

ARTICLE 4.00

NONCONFORMITIES

Section 4.01 Intent and General Provisions

Nonconformities are uses, structures, buildings, or lots which do not conform to one or more provisions or requirements of this Ordinance or a subsequent amendment, but which were lawfully established prior to the time of adoption of the Ordinance or amendment. Such nonconformities are not compatible with the current or intended use of land in the district in which they are located. Therefore, it is the intent of this Ordinance to permit such nonconformities to continue under certain conditions, but to discourage their expansion, enlargement, or extension or where discontinuance or removal is not feasible to gradually upgrade such nonconformities to conforming status. Accordingly, the purpose of this section is to establish regulations that govern the completion, restoration, reconstruction, extension, and/or substitution of nonconformities, and to specify the circumstances and conditions under which nonconformities shall be permitted to continue.

Whenever this article refers to the "effective date," the reference shall be deemed to include the effective date of any amendments to this Ordinance if the amendments created a nonconforming situation.

The following table summarizes but is not intended to diminish the regulatory effect of the nonconforming regulations contained in this Article:

SUMMARY OF NONCONFORMING REGULATIONS	
Issue	Requirements
Period of nonuse before nonconformity must cease	Nonconforming Use of Open Land: 6 months Nonconforming Structure: 12 months
Establishment of new conforming use	Nonconforming use must cease
Change in ownership	No effect on nonconformity
Nonconforming single family use	May be enlarged, subject to conditions
Substitution of one nonconformity for another	Permitted under certain conditions
Nonconforming lots under same ownership	Must be combined
Expansion of nonconforming use within building	Permitted subject to conditions
Expansion of nonconforming use beyond existing building	Not permitted
Enlargement of nonconforming structure	Not permitted
Maintenance, structural repairs	Generally permitted
Renovations, modernization	Maximum value: 50% of assessed value
Rebuilding after catastrophe	Permitted if damage is less than 50% of pre-

	catastrophe fair market value
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Section 4.02 General Requirements

The following regulations shall apply to all nonconforming uses, structures, and lots:

A. Continuation of Nonconforming Uses and Structures

Any lawful nonconforming use existing on the effective date of this Ordinance or amendment thereto may be continued and shall not be considered to be in violation of this Ordinance, provided that, unless otherwise noted in this Article, the use shall not be enlarged, or extended to occupy a greater area of land, or moved in whole or in part to another portion of the lot. Any lawful building or structure existing on the effective date of this Ordinance or amendment thereto may be continued and shall not be considered in violation of this Ordinance, provided that, unless otherwise noted in this Article, the building and land involved shall not be structurally altered, enlarged, or moved unless such modifications conform to the provisions of this Ordinance for the district in which it is located. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by an official charged with protecting the public safety, upon order of such official.

B. Buildings Under Construction

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has begun preparatory to rebuilding, such work shall be deemed to be actual construction, provided that such work shall be diligently carried on until completion of the building involved.

C. Discontinuation of Nonconforming Uses and Uses of Structures

1. Nonconforming Use of Structure

When a nonconforming use of a structure, or structure and land in combination is discontinued or abandoned for twelve (12) consecutive months, the structure or structure and land in combination shall not thereafter be used except in conformance with the provisions of the district in which it is located.

2. Nonconforming Uses of Open Land

If any nonconforming use of open land ceases for any reason for a period of more than six (6) months any subsequent use of such land shall conform to the provisions set forth of the district in which it is located.

3. Seasonal Uses

In applying this sub-section to seasonal uses, the time during the off-season shall not be included.

D. Condemnation and Purchase

In order to accomplish the elimination of nonconforming uses and structures which constitute a nuisance or are detrimental to the public health, safety and welfare, the Township of Hartland, pursuant to Section 208, Public Act 110 of 2006, as amended, may acquire by purchase, condemnation or otherwise, private property for the purpose of removal of nonconforming uses.

E. Recording of Nonconforming Uses and Structures

The Zoning Administrator shall be responsible for maintaining records of nonconforming uses and structures as accurate as is feasible, and for determining legal nonconforming uses and structures in existence on the effective date of this Ordinance. Failure on the part of a property owner to provide the Zoning Administrator with necessary information, as requested by the Zoning Administrator, to determine legal nonconforming status may result in denial of required or requested permits.

F. Establishment of a Conforming Use or Structure

In the event that a nonconforming principal use or structure is superseded by a conforming principal use or structure on a site, the nonconforming use or structure shall be immediately and permanently removed.

G. Change of Tenancy or Ownership

In the event there is a change in tenancy, ownership, or management, an existing nonconforming use or structure shall be allowed to continue provided there is no change in the nature or character of such nonconformity.

