
Article IV - Modifications and Non Conformities

Section 400 SETBACK MODIFICATIONS

§400.1 Front Setbacks from Major or Minor Arterials: For the purpose of protecting residential use from adverse influences of traffic and for the purpose of protecting major or minor arterials for their traffic functions, all buildings along these roadways must be set back as least fifty (50) feet from the right-of-way line of the roadways. Major or minor arterials are or will be any street or road so designated by the Township Planning Commission or as specified in the Penn Township Comprehensive Plan.

§400.2 Front, Side and Rear Setback of Buildings on Built-up Streets: Where at least two (2) adjacent buildings within one hundred (100) feet of a vacant lot are set back a lesser distance than required, the average of the lesser distances becomes the required minimum setback for the property.

§400.3 Setback on Corner Lots: In the case of corner lots, two (2) front yards shall be provided (the second of which will exist in lieu of one (1) side yard).

§400.4 Exceptions for Accessory or Appurtenant Structures: All yards and open areas shall be maintained with no portion of such area utilized for building or structures. The following structures and uses shall be the only exceptions:

- Permanent Roofed Accessory Structures
 - Allowed in Rear Yards (See Section §300.2)*
- Access Drives
- Animal Feeding Areas
- Antennas
- Arbors and/or Trellis*
- Awnings
- Barbecues and/or Outdoor Fireplaces* - rear and side yard only
- Chimneys
- Cornices and/or Gutters
- Driveways
- Fences and/or Retaining Walls*
- Fire Escapes
- Flagpoles
- Clothesline Poles - rear yard only
- Lamp Post
- Mail Box
- Outdoor Furniture*
- Playground Equipment*
- Ponds and/or Streams
- School Bus Shelters

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Sewage Disposal Systems*
Sidewalks
Steps
Telephone Booths*
Temporary Structures*
Tree Wells
Utility Meters
Water Systems

* - Shall not be located within the 100-year flood plain.

Section 401 MODIFICATION OF MAXIMUM HEIGHT RESTRICTIONS

The height regulations do not apply to the following projections provided that the height of any such projection above its base shall not be greater than the shortest distance measured along a horizontal plane from such base to any lot line:

- a) Structures such as chimneys, standpipes, flagpoles, television antennas (for permitted uses in the A/O, S/C H/B and I zones only) or radio towers.
- b) Structures on building such as clock or bell towers, church steeples, cupolas, water tanks, and other mechanical appurtenances, if such structures, at any level, do not cover more than twenty-five (25) percent of the roof on which they are located.
- c) Parapet walls or cornices used solely for ornamental purposes if not in excess of five (5) feet.

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Section 402 SOLAR AND WIND ENERGY FACILITIES

- a) Solar Energy Systems: Solar energy systems shall be permitted relief from previously stated limitations to the following extent:
- 1) Setbacks
- a) Architectural features needed for the operation of active or passive solar energy systems, including but not limited to canopies, eaves, overhangs, detached solar collectors, reflectors, piping and movable insulation may be permitted to extend up to ten (10) feet into required yard areas when these devices are a functional component of the space heating or domestic hot water system of the principal building lot.
- b) The rear or side yard setbacks required may be reduced to zero in order to allow the placement of solar energy systems, provided that:
- No portion of the structure or architectural features project over the property lines.
 - Exposure protection between structures is provided according to the specifications of all applicable fire and safety regulations guaranteeing emergency access, light and ventilation.
 - The placement of all structures, building materials, and finished wall construction along the lot lines does not interfere with traffic along adjacent or intersecting rights-of-way or with the site distance at intersections.
 - No other design can be shown to meet the requirements of the Zoning Ordinance and provide the same solar energy utilization.
 - Existing solar energy systems will not be substantially impaired by shadowing more than ten (10) percent of the collector area between 9:00 a.m. and 3:00 p.m. on a clear winter solstice (December 21st) day.

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- 2) Building Height
 - a) Solar energy collection equipment, solar energy reflectors, or solar energy storage tanks shall extend no more than ten (10) feet above the highest point of the roof.

- 3) Lot Coverage
 - a) Solar collectors and/or solar energy systems shall not be included in the lot coverage calculations provided their installation will not create adverse storm water problems and will not significantly detract from the groundwater recharge potential of the immediate vicinity.

- b) Wind Energy Systems: Wind energy systems shall be permitted relief from previously stated limitations to the following extent:
 - 1) Setbacks
 - a) The setbacks from any lot line must be equal to the height of the tower, plus the length of the longest extension of the rotor plus ten (10) feet.

 - 2) Building Height
 - a) The height is not restricted unless there is an adverse affect upon the character of the neighborhood or television interference or the unit generates significant amounts of noise.

 - 3) Access
 - a) Climbing access to the tower is secured from use by unauthorized persons.

Section 403 BUILDINGS UNDER CONSTRUCTION

If the construction is completed within one (1) year after the effective date of this Ordinance, a building, the foundation of which was completed before the effective date, may be constructed without being bound by the requirements of this Ordinance. In like manner, a building, the foundation of which was completed before an amendment, may be constructed if the construction is completed within one (1) year after the amendment.

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Section 404 DIVISION OF BUILT-ON LOTS

No lot may be formed from part of a lot occupied by a building unless each newly created lot will meet all the applicable provisions of this Ordinance, except where a new lot is formed from a lot with an existing approved nonconformity and no new nonconformity is created in any lot by the formation of the new lot.

