

CHAPTER 165

NONCONFORMITIES

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| 165.01 Intent. | 165.06 Restoration of nonconforming uses. |
| 165.02 Incompatibility of nonconformities. | 165.07 Reconstruction of nonconforming uses. |
| 165.03 Exception for zoning certificates applied for. | 165.08 Extension of nonconforming uses. |
| 165.04 Nonconforming use of building and land not affected by zoning. | 165.09 Substitution of nonconforming uses. |
| 165.05 Completion of nonconforming buildings or structures. | 165.10 Nonconforming lots of record. |
| | 165.11 Repairs and maintenance. |
| | 165.12 Exception for occupied dwellings in residential districts. |
| | 165.13 Conditional uses considered conforming. |

165.01 INTENT.

Within Bainbridge Township there exists lots, buildings, structures and uses of land which were lawful prior to the effective date of this Zoning Resolution or amendments thereto but which would be prohibited, regulated or restricted under the terms of this Zoning Resolution or which may hereafter be prohibited, regulated or restricted by amendments. It is the intent of this Zoning Resolution to permit these nonconformities to continue until lawful elimination but not to encourage their survival. It is further the intent of this Zoning Resolution that nonconformities shall not be enlarged, expanded, extended or materially altered, and that their existence shall not be used as a reason for permitting new or additional buildings, structures or uses of land which do not conform to the provisions of this Zoning Resolution.

165.02 INCOMPATIBILITY OF NONCONFORMITIES.

Nonconformities are hereby declared to be incompatible with permitted uses and contrary to the intent and provisions of this Zoning Resolution. Except as specifically provided in this chapter, no nonconforming lot, building, structure or use shall be enlarged, expanded, extended or materially altered after the effective date of this Zoning Resolution. The addition or material alteration of signs as accessory structures to a nonconforming use shall be deemed an expansion or material alteration of such use. Nothing contained herein shall be construed as limiting the authority of the Board of Zoning Appeals to grant a variance from the provisions of this Zoning Resolution, under appropriate conditions and circumstances.

165.03 EXCEPTION FOR ZONING CERTIFICATES APPLIED FOR.

Section 165.02 shall not affect the validity of zoning certificates of applicants who have perfected applications and submitted plans and drawings prior to the effective date of this Zoning Resolution. However, such zoning certificates shall not be extended or renewed upon expiration, unless construction is commenced and continued to completion pursuant to terms and requirements of law existing at the time the application is submitted.

165.04 NONCONFORMING USE OF BUILDING AND LAND NOT AFFECTED BY ZONING.

The lawful use of any dwelling, building or structure and of any land or premises, as existing and lawful at the time of the effective date of this resolution or any amendment thereto, may be continued, although such use does not conform with this resolution or amendment, but if any such nonconforming use is voluntarily discontinued for two (2) years or more, any future use of said land shall be in conformity with the provisions of this resolution or amendment thereto.

165.05 COMPLETION OF NONCONFORMING BUILDINGS OR STRUCTURES.

The construction of any dwelling, building or structure which commenced prior to the effective date of this resolution or amendment thereto, and for which a zoning certificate has been lawfully obtained, may be continued and completed, although such use does not conform with this resolution or amendment. Construction is hereby defined as the placing of construction materials in permanent position and fastened in a permanent manner. Construction must be completed within two (2) years of the effective date of this resolution or amendment thereto for the building or structure to be a lawful nonconforming use as provided in section 165.04 of this resolution. A building or structure shall be deemed complete for purposes of this section only upon issuance of an occupancy permit by the appropriate building authority.

165.06 RESTORATION OF NONCONFORMING USES.

On any nonconforming building or structure, or portion of a building or structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the square footage existing when it became nonconforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building, structure or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

165.07 RECONSTRUCTION, REPAIR AND REPLACEMENT OF NONCONFORMING BUILDINGS, STRUCTURES AND USES.

- (a) If a building or structure occupied by a nonconforming use is damaged or partially destroyed by any cause, and the cost of repair or replacement exceeds sixty percent (60%) of the replacement cost of the building or structure on the date of such damage or destruction as determined by the zoning inspector, the right to maintain and continue to operate such nonconforming use shall terminate immediately.
- (b) If a nonconforming building or structure is damaged, partially destroyed or otherwise becomes substandard pursuant to the applicable provisions of the county or state building code and the cost of repair, replacement or of bringing the building or structure into conformity with the building code exceeds sixty percent (60%) of the replacement cost of such building or structure on the date it is lawfully determined to be damaged, partially destroyed or substandard as determined by the zoning inspector, the right to repair or replace such nonconforming building or structure shall terminate immediately.
- (c) Should a nonconforming building or structure or nonconforming portion of a building or structure be destroyed by any means, by sixty percent (60%) or more of the replacement value as determined by the zoning inspector on the date destroyed, it shall not be reconstructed except in conformity with the provisions of this resolution.
- (d) In determining the cost of repair or replacement of any building or structure, the zoning inspector shall not consider the cost of the land or any items other than the building or structure itself. If the owner or lessee disputes the determination of the zoning inspector as set forth in paragraphs "a," "b," and "c" herein, he shall communicate this in writing within thirty (30) days from the date of receipt of the zoning inspector's determination and within thirty (30) days thereafter provide a written report of the damage assessment from a qualified inspector.
- (e) The repair or replacement of a substandard, damaged or partially destroyed building or structure shall be completed within two (2) years of the date of such determination by the zoning inspector.
- (f) Should a building or 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.

