



To: Atlas Township Planning Commission & Zoning Board of Appeals

From: Adam Young, AICP

Date: February 15, 2024

Subject: Potential Zoning Ordinance Amendment: Nonconforming Uses, Structures and Lots

At their December 20, 2023, meeting, the Atlas Township Zoning Board of Appeals (ZBA) heard a request from the Township Building Official for an interpretation of the existing zoning ordinance language found in Section 300.310 pertaining to nonconforming uses, structures and lots. Recognizing a lack of clarity in the existing language, the ZBA requested the Planning Commission to review the language and consider amendments for clarification and simplification.

We prepared proposed amendment language and presented it to the Planning Commission at their meeting on February 14, 2024. Based on comments received from the Planning Commission, we have prepared an updated version of the proposed amendment language. The proposed amendment is below:

<p>Key: Existing zoning ordinance language</p> <p>Text proposed to be deleted Text proposed to be added</p>

300.310 - Nonconforming uses, structures and lots.

- A. ~~Nonconforming use of land. Any nonconforming use of land or structure, may be continued; provided, however, such use shall have continued in operation, does not constitute a nuisance, and shall not be enlarged, altered, or changed in area, activity, or content during its continuance, except as provided otherwise by proper authority.~~ Where, at the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is made no longer permissible under the terms of the Ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions.
 - 1. Any nonconforming use which has ceased its usual conduct of such business for a period of one year or more shall be considered to have terminated, and may not thereafter commence operation.
 - 2. The Zoning Board of Appeals shall determine that a nonconforming use has been removed, discontinued, been abandoned, or otherwise ceased to occupy the land ~~and/or structure~~ in question upon a finding that a minimum of three (3) of the following conditions exist.
 - a. Local, county, or state government files or records show that the nonconforming use has ceased. Such evidence may include, but shall not be limited to, permits, inspection reports, dated photographs or notarized statements of government officials, agents, representatives, or employees.

- b. ~~Dated telephone directories, or similar~~ Dated records that provide information about the occupants or uses located on a street by address or lot number, show that the nonconforming use has ceased. Such evidence may include, but shall not be limited to, entries that show the address associated with the use as vacant or occupied by another use, or show the ~~telephone number~~ **phone or internet service** associated with the use as disconnected or in use at another location.
 - c. Utility records, including, but not limited to, providers of water, sewer, electric, natural gas, or telecommunications service, show that the nonconforming use has ceased. Such evidence may include, but shall not be limited to, records indicating that the address of the use is vacant or occupied by another use, the utility service associated with the use has been disconnected or the business, organization or individual associated with the use has moved to another location.
 - d. Dated advertising or other information **included on the internet or** published in a newspaper or magazine show that the nonconforming use has ceased. Such evidence may include, but shall not be limited to, **websites, social media pages**, advertisements, articles, features, or photographs that address the use of the land in question.
 - e. Dated aerial photographs from Genesee County or other sources that show that the nonconforming use has ceased.
 - f. Other relevant information showing that the nonconforming use has ceased. Such evidence may include, but shall not be limited to, date-stamped photographs, diary or log entries, affidavits, or notarized statements.
- B. Nonconforming use of a structure. Where a lawful use of a structure exists at the effective date of adoption or amendment of this Ordinance that would not be allowed in the district under the terms of this Ordinance, the lawful use of the structure may be continued so long as it remains otherwise lawful, subject to the following provisions: ~~The use of or occupancy of a nonconforming structure, may be continued, provided, however, that no enlargement, change, or alteration shall be permitted upon such nonconforming structure, except upon a finding by the Building Inspector that such enlargement, change, or alteration is in conformance with the requirements of this Ordinance and that the use within such structure is in conformity with the requirements of this Ordinance; and further, provided, that no enlargement, change or alteration of a nonconforming structure housing a nonconforming use shall be permitted except upon a finding by the Board of Zoning Appeals that such enlargement, change or alteration will permit greater compliance with the provisions of this Ordinance and that adequate provisions, as required by the Board of Zoning Appeals, are installed or instituted to minimize the detrimental effects of the nonconforming use upon adjoining conforming uses.~~
- 1. **Such structure shall not 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. The Zoning Board of Appeals may grant an exception where adequate provisions are installed or instituted to minimize the detrimental effects of the nonconforming use upon adjoining conforming uses.**

~~2.~~ **2.** Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any structure housing a nonconforming use, or part thereof, declared to be unsafe by any official charged with providing for the public safety, ~~and which strengthening or restoration is ordered by such official.~~

C. Nonconforming structure. 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 area, lot coverage, height, yards, 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.

