose or in a then lawful manner which the Zoning Ordinance would render thereafter prohibited and nonconforming, such property is generally held to have acquired a vested right to continue such nonconforming use or nonconforming structure. Nevertheless, this does not preclude the Borough from regulating the change, alteration, reconstruction, reestablishment, extension, destruction and abandonment of nonconforming uses in accord with the Pennsylvania Municipalities Planning Code and general case law.

It is also the purpose of this Article to limit the injurious impact of nonconforming uses and/or structures on other adjacent properties within a particular district and the community as a whole, while recognizing that the change, alteration, reconstruction, reestablishment, or extension of non-conforming uses and/or structures may not be contrary to the public interest or the general purpose of this Zoning Ordinance; when failure to allow such change, alteration, reconstruction, reestablishment, or extension would itself lead to neighborhood or district deterioration.

It is further the purpose of this Article to prescribe those standards which are to be applied by the Borough in determining the reasonableness of a proposal to change, alter, reconstruct, reestablish, or extend a non-conforming use. The following are regulations which shall apply.

901.2 Applicability

The provisions and protections of this Article IX shall apply only to those nonconforming lots, structures and uses which legally pre-existed the applicable provisions of this Ordinance, as amended, reenacted and replace, or which are recognized by §903 or §904 of this Article IX. Any lot, structure or use created, constructed or established after the effective date of the original Zoning Ordinance, as amended, reenacted and replaced, which does not conform to the applicable requirements shall be considered an illegal lot, structure or use subject to the penalties prescribed by this Ordinance, and the said lot, structure or use shall not be entitled to any of the protections afforded to legal, pre-existing nonconforming lots, structures or uses.

901.3 Registration

It shall be the responsibility of the party asserting a nonconformity to provide the evidence that the nonconformity is legal. A property owner may request a written statement of nonconformity from the Zoning Officer after providing sufficient evidence. The Zoning Officer may submit any application for a Certificate of Nonconformance to the Planning Commission for the Commission's review and recommendation with regard to the evidence of nonconformity.

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901.4 Continuation and Change

A lawful nonconforming lot, structure or use as defined by this Ordinance may be continued and may be sold and be continued by new owners. Any expansion, alteration, extension or change in a nonconformity shall only proceed in compliance with this Article.

901.5 Loss of Nonconformity

In the case where any nonconforming lot, structure or use which is changed, altered or reestablished to become conforming, the nonconformity shall be deemed abandoned, and thereafter, the said lot, structure or use shall not revert to any nonconformity.

902 Definitions

902.1 Nonconforming Lot

Any lot which does not conform with the minimum width, depth or area dimensions specified for the district where such a lot is situated, such lot having been created and recorded in the office of the Lackawanna County Recorder of Deeds prior to the effective date of the original Borough of Clarks Summit Zoning Ordinance, as amended, reenacted and replaced.

902.2 Nonconforming Structure

A structure or part of a structure which does not comply with the applicable district limitations on structure size and location on a lot, where such structure lawfully existed prior to the enactment of the original Borough of Clarks Summit Zoning Ordinance, as amended, reenacted and replaced; and including, but not limited to, non-conforming signs.

902.3 Nonconforming Structure, Alteration or Expansion

As applied to a nonconforming structure, a change or rearrangement in the structural parts or in the existing facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

902.4 Nonconforming Structure, Reconstruction

The rebuilding of a nonconforming structure damaged or destroyed by casualty to the exact or less nonconforming condition which existed prior to the casualty.

902.5 Nonconforming Use

A use, whether of land or of a structure, which does not comply with the applicable use provisions in this Ordinance or amendments hereto, where such use was Lawfully in existence prior to the enactment of the original Borough of Clarks Summit Zoning Ordinance, as amended, reenacted and replaced.

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902.6 Nonconforming Use, Change

The conversion of a nonconforming use to a different use classification as enumerated on the Schedule of Uses of this Zoning Ordinance.

902.7 Nonconforming Use, Extension

The expansion of a nonconforming use throughout the structure which the said use partially occupies; or the expansion of a nonconforming use onto property not already occupied by the said use.

902.8 Nonconforming Use, Reestablishment

The reopening or reinstatement of a nonconforming use which has been discontinued by the owner of the said use, such reopening effected prior to the abandonment of the nonconforming use as determined under the provisions of this Zoning Ordinance.

