

**ARTICLE 23**  
**NONCONFORMING LOTS, NONCONFORMING USES OF LAND,**  
**NONCONFORMING STRUCTURES, AND**  
**NONCONFORMING USES OF LAND AND STRUCTURES**

**Section 23.01 Purpose**

The purpose of this section is to provide for the regulation of uses, structures, and lots that do not, at the time of this Ordinance, conform to the requirements of this Ordinance. The provisions of this section shall govern such uses, structures, and lots.

**Section 23.02 Nonconforming Lots**

1. 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 at the effective date of adoption or amendment of this Ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district; provided that yard dimensions and other requirements not involving lot area, lot width or both, shall conform to the regulations for the district in which such lot is located, except as provided below.

Nonconforming lots that exist within the development area known as Brackel Point may encroach upon the required side yard setbacks provided a minimum five (5) foot setback is maintained from the lot line, and a ten (10) foot setback is maintained between structures.

2. In any district that does not permit single family dwellings, if two or more lots, combinations of lots, or portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements for lot width and area as established by this Ordinance, the lands involved shall be considered to be an undivided parcel for the purpose of this Ordinance, and no portion of the parcel shall be used or occupied which does not meet lot width and area requirements established by this Ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this Ordinance.
3. Upon application to the Township Board, the Board may, at its sole discretion, permit the combination, in whole or in part, of nonconforming lots of record into building sites less than the size requirements provided in this Ordinance. The application shall be filed with the Township Clerk on forms provided by the Township. Approval of the application shall be subject to the following provisions:

- a. Any newly created lot must be capable of accommodating a structure that is in conformance with the building area, setback, and lot coverage requirements set forth in this Ordinance.
- b. Any lot created under these provisions shall be at least fifty (50) feet in width.
- c. In the event that a lot created under these provisions is less than twelve thousand five hundred (12,500) square feet in area, any structure constructed on the lot shall have direct hookup to the public sanitary sewer system.

### **Section 23.03 Nonconforming Uses of Land**

1. Where, at the effective date of adoption or amendment of this Ordinance, a lawful use of land exists that is no longer permissible under the terms of this Ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:
  - a. No such nonconforming use 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 Ordinance;
  - b. No such nonconforming use shall be moved, in whole or in part, to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance; and
  - c. If such nonconforming use of land ceases for any reason for a period of more than twelve (12) months, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located.

### **Section 23.04 Nonconforming Structures**

1. Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on lot area, lot coverage, building height, setbacks, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
  - a. No such structure may be enlarged or altered in a way that increases its nonconformity.
  - b. Should such structure be destroyed by any means to an extent of more than sixty (60%) percent of its replacement cost, exclusive of the foundation, it shall be reconstructed only in conformity with the provisions of this Ordinance. The sixty percent (60%) provision shall not

apply to non-conforming single-family residential structures; however, application for rebuilding shall be made within one (1) year from the date of damage or destruction.

- c. Should such structure be moved any distance for any reason whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

### **Section 23.05 Nonconforming Uses of Land and Structures**

1. If a lawful use of a structure, or of land and structure in combination, exists at the effective date of adoption or amendment of this Ordinance, which would not be permitted in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:
  - a. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
  - b. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, and which existed at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.
  - c. If no structural alterations are made, any nonconforming use of a structure, or land and structure in combination, may be changed to another nonconforming use of the same or a more restricted classification provided that the Board of Appeals, either by general rule or by specific case, finds that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Appeals may require conditions and safeguards in accord with the purpose and intent of this Ordinance. Where a nonconforming use of a structure, land, or land and structure in combination is hereafter changed to a more conforming use, it shall not thereafter be changed to a less conforming use.
  - d. Any structure, or land and structure in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed.
  - e. When a nonconforming use of a structure, or land and structure in combination, is discontinued or ceases to exist for twelve (12) consecutive months, or for a total of eighteen (18) months during any three (3) year period, the structure, or land and structure in combination, shall not thereafter be used except in conformance with the regulations of the

district in which it is located. Structures occupied by seasonal uses shall be *exempt* from this provision.

*The owner's intent to no longer continue use of the nonconforming uses shall be established by a preponderance of the following points of evidence:*

- a. *Utilities have been disconnected*
- b. *If there were signs, the signs have been removed or have fallen into disrepair*
- c. *Fixtures within and outside have been removed*
- d. *The property has fallen into disrepair or is considered "blighted"*
- e. *U.S. Mail delivery has been terminated or mail is forwarded to another address*
- f. *The classification of the property for tax purposes has been changed to reflect another use*
- g. *Other similar changes to the nonconforming building or use*

*Action to determine if a nonconforming use was intended to be discontinued by the owner may be delayed if any of the following is ongoing:*

- a. *Property held in Probate*
- b. *Insurance settlement in dispute*
- c. *Criminal investigation*

(Amendment 104-05-06-10; Effective 04/27/07)

- f. Where nonconforming use status applies to land and structure in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

### **Section 23.06 Repairs and Maintenance**

1. On or within any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, or for exterior aesthetic improvements to an extent not exceeding sixty (60) percent of the replacement value of the building, provided that the volume of the building as it existed at the time of passage or amendment of this Ordinance shall not be increased.
2. 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 any official charged with protecting the public safety, upon order of such official.

### **Section 23.07 Special Uses Are Not Nonconforming Uses**

Any special use that is permitted as provided in this Ordinance shall not be deemed a nonconforming use, but shall, without further action, be deemed a conforming use in such district.

### **Section 23.08 Change of Tenancy or Ownership**

The tenancy, ownership, or management of any existing nonconforming uses of land, structures, or land and structures in combination may be transferred or changed.

### **Section 23.09 Preferred Class of Nonconforming Use**

1. Notwithstanding the above-enumerated provisions of Sections 22.02 and 22.04, certain nonconforming uses may be entitled to the status of "Preferred Class of Nonconforming Use" subject to the following conditions:
  - a. The use does not adversely affect the public health, safety, and welfare.
  - b. The use does not adversely affect the intent of the district in which it is located.
  - c. No useful purpose would be served by the strict application of the provision or requirements of this Ordinance with which the use does not conform.
  - d. A nonresidential use in a residential district shall not be eligible for preferred status.
2. A property owner shall seek approval of "preferred" status of the use of the structure from the Zoning Administrator. A structure housing a "Preferred Nonconforming Use" may be enlarged or altered provided such alteration is approved by the Board of Appeals. The property owner, upon approval of preferred status, shall submit a site plan pursuant to requirements in Article 21, Site Plan Review Procedures.