165.08 EXTENSION OF NONCONFORMING BUILDINGS, STRUCTURES, AND USES.

- A. No lawful nonconforming building or structure may be enlarged, altered or relocated in a way which increases its nonconformity, but any building, structure or portion thereof, may be altered or relocated to decrease its nonconformity.
- B. No lawful nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the time of the effective date of this resolution or any amendment thereto without the grant of a variance by the board of zoning appeals.
- C. No lawful nonconforming uses shall be moved in whole or in part to any portion of the lot or property other than that occupied by such uses at the time of the effective date of this resolution or any amendment thereto.
- D. No additional building or structure not conforming to the requirements of this resolution any amendment thereto shall be erected in connection with such nonconforming use of land.
- E. No existing building or structure devoted to a use not permitted by this resolution 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.
- F. Any nonconforming use may be extended throughout any parts of a building or structure which were manifestly arranged or designed for such use at the time of the effective date of this resolution or any amendment thereto, but no such use shall be extended to occupy any land outside such building or structure.
- G. Any building or structure, or building or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use shall not thereafter be resumed.

165.09 SUBSTITUTION OF NONCONFORMING USES.

A nonconforming use may be substituted for a lawful nonconforming use provided that the board of zoning appeals finds such use is of the same kind and character as the prior lawful nonconforming use and does not result in an increase in noise, pollution, traffic, sign area, or in the number of persons using the property, and that the proposed use is equally or more appropriate to the district than the existing nonconforming use, and that to permit the proposed change in use is consistent with the objectives of this Zoning Resolution and will not adversely affect neighboring properties. In permitting such change, the Board may impose appropriate conditions and limitations relating to the use or to be made to structures used in conjunction with the nonconforming use.

165.10 NONCONFORMING LOTS OF RECORD.

- (a) In any zoning district, a building, structure, or use, as permitted herein, shall be allowed on any lot of record with a lot area or lot frontage less than the minimum prescribed herein, which meets all of the following:
1. It was a lot of record prior to enactment of the zoning resolution or amendment thereto which resulted in its nonconformity.
 2. It is in conformity with all of the regulations of the zoning resolution or amendment thereto which were in effect at the time it became a lot of record.
 3. The amount of nonconformity has not been increased since it became nonconforming.
 4. The building, structure, or use complies with all other regulations set forth herein, except minimum lot area and minimum lot frontage.
- (b) Exception for Certain Lots in Residential Districts.
- (1) Notwithstanding the provisions of subsection (a) hereof, zoning certificates may be issued for new construction on residential lots having an area of three (3) acres or more, which were platted or subdivided of record prior to the effective date of this Zoning Resolution, and which by this Zoning Resolution are either transferred from the R-3A District to the R-5A District or retain R-3A District status.
 - (2) On lawful pre-existing nonconforming lots of record, the minimum side yard setback lines for the affected zoning district apply. However, where the existing dwelling on a lot is closer than this setback line to the side yard lot line, then the side yard setback line for an accessory building shall be reduced to the existing setback line created by the dwelling. But, in no case, shall the side yard setback line be less than 20 feet. **[Adopted 5/30/2006 – Z-2006-1]**
 - (3) On lawful pre-existing nonconforming lots of record, the maximum size for the accessory building shall be 300 square feet and the maximum height shall be 15 feet. **[Adopted 5/30/2006 – Z-2006-1]**

165.11 REPAIRS AND MAINTENANCE.

The provisions of this chapter shall not be deemed to prohibit ordinary repairs and maintenance of buildings or structures devoted to a nonconforming use, nonconforming buildings or structures, or buildings or structures located on nonconforming lots of record provided that no change shall be made to any such buildings or structures which would increase any nonconformity or the cubical content.

165.12 EXCEPTION FOR OCCUPIED DWELLINGS IN RESIDENTIAL DISTRICTS.

Notwithstanding the provisions of this chapter, dwellings in the R-5A and R-3A Residential Districts, which were completed and occupied prior to September 8, 1978, or prior to the effective date of this Zoning Resolution, which are situated on nonconforming lots of record, may be rebuilt, repaired, altered, structurally altered, extended or enlarged, in the same manner and to the same extent as would have been permitted under the use district regulations applicable to such dwellings immediately prior to September 8, 1978, or prior to the effective date of this Zoning Resolution in the event that Amendment Z-78-8 is declared invalid by the courts.

165.13 CONDITIONAL USES CONSIDERED CONFORMING.

Any use which is permitted as a conditional use in a district under the terms of this Zoning Resolution shall not be deemed a nonconforming use in such district, but shall without further action be considered a conforming use.