903 Nonconformities Under Development

For the purposes of this Article IX, a building, structure or use, legally permitted, planned and substantially under construction in compliance with existing Ordinances prior to the effective date of this Ordinance, or any amendment hereto, and completed within a one-year period after the effective date of this Ordinance or amendment hereto, shall be considered nonconforming.

904 Nonconformities by Variance

A building, structure or use allowed by variance in a district where it is non-conforming with any regulations of this Ordinance, as amended, reenacted and replaced, shall be considered nonconforming for the purposes of this Ordinance.

905 Normal Maintenance and Repair Activities

Normal maintenance and repair, such as painting, replacement of siding, and similar activities is allowed, as well as those interior renovations which do not structurally alter the building or area or result in increased use of the building or area, or a change of nonconforming, or otherwise create more incompatibility with the surrounding permitted uses. Such maintenance and repair activities shall, however, shall comply with all other applicable standards and permit requirements of this Ordinance.

906 Changes of Nonconforming Uses

906.1 Conditional Uses

All changes of nonconforming uses shall be considered conditional uses subject to the specific procedures and review criteria contained in Article XI of this Ordinance and the review factors in §912 of this Article. A nonconforming use may only be changed to a use of equal or less nonconformity (i.e. more restrictive classification) as determined by the Planning Commission and Council in accord with classification of the uses in the Schedule of Uses of this Ordinance.

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The general standard shall be that no change of a nonconforming use shall be permitted if such change will result in the establishment of a use which is materially different from the existing use in terms of negative affects on the community and the long term application of the Zoning Ordinance to eliminate incompatible uses from specific zoning districts. For example, a change from a nonconforming retail store in R-1 District to a bank may be permitted; however, a change to a manufacturing use would not be permitted.

906.2 Conforming Changes and Conversions

A change in a nonconforming use to a conforming use shall not be considered a conditional use unless the proposed use is classified as a conditional use by the Schedule of Uses in this Ordinance. A change of a nonconforming use to a conforming use shall be considered an abandonment of the nonconforming use which shall not thereafter revert to a nonconforming use.

The conversion of a nonconforming use to a nonconforming use of like classification shall not be considered a conditional use. For example, a nonconforming retail establishment selling groceries proposed for conversion to a shoe store would not be considered a change in nonconforming use.

906.3 Other Standards

All changes to nonconforming uses shall also be subject to all other applicable standards in this Ordinance.

907 Extension of Nonconforming Uses

907.1 Conditional Uses

All extensions of nonconforming uses into more area of a structure or onto more area of property shall be considered conditional uses subject to the specific procedures and review criteria contained in Article XI of this Ordinance, and the review factors in 5912 of this Article.

907.2 Extension onto Other Properties of Record in the Same Ownership

A nonconforming use may only be extended onto a new property of record if that property is contiguous to the existing location, the properties were both under the same ownership as of the effective date of this Ordinance, as amended, the owner has clearly exhausted the alternatives available for expansion on the existing property, and the use is not one which has been altogether prohibited as a new use under this Ordinance.

907.3 Extension Limitation

A nonconforming use shall not be extended more than fifty (50) percent beyond the area of land or structure legally occupied by the use.

907.4 Prohibited Extensions

Should the use proposed for extension be one which is specifically prohibited as a new use in the Borough or is a use

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judged by the Borough to be one similar to such a use or of such a nature as to impose health, safety or welfare concerns which cannot be satisfied by the imposition of the conditions permitted under this Ordinance, the requested extension shall be denied. The Council shall consider past operating performance in making its decision.

908 Reconstruction

908.1 Time Limit

If any nonconforming structure or use (see Subsections 908.4 below for exception) is damaged up to a maximum of seventy-five (75) percent of its appraised fair market value as a result of a casualty, it may be restored or reconstructed to its preexisting condition of nonconformity provided:

- A. The application for a building permit is submitted within eighteen (18) months of the date of the casualty.
- B. The nonconformity is not increased and no new nonconformity is created.

908.2 Procedure - Permits

All applicable permits for the reconstruction of a nonconforming use shall be required. Such reconstruction shall be considered a conditional use if the reconstruction involves a change or extension of use as regulated by §906 and §907 of this Ordinance, respectively.

