

ARTICLE VII
NONCONFORMING USES

Section 700 DEFINITION

A nonconforming use is the lawful employment or occupancy of a land area, building or structure which was in existence prior to the enactment of this Zoning Ordinance or its amendments but does not comply with the present provisions of this Zoning Ordinance or amendments hereafter enacted.

Section 701 PERMITTED CONTINUATION

A nonconforming use may continue; be bought or sold, altered, restored or extended subject to the provisions of this Article even though such use does not conform to the regulations established in this Ordinance for that use.

Section 702 ALTERATIONS

- A. A nonconforming building or structure may be altered or improved within the confines of the existing buildings.
- B. A nonconforming building or structure may be altered, improved or reconstructed in excess of fifty (50) percent of the fair market value of the building or structure, but not exceeding one hundred (100) percent of the fair market value as determined by the Tioga County Assessor if approved as a Special Exception by the Zoning Hearing Board.
- C. A nonconforming building or structure may be altered to the extent necessary if such alteration is intended and will result in the building or structures conversion to a conforming use.

Section 703 EXTENSION OR EXPANSION

A nonconforming use may be extended upon approval as a Special Exception by the Zoning Hearing Board subject to and provided the following:

- A. The extension does not encroach upon the front, side and rear yard requirements and the maximum building height requirements of this Ordinance.
- B. The extension is for the purpose of expanding the nonconforming use in existence at the time of the adoption of this Zoning Ordinance.

- C. Such extension does not result in an increase in total floor area, or lot use area of more than one hundred (100) percent of the original floor area or lot area.
- D. Adequate parking can be provided in conformance with this Ordinance to serve both the original plus expanded use.
- E. Such expansion does not present a threat to the health or safety of the community or its residents.

Section 704 CHANGES

No nonconforming building, structure or use shall be changed to another type of nonconforming use, except as a Special Exception under the provision of this Ordinance.

Section 705 RESTORATIONS

- A. A building which is damaged by fire, explosion, flood or other casualty to the extent of seventy-five (75) percent or more of its value (exclusive of walls below grade) at the date of the damage as determined by fair market value of the building, and which does not comply with the use, area or height regulations of this Ordinance, shall not be restored except in conformity with the regulations of this Ordinance.
- B. A lawful nonconforming building destroyed to the extent of less than seventy-five (75) percent by fire, explosion, flood or other casualty or legally condemned, may be reconstructed and used for the same nonconforming use, provided that (a) the reconstructed building shall not exceed in height, area or volume, the building destroyed or condemned and (b) building reconstruction shall be commenced within one (1) year from the date the building was destroyed or condemned and shall be carried on without interruption.

Section 706 ABANDONMENT

- A. The nonconforming use of a building or land which has been abandoned shall not thereafter be returned to such nonconforming use, unless approved as a Special Exception under the provisions of this Ordinance. A nonconforming use shall be considered abandoned when one (1) of the following conditions exists:

1. When the intent of the owner to discontinue the use is apparent.
 2. When the characteristic equipment and furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within six (6) months unless other facts show intention to resume the nonconforming use.
 3. When a nonconforming use has been discontinued for a period of one (1) year.
 4. When it has been replaced by a conforming use.
 5. When it has been changed to a use permitted as a Special Exception by the Zoning Hearing Board.
- B. Any nonconforming use of a sign or billboard which is discontinued or not used for six (6) months shall not be resumed; and if any sign or billboard is removed, it shall not be reconstructed.

Section 707 NONCONFORMING LOTS OF RECORD

- A. A single-family house and customary accessory buildings may be erected on any approved lot of record in existence on the effective date of this Ordinance.
- B. This provision shall apply even though such lot fails to meet the applicable requirements of side, front or rear yards or the minimum lot area requirements.

Section 708 UNSAFE STRUCTURE

Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition of any portion of a building declared unsafe by a proper authority.

Section 709 CONSTRUCTION APPROVED PRIOR TO LEGAL ENACTMENT OF ORDINANCE

Nothing herein contained shall require any change in plans, construction or designated use of a building or structure for which a permit has been issued and the construction of which shall have diligently proceeded within six (6) months of the date of such permit.

Section 710 REGISTRATION

The Zoning Officer shall prepare a list registering all nonconforming uses existing at the time of the legal enactment of this Ordinance. Said list shall include a general description of the nature and extent of the nonconformity and may include photographs as documentation. Further, said list shall be maintained for public use and information.

ARTICLE VIII
ADOPTION AND AMENDMENT

Section 800 ADOPTION

This Zoning Ordinance is adopted in compliance with the provisions of Article VI, Section 607 and 608 of Act 247, as amended, known and cited as the "Pennsylvania Municipalities Planning Code".