H. Exceptions and Variances

Any use for which a special exception or variance has been granted as provided in this Ordinance shall not be deemed a nonconformity.

I. Unlawful Nonconformities

No nonconformity shall be permitted to continue in existence if it was unlawful at the time it was established.

J. Nonconforming Single-Family Uses

Notwithstanding the limitations outlined in this article, any structure used for single-family residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements. No increase in the number of dwelling units shall be permitted. Such expansion shall be subject to approval of the Zoning Board of Appeals.

K. Substitution

A nonconforming use may be changed to another nonconforming use upon approval of the Zoning Board of Appeals provided that no structural alterations are required to accommodate the new nonconforming use, and that the proposed use is equally or more appropriate in the district than the existing nonconformity. In permitting such a change, the Zoning Board of Appeals may require conditions to accomplish the purposes of this Ordinance. In making its determination that the proposed use is equally or more appropriate in the district than the existing nonconforming use, the Zoning Board of Appeals shall consider such characteristics as: traffic generation, parking required, typical hours of operation, screening requirements, utility demands, potential impact on surrounding properties in terms of noise, lights, and views, and similar features.

L. Change of Location

Should a nonconforming structure be moved to another parcel or to another location on the same parcel for any reason whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

Section 4.03 Nonconforming Lots of Record

The following regulations shall apply to any nonconforming lot of record or nonconforming lot described in a deed or land contract executed and delivered prior to the effective date of this Ordinance or amendment thereto:

A. Use of Nonconforming Lots

Any nonconforming lot shall be used only for a use permitted in the district in which it is located. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record in existence at the effective date of adoption or amendment thereto. This provision shall apply even though such single-family lot fails to meet the requirements for area or width, or both, provided that the lot can be developed as proposed without any significant adverse impact on surrounding properties or the public health, safety, and welfare. All yard requirements and other non-area or width requirements shall be met.

1. Yard setback and minimum floor area requirements for dwellings on lots and parcels recorded prior to September 18, 1959.
 - a. Front Yard Setbacks: a minimum of 25 feet or the average of the setbacks of dwellings on the nearest lots fronting on the same side of the road and waterfront, whichever is greater.
 - b. Side Yard Setbacks: a minimum of 10 feet.
 - c. Rear yard setbacks: a minimum of 15 feet or the average of the setbacks of dwellings on the nearest lots fronting on the same side of the road, whichever is greater.
 - d. First Floor Footage: a minimum of 1000 square feet (for a ranch type home).
 - e. Lot Coverage: a maximum of thirty percent (30%).

B. Variance from Area and Bulk Requirements

If the use of a nonconforming lot requires a variance from the area or bulk requirements, other than as provided in Section 4.03.A., then such use shall be permitted only if a variance is granted by the Zoning Board of Appeals.

C. Nonconforming Contiguous Lots Under the Same Ownership

In the event two (2) or more contiguous nonconforming lots are under single ownership and the degree of nonconformity will be reduced or eliminated by the combination of the contiguous lots, the lots shall be considered a single lot for the purposes of this Ordinance. No portion of said parcel shall be used, occupied, or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of a parcel be made which creates a lot with width or area less than the requirements stated in this Ordinance. These provisions shall not apply to contiguous lots in single ownership where each of the lots is occupied by an existing single family dwelling.

D. Combination of Nonconforming Lots

The Township Assessor may permit the combination, in whole or in part, of nonconforming lots of record into building sites less than the size requirements established by this Ordinance, provided that the combination of lots reduces the degree of nonconformity and results in a parcel which is capable of accommodating a structure that is in conformance with the building area and setback requirements of this Ordinance.

Section 4.04 Modification to Nonconforming Uses or Structures

A. General Provisions

No nonconforming use or structure shall be enlarged, extended, expanded or structurally altered, nor shall any accessory use, building or structure be established therewith, nor shall any nonconformity be changed to a different nonconformity which increases the intensity of use or nonconformity, except as permitted in this Article.

B. Applicability

The following regulations shall apply to any nonconforming use or structure, including:

1. Nonconforming uses of open land.
2. Nonconforming use of buildings designed for a conforming use.
3. Nonconforming use of buildings specifically designed for the type of use which occupies them but not suitable for a conforming use.
4. Buildings designed and used for a conforming use but not in conformance with area and bulk, setback, parking, loading, or landscaping requirements.

5. Nonconforming structures, such as fences and signs.

C. Enlargement, Extension, or Alteration

1. Increase in Nonconformity Prohibited

Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of any nonconformity. For example, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

- a. An increase in the total amount of space devoted to a nonconforming use, or
- b. Greater nonconformity with respect to dimensional restrictions, such as setback requirements, height limitations, density requirements, or other requirements in the district in which the property is located.