Section 405 STATUS OF SUBDIVISION OR LAND DEVELOPMENT PLAN

From the time an application for approval of a plat, whether preliminary or final, is duly filed as provided in the Subdivision and Land Development Ordinance, and while such application is pending approval or disapproval, no change or amendment of the Zoning Ordinance shall affect the decision on such application adversely to the applicant and the applicant shall be entitled to a decision in accordance with the provision of the Zoning Ordinance as it stood at the time the application was duly filed. In addition, when a preliminary application has been duly approved, the applicant shall be entitled to final approval in accordance with the terms of the approved preliminary application as hereinafter provided. However, if an application is properly and finally denied, any subsequent application shall be subject to the intervening change in the Zoning Ordinance.

When an application for approval of a plat, whether preliminary or final, has been approved without conditions or approved by the applicant's acceptance of conditions, no subsequent change or amendment in the zoning shall be applied to affect adversely the right of the applicant to commence and to complete any aspect of the approved development in accordance with the terms of such approval within five years from such approval. The five-year period shall be extended for the duration of any litigation, including appeals, which prevent the commencement or completion of the development and for the duration of any sewer or utility moratorium or prohibition that was imposed subsequent to the filing of an application for preliminary approval of a plat. In the event of an appeal filed by any party from the approval or disapproval of a plat, the five-year period shall be extended by the total time from the date the appeal was filed until a final order in such matter has been entered and all appeals have been concluded and any period for filing appeals or requests for reconsideration have expired, provided, however, no extension shall be based upon any water or sewer moratorium which was in effect as of the date of the filing of a preliminary application.

Where final approval is preceded by preliminary approval, the five-year period shall be counted from the date of the preliminary approval.

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Section 406 LOTS OF RECORD

On a lot where adjacent lots or land were not owned by the said lot owner or owners, both on the effective date of this Ordinance and on the date of the request for the erection of a building or otherwise, which does not fulfill the regulations for the minimum lot area and/or lot width or depth for the zone in which it is located, a building may be erected, altered or used and any conforming or permitted use may be established, providing the setback requirements conform with the average established by existing uses in the neighborhood, excepting, however, those lots covered under Section 405 hereof.

**Section 407 NONCONFORMING USES, STRUCTURES AND DIMENSIONAL
NONCONFORMITIES**

§407.1 Continuance:

- a) Except as otherwise provided in this Section, the lawful use of land or building existing at the date of the adoption of this Ordinance or amendment thereto may be continued, although such use of land or building does not conform to the use regulations specified by this Ordinance or amendment thereto for the zone in which such land or building is located.
- b) Except as otherwise provided in this Section, any dimensional nonconformities existing at the date of the adoption of this Ordinance or amendment thereto may be continued.

§407.2 Expansion and Alteration:

- a) Upon application for a Special Exception and in accordance with the provisions of Section 612, the Zoning Hearing Board may approve the expansion or alteration of a use of land or building that is not in conformance with the provisions of this Ordinance.
- b) A nonconformity may be altered or expanded only if such alteration or expansion is in conformance with the provisions of this Ordinance. The Zoning Hearing Board may authorize additions or improvements to dimensional nonconformities by special exception, provided that such additions or improvements meet the requirement of Section 612.

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§407.3 Replacement:

- a) Upon application for a Special Exception, the Zoning Hearing Board may approve the replacement of one nonconforming use by another nonconforming use provided that the proposed nonconforming use will have no more adverse effect upon adjacent property than the existing nonconforming use as provided in Section 634.

- b) Upon application for a Special Exception, the Zoning Hearing Board may approve the replacement of one dimensional nonconformity by another dimensional nonconformity provided that such replacement does not create new dimensional nonconformities or further increase existing dimensional nonconformities, as provided in Section 634.

§407.4 Restoration:

- a) If any nonconformity is destroyed by reason of windstorm, fire, explosion or other act of God or public enemy to an extent of more than seventy-five (75) percent of the market value as appraised for the tax assessment purposes than such destruction shall be deemed complete destruction and the nonconformity may not be rebuilt, restored or repaired except in conformance with this Ordinance.

- b) If the structure is damaged less than seventy-five (75) percent of the appraised value, such structure must be repaired or replaced within one (1) year of destruction date.

- c) Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition any wall, floor or roof which has been declared unsafe.

§407.5 Abandonment: A nonconforming use shall be adjudged as abandoned when there occurs a cessation of any such use or activity by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within a period of one year from the date of cessation or discontinuance. Such use shall not thereafter be reinstated and structure shall not be reoccupied except in conformance with this Ordinance.

§407.6 Reversion: No nonconformity shall, if once changed to conform to the regulations of this Ordinance, be changed back again to a nonconformity. This section shall not preclude a property owner from applying for, or securing, a variance or special exception pursuant to the requirements of this Ordinance.

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§407.7 Identification and Registration:

- a) The owner of the premises occupied by a lawful nonconforming use existing on the effective date of this Ordinance shall secure a certificate of nonconformance which shall be for the purpose of insuring to this owner the right to continue the nonconforming use.
- b) An application for a certificate of nonconformance shall be made to the Zoning Officer by the owner of any property that, at the time of the effective date of this Ordinance, does not conform to the provisions of this Ordinance. Such application shall be made within ninety (90) days after the effective date of this Ordinance, and the certificate of nonconformance shall set forth in detail all of the nonconforming conditions of said property and shall include a sketch of the land and improvements covered by the certificate of nonconformance. This sketch may be either on the back of the certificate of nonconformance or may be a map or sketch attached to the certificate of nonconformance. If desirable or required, photographs may also be made a part of the record.
- c) All forms for applications and certificates on nonconformance shall be supplied by the Zoning Officer on request. Nonconforming uses and nonconforming structures shall be identified and registered by the Zoning Officer.
- d) Failure of an owner to secure a certificate of nonconformance by timely application shall create a presumption that the nonconforming use of his building did not exist on the effective date of this Ordinance.