Section 801 AMENDMENT

This Zoning Ordinance may be amended from time to time as deemed necessary for the public welfare or convenience, in compliance with the provisions of Article VI, Section 609 and Section 609.1 of Act 247, as amended, known and cited as the "Pennsylvania Municipalities Planning Code".

A. Enactment of amendment:

An amendment to this Ordinance may be initiated by the Board of Supervisors or the Planning Commission. Before voting on the enactment of an amendment, the Board of Supervisors shall hold a public hearing thereon, pursuant to public notice. In the case of an amendment prepared by other than the Planning Commission, the Board of Supervisors shall submit said amendment to the Planning Commission for recommendations, at least thirty (30) days prior to the public hearing. If, after any public hearing held upon an amendment, the proposed amendment is revised, or further revised, to include land not previously affected by it, the Board of Supervisors shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment. Forty-five (45) days prior to the public hearing held by the Board of Supervisors, the Township Planning Commission shall submit the proposed amendment to the Tioga County Planning Commission for recommendations.

B. Procedure upon curative amendment:

A landowner who desires to challenge on substantive grounds the validity of this Ordinance, or any provision hereof, which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment to the Board of Supervisors with a written request that his challenge and proposed amendment or amendments be heard and decided in the manner prescribed by Act 247, the "Pennsylvania Municipalities Planning Code" and further defined as follows:

1. Procedure for filing for curative amendment:
 - a. The landowner shall make a written request to the Board of Supervisors that it hold a hearing on his challenge. The request shall contain a short statement reasonably informing the Board of Supervisors of the matters that are in issue and the grounds for the challenge.
 - b. Such request may be submitted at any time but if an application for a permit or approval is denied under this Ordinance the request shall be made not later than thirty (30) days after notification of such denial. In such case, if the landowner elects to make the request to the Board of Supervisors and the request is timely, the time within which he may seek review of the denial of the permit or approval on other issues shall not begin to run until the request is finally disposed of.
 - c. The request shall be accompanied by plans and other materials describing the use or development proposed by the landowner. Such plans and other material may be general in nature, but should provide a sufficient base for evaluating the challenge.
2. Public hearing:
 - a. Upon petition the Board of Supervisors shall hold a hearing thereon within sixty (60) days of the filing of the request.
 - b. At least thirty (30) and forty-five (45) days prior to the hearing the Board of Supervisors shall refer the proposed amendment to the Township Planning Commission and the Tioga County Planning Commission for recommendations.
 - c. The public notices of the hearing shall in addition to the requirements for advertisement for any amendment indicate that the validity of this Ordinance is in question and shall indicate the place and times when a copy of the landowner's request, including all plans submitted and the proposed amendment(s) may be examined by the public.
 - d. The public hearing shall be conducted within the following guidelines:
 - (1) The Chairman or acting chairman of the Board of Supervisors presiding shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers including witnesses and documents requested by the parties.

- (2) The parties have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.
 - (3) Formal rules of evidence shall not apply but irrelevant, immaterial or unduly repetitious evidence may be excluded.
 - (4) The Board of Supervisors shall keep a stenographic record of the proceedings and a transcript of the proceedings as well as copies of graphic or written material received in evidence shall be made available to any party at cost.
 - (5) The Board of Supervisors shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate; shall not take notice of any communication, reports, staff memoranda, or other materials unless the parties are afforded an opportunity to contest the material so noticed; and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representatives unless all parties are given an opportunity to be present.
- e. The hearing may be postponed or continued at the request of the landowner or by mutual consent of the parties.
3. Procedure for rendering formal action:
Upon completion of the hearing the Board of Supervisors shall render a decision and communicate said decision to all parties within thirty (30) days.
- a. Approval of the amendment shall be granted by formal affirmative vote at a regular or special meeting of the Board of Township Supervisors.
 - b. The landowner's request shall be considered denied when:
 - (1) The Board of Supervisors notifies the landowner that it will not adopt the amendment.
 - (2) The Board of Supervisors adopts another amendment which is unacceptable to the landowner.
 - (3) The Board of Supervisors fails to act on the landowner's request within thirty (30) days of the close of the last hearing, unless the time is extended by mutual consent of the landowner and Board of Supervisors.

4. Appeal:
Any action taken or decision rendered under this Article may be appealed by any parties aggrieved by said action or decision under the provisions and procedures provided in Act 247.