- 1. No such structure may be enlarged or altered in a way which increases its nonconformity.**
- 2. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.**

~~D.~~ **D.** Nonconforming lot. Nonconforming lots may be improved under the following conditions:

- Improved nonconforming lots (those occupied by an existing principal building and accessory building(s)) may be improved by the enlargement or alteration of the existing principal building and/or the construction or enlargement of an accessory building provided that the applicable zoning requirements are met. If the variation of a setback or other zoning restriction is required in order to enlarge, alter or erect a structure on a nonconforming lot, then such structure shall only be permitted if the ~~Board of Zoning Appeals~~ **Zoning Board of Appeals** grants a variance.
- Lawfully existing unimproved nonconforming residential lots (those that do not have a principal dwelling) that are nonconforming because of lot size, lot width, or depth to width ratio may be improved, provided all other applicable zoning requirements are met. Further, that septic and driveway approvals have been obtained by applicable agencies. If the variation of a setback or other zoning restriction is required to erect a dwelling, then a variance from the ~~Board of Zoning Appeals~~ **Zoning Board of Appeals** must be obtained.
- Other unimproved nonconforming lots (those that are not occupied by a principal building) shall not be occupied except upon variance approved by the ~~Board of Zoning Appeals~~ **Zoning Board of Appeals**.
- If two or more lots or combination of lots and portions of lots with contiguous frontage in single ownership are of record at the effective date of this Ordinance, the lands involved shall be considered an undivided lot for the purpose of this Ordinance. Future divisions of such a lot shall be in conformance with current ordinance requirements.

~~E.~~ **E.** Destruction of structure. Nothing in this Ordinance shall prevent the restoration, rebuilding, or repairing of any nonconforming structure, or structure housing a nonconforming use, which structure has been damaged by fire, acts of God, or any act of a public enemy, subsequent to the effective date of this Ordinance, in an amount up to and including 65 percent of the replacement value of the structure as determined by an assessment board consisting of a qualified appraiser appointed by the Township

Board, another by the owner of the structure, and a third appointed by the first two appointees, with the cost of such appraisers shared equally by the Township and the owner, and provided that the restoration or repairing shall have commenced and is diligently prosecuted within one year after the date of destruction. Nonconforming residential structures and/or their accessory structures are exempt from this section and are entitled to be rebuilt to their pre-destruction condition; however, application for rebuilding shall be made within one (1) year from the date of damage or destruction.

~~F.~~ **F.** Maintenance. Nothing in this Ordinance shall prevent the renovation or repair of nonstructural members, or the maintenance ~~of~~ **of** a nonconforming structure made necessary by ordinary wear and tear, provided the cost per year of such repair or maintenance does not exceed 25 percent of the value of the structure as determined by its state equalized valuation.

~~F.~~ ~~Preferred class of nonconforming use.~~

~~1. Notwithstanding any of the above enumerated provisions of this section, certain nonconforming uses may be entitled to the status of "Preferred Class of Nonconforming Use," subject to the following conditions:~~

~~a. The nonconforming use is compatible with the area development pattern.~~

~~b. The nonconforming use is consistent with the objectives of the Township Master Plan.~~

~~c. The nonconforming use does not adversely impact the public health, safety and general welfare.~~

~~d. The nonconforming use does not adversely impact the purpose of the zoning district where it is located.~~

~~2. A preferred class of nonconforming use or structure housing a preferred class of nonconforming use may be enlarged or altered provided such alteration is approved by the Planning Commission. The property owner shall first seek approval of the "preferred" status by the Planning Commission. The property owner, upon approval of preferred status, shall then submit a site plan pursuant to the requirements of Section 300.1302 for review and approval by the Planning Commission.~~

~~3. Preferred class nonconformities shall be permitted to be perpetuated and expanded in accordance with an approved site plan, subject to the provisions of this section and any conditions of approval. Preferred class nonconformities shall be permitted to be perpetuated, expanded, improved, or rebuilt if damaged or destroyed in accordance with an approved site plan, subject to the provisions of this section and any conditions of approval.~~

~~4. An application for a preferred class designation that has been denied by the Planning Commission may not be appealed to the Zoning Board of Appeals.~~

~~5. The preferred class designation shall be deemed removed when either the primary structure or property occupied by a preferred class of nonconforming use is permanently removed, or when a preferred class of nonconforming use is replaced by a conforming use. All subsequent uses shall conform to the use provisions of this Ordinance.~~

~~6. Failure of the owner, operator, or person having beneficial use of a lot occupied by a preferred class of nonconforming use to maintain the use or improve the site in accordance with the provisions of this section, an approved site plan, or any conditions of approval shall be grounds for the Planning Commission to rescind the preferred class designation, after convening a public hearing noticed in accordance with Section 300.1303,4, for cause shown.~~

If the Planning Commission wishes to move forward with this zoning amendment, a public hearing will need to be held. If you have any questions, please feel free to contact me at 313.961.3651 or ayoung@wadetrim.com

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