

**EAST NOTTINGHAM TOWNSHIP
ZONING ORDINANCE**

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

SECTION 2001 APPLICABILITY

The regulations of this article shall apply to existing lots, structures, uses and signs that do not conform to the regulations of the zoning district in which they are located and were either in existence prior to the effective date of this ordinance, or subsequent amendments, or are rendered nonconforming by the adoption of this ordinance. As such, they shall be known and regarded as nonconforming, and the following regulations, as applicable, shall apply to them. Provided, however, that the burden of proof shall remain upon the landowner to prove that a lot, structure, use, or sign is lawfully nonconforming under the terms of this article

**SECTION 2002 ALTERATION, RESTORATION, ENLARGEMENT AND USE
OF NONCONFORMITIES**

- A. Nonconforming Lots. A lot which contains no structures and which is held in single and separate ownership on the effective date of this ordinance, or subsequent amendments, or rendered nonconforming by this ordinance, which does not meet the minimum lot area requirement or lot width requirement at the building line of the zoning district in which it is located, or which is of such unusual dimensions that the owner cannot reasonably comply with one or more of the other dimensional requirements of the zoning district in which it is located, may be used or a structure may be erected thereon for use as limited by the use regulations of the zoning district in which the lot is located, subject to the following conditions:
1. The owner does not own or control contiguous property sufficient to enable the owner to comply with the minimum lot area, width, building coverage, yard, and height regulations and design standards of the zoning district in which the property is located. For purposes of this regulation, a nonconforming lot under common ownership with a contiguous conforming or nonconforming lot shall be considered one lot.
 2. The proposed structure or use shall comply with the design standards and the width, impervious coverage, yard, and height regulations, except minimum lot size and lot width at the building line, of the zoning district in which the lot is located. Otherwise, the lot shall not be used or a structure erected unless a variance is granted by the Zoning Hearing Board.

B. Nonconforming Structures

1. Continuation. Any lawful nonconforming structure existing on the effective date of this ordinance, or subsequent amendments, or rendered nonconforming by this ordinance, may continue to exist and be used. Such structures shall not further deviate from the provisions of this ordinance, except as explicitly provided herein.
2. Restoration. Any lawful nonconforming structure which has been involuntarily damaged by fire, explosion, flood, or similar cause, or legally condemned as unsafe, may be restored or reconstructed within the limits of the existing foundation or footprint of the damaged structure, provided that:
 - a. The restored or reconstructed structure shall not exceed its original dimensions.
 - b. Restoration or reconstruction shall commence within one year from the date of damage, destruction, or condemnation, and shall be completed within one year of the date of the commencement of such work.
 - c. The use of the restored or reconstructed nonconforming structure shall be in accordance with this Article XX.
3. Alteration and enlargement. Any lawful nonconforming structure existing on the effective date of this ordinance or subsequent amendments, or rendered nonconforming by this ordinance, may be altered or enlarged, provided that the total increase in area of the nonconforming structure shall not exceed an aggregate total of 50% of the existing floor area of the nonconforming structure. Floor area shall be based upon the total floor area of the structure at the time the use first became nonconforming. Such alteration or enlargement shall conform to all of the lot area, width, impervious coverage, height, and yard regulations and design standards of the zoning district in which it is located. The vertical expansion of a nonconforming structure shall be subject to the limitations on expansion contained in this section.
4. Repair, renovation, and modernization. Repair, renovation, and modernization of nonconforming buildings or structures, such as renewal or replacement of outer surfaces or windows; addition of soundproofing materials, fireproofing materials, and air conditioning; and repair and/or replacement of structural parts of the structure, shall be permitted notwithstanding other provisions of this Article XX, provided:
 - a. Such repair, renovation, or modernization does not change or substantially alter the physical configuration of the nonconforming building or structure.
 - b. There shall be no increase in the size of or area covered by the said nonconforming building or structure, nor any extension or expansion of the nonconforming building or structure, in or on the lot where the use is located.

C. Nonconforming Uses

1. Continuation. Any lawful nonconforming use of a structure or of land legally existing on the effective date of this ordinance, or subsequent amendments, or rendered nonconforming by this ordinance, may continue to exist and be used.
2. Alteration and expansion. Any lawful nonconforming use of a structure or land may be altered or expanded, but only in strict conformity with the following regulations:
 - a. Such alteration or expansion shall conform to all of the lot area, width, impervious coverage, height, and yard regulations and design standards of the zoning district in which it is located.
 - b. The alteration or expansion of the nonconforming use shall be limited to and permitted only on the same lot that was in existence when the use first became nonconforming.
 - c. The total increase in area of the nonconforming use of land or a structure shall not exceed an aggregate total of 50% of the existing improved land or floor area that is devoted to the nonconforming use. Floor area shall be based upon the total floor area of the structure at the time the use first became nonconforming. For example, if all other requirements of this ordinance are met, a nonconforming use may be expanded once by 20%, and a second time by not more than 30% of the total floor area of the structure as it existed at the time the use first became nonconforming. If, prior to the effective date of this restriction, the use has been expanded by a percentage greater than 50%, it shall not be entitled to any further expansion under this section. The vertical expansion of a nonconforming use of land or a structure shall be subject to the limitations on expansion contained in this section.
 - d. The total increase in area of the nonconforming use of land shall not exceed an aggregate total of more than 50% of the total area of the lot that is devoted to the nonconforming use.
 - e. The alteration or expansion of a nonconforming use of a structure or of land shall be permitted only if a special exception is granted by the Zoning Hearing Board pursuant to Article XXII.
3. Change in use. Once changed to a conforming use, whether within a structure or on land, the conforming use shall not be permitted to revert to a nonconforming use. A nonconforming use may be changed to another nonconforming use only when approved by the Zoning Hearing Board as a special exception pursuant to Article XXII and under the following conditions:
 - a. The applicant shall prove that the proposed nonconforming use cannot reasonably be changed to a use permitted in the zoning district in which it is located.
 - b. The applicant shall prove that the proposed change in use will have the same or less impact than the existing nonconforming use with respect to the following factors:

- 1) Traffic impact, including trip generation, traffic congestion, traffic safety, and access to the property.
- 2) The applicable performance standards specified in Article XVII, General Regulations.
- 3) Compatibility with nearby dwellings.
- 4) Stormwater management.

D. Nonconforming signs. Any sign lawfully in existence prior to the effective date of this ordinance or of any amendments to this ordinance hereafter enacted, and which did not conform to or comply with the provisions of this ordinance or its amendments at the time of enactment shall be a nonconforming sign.

1. Alteration or moving. A nonconforming sign shall not be moved to another position or location upon the building, structure, or lot on which it is located, nor shall the size or area of such nonconforming sign be increased or its structure or construction altered or changed.
2. Damage or destruction. Whenever a nonconforming sign has been damaged or destroyed by any means to the extent of fifty (50) percent of its market value at the time of the destruction or damage, such sign shall not be restored or replaced unless it conforms to all provisions of this ordinance.
3. Discontinuance. Whenever a nonconforming sign is accessory to a nonconforming use of a building, structure, or land and such nonconforming use of the building, structure, or land is discontinued for a continuous period of more than twelve (12) months, then such nonconforming sign shall be removed within six (6) months from the end of the aforesaid twelve (12) month period and the use of signs upon such building, structure, or land shall not be resumed except in accordance with the provisions of this ordinance.

SECTION 2003 DISTRICT CHANGE

Whenever the boundaries of a zoning district are changed, and the change results in a transfer of a lot from one zoning district to another zoning district, the provisions of this article shall apply to any lawful nonconforming uses or structures existing in the zoning district to which the lot has been transferred.

SECTION 2004 TRANSFER OF OWNERSHIP

Whenever the title to a lot is transferred, such transfer shall not by itself adversely affect the lawful status of a lawful nonconforming lot, structure, use, or sign.

SECTION 2005 ABANDONMENT OF NONCONFORMING USE OR STRUCTURE

Whenever a lawful nonconforming use of land or of a structure is abandoned or discontinued or the use is removed for a period of twelve (12) consecutive months, or the structure constituting or housing the nonconformity is razed and not reconstructed within a period of twelve (12) consecutive months, such abandonment or discontinuance shall be presumed to constitute an intention to abandon or discontinue such use, and subsequent use of such land or structure shall conform to the regulations of the zoning district in which it is located, unless the Zoning Hearing Board, as a matter of law, determines that such abandonment has not occurred.

SECTION 2006 IRREGULARLY SHAPED LOTS

As specified in each zoning district, the minimum lot width shall be measured at the required building setback line. In the case of irregularly shaped lots, the lot frontage measured at the street right-of-way line shall not be less than seventy (70%) percent of the required minimum lot width, except in the following situations: on cul-de-sac or court streets or on street centerline curves of less than three hundred fifty (350') feet radius, in which case the lot frontage measured at the street right-of-way line shall not be less than forty (40%) percent of the required minimum lot width.

SECTION 2007 EXISTING USES REQUIRING SPECIAL EXCEPTION OR CONDITIONAL USE APPROVAL

Any use existing as of the date of adoption of this ordinance that is permitted by special exception or conditional use in the zoning district in which it is located under the terms of the ordinance, but which did not previously receive such approval, shall not be deemed a nonconforming use in such district, but shall, without further action by the Zoning Hearing Board or Board of Supervisors, respectively, be considered a conforming use.

SECTION 2008 RULES OF INTERPRETATION

- A. No special exception shall be granted under the provisions of this article with respect to any property where the requested special exception will result in violations of other lot area, width, impervious coverage, setback, height, and yard regulations and design standards of the zoning district in which the property is located, unless a variance is granted by the Zoning Hearing Board from the regulation which is otherwise applicable. The owner of a nonconforming use or other nonconformity has no inherent right to expand, alter, or use any nonconformity in conflict with the applicable zoning district regulations.

- B. In those zoning districts in which the district regulations establish different design standards or lot area, width, impervious coverage, setback, height, or yard regulations for uses permitted as of right, by special exception, or by conditional use, no lot shall be construed to be nonconforming for purposes of the regulations of this article which complies with the minimum lot area and other regulations applicable to uses permitted as of right. The regulations applicable to uses permitted by special exception or by conditional use shall not render the lot nonconforming, unless the owner demonstrates that the lot cannot reasonably be used for any use permitted as of right in such zoning district, or the Zoning Hearing Board grants a variance from the applicable regulations.
- C. No provision of this article which establishes a specific percentage limitation upon the expansion of a nonconforming use shall be construed to automatically authorize an expansion to the maximum permitted, nor shall a variance related to any nonconformity be granted from the applicable zoning district regulations in excess of the minimum variance necessary to afford relief. It shall be incumbent upon the applicant to prove the need for such expansion consistent with established principles of law.