

PART 5
NONCONFORMITIES

Section 500. Continuation of Nonconformities

- A. All lawful uses of land, buildings, signs, or other structures existing on the effective date of this Chapter may be continued, altered, restored, reconstructed, sold, or maintained in accordance with the provisions of this Chapter.

Section 501. Registration of Nonconformities

- A. Nonconformities may be reported to the Zoning Officer by the owner, user, lessor, or lessee, and be registered by the Zoning Officer within one (1) year of the effective date of this Chapter. The Zoning Officer, upon proof of a legal nonconformity, may certify the existence of the nonconformities .
- B. Should a nonconformity not be reported or identified within one (1) year, the owner of the nonconformity shall have the right to show by a preponderance of the evidence to the Zoning Officer that the nonconformity existed upon the effective date of this Chapter.

Section 502. Existing Nonconforming Lots of Record

- A. Any nonconforming lot, due to its lot area or dimensions, existing as of the effective date of this Chapter or created by an amendment to this Chapter may be continued although such lot does not conform to the lot requirements for the district in which it is located.
- B. The following requirements apply to the development and use of a nonconforming lot.
1. All the requirements of this Chapter shall be met with the exception of minimum lot area and minimum lot width.
 2. The following requirements shall apply to the development and use of the nonconforming lot:
 - a. All the requirements of this Part shall be met with the exception of minimum lot area and minimum lot width. No lot shall be developed unless the following requirements are met:
 - (i) In residential districts, only one single-family dwelling may be erected, and the following minimum side building setback shall be provided:
 - (aa) On lots less than forty (40) feet in width, but not less than twenty-six (26) feet in width, two (2) minimum side building setbacks shall be provided, each equaling twenty (20) percent of the existing lot width. However, no building shall be closer than ten (10) feet to an existing principal building.
 3. Where possible, contiguous nonconforming parcels under common ownership should be combined to create conforming lots.

Section 503. Existing Nonconforming Uses and Structures

- A. Alterations and Reconstruction.
1. Repairs and structural alterations not constituting extensions, expansions or enlargements may be made to a nonconforming use or structure.

2. Restoration of Nonconforming Uses and Structures

- a. A nonconforming use or structure which has been damaged or destroyed to the extent of fifty (50%) percent or more of its market value at the time of the damage shall not be restored except in conformity with the regulations of the zoning district in which it is located and all other applicable standards of this Chapter.
- b. When damage is less than fifty (50%) percent or more of its market value at the time of the damage, a nonconforming use or structure may be repaired or reconstructed and used as before the time of the damage, provided that:
 - (1). such repairs or reconstruction are commenced within eighteen (18) months of the date of such damage and is carried to completion without undue delay; and
 - (2). the reconstructed use or structure does not exceed in height, area, and volume, the use or structure destroyed.

B. Extensions, Expansions, and Enlargements.

1. Nonconforming uses or structures, and structures and land occupied or used for purposes which are nonconforming and otherwise not permitted in the zoning district in which they are located shall be allowed to expand, extend or enlarge. All extensions, expansions and enlargements of lawful nonconforming uses and structures shall be reviewed by the Zoning Officer to determine compliance with the following standards:
 - a. Any extension, expansion or enlargement of a nonconforming structure or use shall be permitted as long as the maximum impervious coverage is not exceeded.
 - b. Any expansion or enlargement of a nonconforming structure or use shall not exceed thirty three and one third (33 1/3) percent of the total gross area of the nonconforming structure or use from the time it became nonconforming.
 - c. Any extension, expansion or enlargement shall conform to the height, area/ footprint, setback, and impervious lot coverage regulations of the zoning district in which it is located. If an existing structure or use has a lawfully nonconforming building setback, additions may occur to increase the height above such setback or to extend other portions of the structure or use out to the nonconforming side or rear setback line, provided that:
 - (aa) The use or structure shall not be extended beyond the existing nonconforming building setback line
 - (bb) No additional nonconformity shall be created
 - (cc) The new nonconforming extension shall not be greater than twenty five (25) percent of the existing floor area
 - (dd) All other requirements of this Part are met
 - (ee) Such addition shall not be permitted for a structure proposed for a use by a non-residential use on a lot that abuts an existing residential use in the R-L and R-M zoning districts.
 - d. All required loading and/or parking spaces for any expansion or enlargement shall comply with the requirements of Part 19 of this Chapter.