908.3 Reconstruction Prohibited

A nonconforming structure that has been damaged or destroyed by more than seventy-five (75) percent of its appraised fair market value by any cause shall not be rebuilt in any nonconforming manner except as provided for dwellings in §908.4.

908.4 Dwellings and Buildings in CC Districts

A destroyed or damaged nonconforming building containing not more than two (2) dwelling units and any building in a CC District may be reconstructed regardless of the percentage of destruction provided:

- A. The application for a building permit is submitted within eighteen (18) months of the date of the casualty.
- B. The nonconformity is not increased and no new nonconformity is created.

908.5 Fair Market Value

The applicant shall have the burden of proof to document the percent of the fair market value that was damaged. Such proof shall require an appraisal by a licensed real estate broker with substantial appraisal experience. Fair market value shall be as generally defined by real estate practice.

909 Abandonment of Nonconformities

If a non-conforming use of a structure or land is discontinued, razed, removed or abandoned for twelve (12) months or

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more, subsequent use of such structure or land shall conform to the regulations of the zoning district in which it is located, except for reconstruction in accord with §908.

910 Alterations and Expansions of Nonconforming Structures

910.1 Alterations

The alteration or expansion of nonconforming structures shall be permitted only in accord with this §910.

910.2 Procedure - Permits

All applicable permits for the alteration or expansion of a nonconforming structure shall be required. Such alteration or expansion shall be considered a conditional use if the alteration or expansion involves a change or extension of a nonconforming use as regulated by §906 and §907 of this Ordinance, respectively. Alterations to reduce the nonconformity of setbacks may be permitted by the Zoning Officer provided the Zoning Officer determines the nonconformity is being reduced as intended by this Zoning Ordinance and in accord with the physical features of the lot.

910.3 Nonconforming Setbacks

Should a building have a lawful nonconforming side or rear building setback, the structure may be altered to increase the height above such setback or to extend other portions of the building up to such nonconforming setback line provided no additional nonconformity is created. However, such additions shall not be permitted to any non-residential structure which abuts a residential use.

910.4 Increase in Area or Bulk Nonconformity

In the case where a proposed alteration or expansion of a nonconforming structure will result in an increased nonconformity of setback, height, lot coverage or other area or bulk standard, a variance shall be required from the Zoning Hearing Board.

911 Use of Nonconforming Lots of Record

911.1 Single Family Dwelling

A single-family dwelling may be erected or expanded on any lawful nonconforming lot of record in any District, provided:

- A. Adjoining Property - The lot owner does not own adjoining property, nor has owned such property within the twelve (12) months preceding the effective date of this Ordinance, which can be combined to make the lot conforming.
- B. Front Yard - The required front yard setback is maintained as required for the District in which the lot is located.

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- C. Rear Yards - No rear yard setback is reduced to less than fifteen (15) feet.
- D. Side Yard - Each side yard may be reduced by the same ratio as the ratio of the width of the subject lot to the lot width required for the district, but in no case shall a side yard be reduced to less than five (5) feet.
- E. Other Standards - All other applicable standards in this Ordinance are satisfied.
- F. Sewage Disposal - Sewage disposal is provided in accord with applicable Borough and PA DEP requirements.

911.2 Commercial Uses

A commercial use may be developed on any lawfully existing nonconforming lot where permitted by the Schedule of Uses provided:

- A. Adjoining Property - The lot owner does not own adjoining property, nor has owned such property within the twelve (12) months preceding the effective date of this Ordinance, which can be combined to make the lot conforming.
- B. Setbacks - All setbacks normally required in the District are maintained.
- C. Lot Size Requirement This Ordinance does not require an increased lot size for the specific use.
- D. Other Standards - All other applicable standards in this Ordinance are satisfied.
- E. Sewage Disposal - Sewage disposal is provided in accord with applicable Borough and PA DEP requirements.

912 Review Factors

The Borough shall consider any nonconformity conditional use application in terms of the effect on the following factors:

- A. Traffic generation.
- B. Noise, dust, fumes, gases, odor, glare, vibration, fire and explosion hazards and other nuisances.
- C. Amount and nature of outdoor storage
- D. Hours of operation.
- E. Compatibility with the character of the surrounding neighborhood.
- F. Potential of the expansion to reduce existing congestion and alleviate parking shortages by improved site design, addition of parking and improved loading areas.