2. Permitted Extension

Any nonconforming use may be extended throughout any part of a building which was manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building. No nonconforming use of land shall be enlarged, increased, or extended to occupy a greater area of land, nor shall any such use be moved in whole or in part to any portion of the lot or parcel than was occupied on the effective date of this Ordinance or amendment thereto.

3. Alterations that Decrease Nonconformity

Any nonconforming structure or any structure or portion thereof containing a nonconforming use, may be altered if such alteration serves to decrease the nonconforming nature of the structure or use. The Zoning Board of Appeals shall determine if a proposed alteration will decrease the degree of nonconformity.

4. Variance to Area and Bulk Requirements

If a proposed alteration is deemed reasonable by the Zoning Board of Appeals by virtue of the fact that it would decrease the nonconforming nature of a structure or use, but such alteration requires a variance from the area or bulk requirements, then such alteration shall be permitted only if a variance is granted by the Zoning Board of Appeals.

D. Repairs, Improvements, and Modernization

1. Required Repairs

Repairs or maintenance necessary to keep a nonconforming building structurally safe and sound are permitted. However, if a non-conforming structure or a structure containing a nonconforming use becomes physically unsafe and/or unlawful due to lack of maintenance and repairs, it shall not thereafter be restored, repaired, or rebuilt except in full conformity with the regulations in the district in which it is located.

2. Additional Permitted Improvements

Additional repairs, improvements, or modernization of nonconforming structures, beyond what is required to maintain the safety and soundness of the structure, shall be permitted provided such repairs or improvements do not exceed fifty percent (50%) of the assessed value of the structure during any period of twelve (12) consecutive months. Any such repairs, improvements, and modernization shall not result in enlargement of the cubic content of the nonconforming structure.

The provisions in this paragraph shall apply to all structures except as otherwise provided in this Article for single-family residential uses and for reconstruction of structures damaged by fire or other catastrophe.

E. Damage by Fire or Other Catastrophe

Any nonconforming structure or structure housing a nonconforming use that is damaged by fire, flood, or other means in excess of fifty percent (50%) of the structure's pre-catastrophe fair market value (as determined by the Township Assessor) shall not be rebuilt, repaired, or reconstructed, except in complete conformity with the provisions of this Ordinance for the district in which it is located.

In the event that the damage is less than fifty percent (50%) of the structure's pre-catastrophe fair market value, the structure may be restored to its pre-catastrophe status. Such restoration shall take place only upon approval of the Zoning Board of Appeals and in full compliance with all other applicable provisions of this Ordinance. Such restoration must be commenced within one (1) year of the date of damage and must be diligently pursued to completion. Failure to complete replacement shall result in the loss of legal, nonconforming status.

Section 4.05 Pre-existing Nonconforming Extraction Operations

A. Extension

A nonconforming extraction operation may be extended subject to the following provisions:

1. Extraction may be extended within the property based upon the property lines of record at the time this Ordinance was adopted or amended, provided, however, that such extension shall not cross a public road.
2. Any extractive operation proposed to be commenced after the effective date of adoption or amendment of this Ordinance shall subject to all applicable provisions of this section.
3. Any extension of operation shall not exceed the depth of extraction existing at the effective date of adoption or amendment of this Ordinance, unless extraction to a greater depth is specifically approved by the Planning Commission. An increase in the depth of extraction shall not adversely affect the water table level in the vicinity, shall not result in pollution of subsurface water or otherwise imperil water supplies in the vicinity; and shall not create unstable soil conditions, health and safety hazards.
4. Plans for the extension of operations and restoration of the site shall be filed with the Planning Commission.

B. Discontinuation

If a nonconforming extraction operation ceases for a period of two (2) or more consecutive calendar years, the extraction operation shall not be resumed and the subsequent use of the lot shall thereafter conform to the regulations of the District in which it is located.

C. Alteration

The equipment and processes of a nonconforming extraction operation may be upgraded periodically in order to maintain the operation in a modern condition and in order to meet contemporary environmental and pollution control standards. Such changes shall be permitted, even if they will result in an increase in production, provided the following conditions are met:

1. The changes in equipment and processes shall not have the effect of changing the nature or character of the operation into a use prohibited in the District in which it is located.
2. The noise, dust, odors, and other objectionable attributes of the operation shall not be increased beyond the levels existing at the effective date of adoption or amendment of this Ordinance.
3. The owner of the extraction operation shall notify the Township Board in writing of each change prior to the installation of such change.
4. Building permits for any structure shall be obtained prior to installation or construction.