- e. Any extension, expansion or enlargement of a nonconforming structure or use shall not be permitted to extend into vacant parcels of land adjacent to the parcel containing the nonconforming structure or use, where such vacant parcels have been separately recorded or acquired prior to the effective date of this Chapter.
- f. Any expansions or extensions of a nonconforming sign shall comply with all provisions of this Chapter.
- g. The intensity of a nonconforming use (resulting nuisances such as air pollution, noise, glare, vibrations, delivery traffic, hazards, etc) shall not be increased.

Section 504. Change of Use

- A. Whenever a nonconforming use has been changed to a conforming use, such use shall not thereafter be changed to a nonconforming use.
- B. Whenever a nonconforming use has been changed to a more restricted classification or to a conforming use, such use shall not hereafter be changed to a use of less restricted classification unless in compliance with the rules for such change as outlined by this Part.
- C. A nonconforming use may be changed to another nonconforming use only by the granting of a Special Exception by the Zoning Hearing Board in compliance with this Chapter. Where a Special Exception approval is required, the Zoning Hearing Board shall determine whether the applicant has provided sufficient proof to show the following:
 - 1. The proposed use is in general conformity with the most recent version of the Highspire Borough Comprehensive Plan and harmony with the area in which it is proposed.
 - 2. The proposed use would be equal to or less intensive in external impacts than the existing non-conforming use.
 - 3. The proposed use would be closely similar in external impacts and character of the existing non-conforming use.
 - 4. The proposed use would not endanger the public health and safety if located where proposed and that the use will not deteriorate the environment or generate nuisance conditions such as traffic congestion, noise, dust, smoke, glare or vibration.
 - 5. In addition, the applicant shall furnish evidence that the disposal of materials will be accomplished in a manner that complies with State and Federal regulations.
 - 6. All uses must comply with Borough building, health, housing, rental, safety, property and other applicable local, county, state, and federal code and licensing requirements. All such licensed, certificates, and permits shall have been obtained and presented to the Borough, or shall be a condition of approval.
 - 7. The applicant shall provide a detailed description of the proposed use in each of the following topics:
 - a. The nature of the on-site activities and operations, the type of products, materials, equipment and/or processes involved in the proposed use.
 - b. The number of employees. The total number of employees on each shift.
 - c. The floor area of the building or gross area of the lot devoted to the proposed use.

- d. The magnitude of walk-in trade.
- e. The traffic and environmental impacts that are likely to be generated (e.g. odor, noise, smoke, dust, litter, glare, vibration, electrical disturbance, wastewater, storm water, solid waste, etc.) and specific measures employed to mitigate or eliminate any negative impacts. The applicant shall further furnish evidence that the impacts generated by the proposed use fall within acceptable levels, as regulated by applicable laws and ordinance, including but not limited to those listed in Part 4 of this Chapter.
- f. The hours of operation.
- g. The extent of pervious and impervious surfaces in relationship to that currently present on adjacent lots and the overall block in which development, infill, reuse and/or redevelopment is proposed.
- h. Architectural plans as submitted as part of approval. Architectural plans may be required to be submitted as part of said application.
- i. How the proposed use complies items 1-6 herein this subsection above.

Section 505. Abandonment and Discontinuance

- A. A nonconforming use shall be presumed abandoned when operations associated with the nonconforming use have ceased by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within one (1) year from the date the activity stopped and the use is not actively advertised for sale or lease. Such nonconforming use shall not thereafter be reinstated except in conformance with this Chapter. A nonconforming use, which is actively marketed, but has not been sold or leased, shall not be considered abandoned. The applicant shall be responsible to provide evidence that the nonconformity was not abandoned
- B. Except for in a Mobile Home Park, the removal of a nonconforming mobile home from the site it occupied [and if such site is not leased, actively marketed, or purchased within one (1) year or less] shall constitute abandonment of the site, and any occupation or subsequent use of said site shall conform with the provisions of this Chapter.
- C. The removal of a mobile home from a residential lot already occupied by a residential building shall constitute abandonment of the nonconforming use and such use shall not thereafter be permitted.
- D. Mobile Home Parks which are nonconforming under the terms of this Chapter shall be operated in accordance with Public Health Regulations, Commonwealth of Pennsylvania, DEP, under the provisions of Act 175 of April 9, 1929, P.L. 177, as amended, and all other applicable laws.