ARTICLE IX
ZONING HEARING BOARD

Section 900 CREATION AND APPOINTMENT

A Zoning Hearing Board is hereby created. The membership of said Board shall consist of three residents of the Township appointed by the Board of Supervisors. Their terms of office shall be three years after expiration of the initial term; said initial term shall be so fixed that the term of office of one member shall expire each year. The Zoning Hearing Board shall promptly notify the Board of Supervisors of any vacancies which occur. Appointment to fill vacancies shall be only for the unexpired portion of the term. Members of the Zoning Hearing Board shall hold no other office in the Township, except that no more than one member of the Zoning Hearing Board may also be a member of the Planning Commission.

Section 901 REMOVAL OF MEMBERS

Any Zoning Hearing Board member may be removed for malfeasance or nonfeasance in office or for other just cause by a majority vote of the Board of Supervisors which appointed the member, taken after the member has received 15 days' advance notice of the intent to take such vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

Section 902 ORGANIZATION OF ZONING HEARING BOARD

The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Zoning Hearing Board, but the Zoning Hearing Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf, and the parties may waive further action by the Zoning Hearing Board as provided in Article IX, Section 908 of the "Pennsylvania Municipalities Planning Code", Act 247, as amended. The Zoning Hearing Board may make, alter and rescind rules and forms for its procedure, consistent with ordinances of the Township and laws of the Commonwealth of Pennsylvania. The Zoning Hearing Board shall keep full public records of its business, and shall submit a report of its activities to the Board of Supervisors once a year.

Section 903 POWERS AND DUTIES

- A. The Zoning Hearing Board shall hear and decide appeals from any order, requirement, decision or determination made by the Zoning Officer in the administration of this Ordinance.

- B. The Zoning Hearing Board shall hear and decide all matters referred to it or upon which it is required to pass under this Ordinance.
- C. The Zoning Hearing Board shall hear requests for variances from the requirements of this Ordinance where it is alleged that the provisions of the Ordinance inflict unnecessary hardship upon the applicant following the procedures set forth in Section 904. The Board may grant a variance provided the following findings are made where relevant in a given case.
1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the Zoning Ordinance in the neighborhood or district in which the property is located;
 2. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
 3. That such unnecessary hardship has not been created by the appellant;
 4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
 5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this act and the Zoning Ordinance.

- D. The Zoning Hearing Board shall hear and decide requests for Special Exceptions in those cases where this Ordinance indicates a Special Exception may be granted subject to compliance with the standards and criteria prescribed. In granting a Special Exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in the Ordinance, as it may deem necessary to implement the purposes of the Ordinance.

- E. The Zoning Hearing Board may conduct a hearing and take evidence on a substantive challenge and amendment to this Ordinance filed by a landowner. The Board may further make findings of fact relative to the challenge, and cause to be made a record or transcript, which may serve as the bases for further action. The Zoning Hearing Board shall not make recommendations or render an opinion in such matters, and has no authority to alter, change, or otherwise grant relief in such cases.

Section 904 PROCEDURES

- A. Variance
1. The landowner shall file a request for a variance with the Zoning Officer along with all maps, plans and text which may be relevant to the request. Said request shall be accompanied by a fee specified by the Board of Supervisors.
 2. The Zoning Officer shall transmit the request and any information received therewith, along with his file on said issue forthwith to the Zoning Hearing Board.
 3. Upon receipt of a request for variance the Board shall establish a time and place to hear said request within thirty (30) days.
 4. The Board shall render a decision and inform the applicant of said decision within thirty (30) days of the final hearing date.
- B. Appeal of the Zoning Officer's decision appeals arising from the Zoning Officer's decision on a specific provision of this Ordinance shall be handled in the same manner as a variance request.
- C. Special Exception:
1. The landowner shall file a request for the granting of a Special Exception along with all maps, plans and text which may be necessary to explain the development proposed and its conformance with the standards and criteria of this Ordinance with the Zoning Officer. Said request shall be accompanied by a fee specified by the Board of Supervisors.
 2. The Zoning Officer shall transmit the request and background data forthwith to the Zoning Hearing Board.
 3. The Zoning Hearing Board shall schedule a public hearing with public notice within sixty (60) days of said request.
 4. The Board shall render a decision and inform the applicant of said decision within thirty (30) days of the final hearing date, unless upon mutual consent of the Board and applicant it is agreed to continue the proceedings.

Section 905 TIME LIMITATIONS

Any person aggrieved by the rendering of a decision by the Board of Supervisors, Planning Commission, Zoning Officer, or Zoning Hearing Board shall have thirty (30) days in which to file an appeal or request for review with the Zoning Hearing Board from the date of said decision.

Section 906 APPEALS

Appeals from a decision of the Zoning Hearing Board shall be filed and handled in the manner prescribed by Act 247, as amended, the "Pennsylvania Municipalities Planning Code."