

## **Article XI.           NON-CONFORMING SITUATIONS**

The purpose of this Article is to avoid undue hardship by permitting the continued use of any building, structure, or property that was lawful at the time of the enactment of this Ordinance or any applicable amendment thereof even though such use, structure or property does not conform with the provisions of this Ordinance. However, this Article is also established to require that non-conforming situations be terminated under certain circumstances.

### **Section 11.1           Continuation of Non-conforming Situations**

Non-conforming situations that were otherwise lawful on the effective date of this Ordinance may be continued, subject to the restrictions and qualifications set forth in Sections 11.2 through 11.9 of this Article.

### **Section 11.2           Non-conforming Lots of Record**

Where the owners of a lot of record at the time of the adoption of this Ordinance or his successor in title thereto does not own sufficient land to enable him to conform to the area or lot width requirements of this Ordinance, such lot may be used as a building site provided all other dimensional requirements are met and provided that the use to be made of the property is not one to which larger than minimum lot area requirements are called for in the list of Permitted and Conditional Uses and the Special Requirements.

### **Section 11.3           Extension or Enlargement of Non-conforming Situations**

1. Except as specifically provided in this Section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of non-conformity of a non-conforming situation.
2. Subject to Paragraph 4 of this Section, a non-conforming use may be extended through any portion of a completed building that, when the use was made non-conforming by this Ordinance, was manifestly designed or arranged to accommodate such use. However, a non-conforming use may not be extended to additional buildings or to land outside the original building.
3. A non-conforming use may not be extended to cover more land than was occupied, or manifestly designed and arranged to be occupied, by that use when it became non-conforming.
4. The volume, intensity, or frequency of use of property where a non-conforming situation exists may be increased and the equipment or processes used at a location where a non-conforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this Section occur.

5. Physical alteration of non-conforming structures or structures containing a non-conforming use is unlawful if it results in:
  - a) An increase in the total amount of space devoted to a non-conforming use;
  - b) Greater non-conformity with respect to dimension restrictions such as yard requirements, height limitations, or density requirements; or,
  - c) The enclosure of previously unenclosed areas, even through those areas are or were used in connection with the non-conforming activity.
  
6. Minor repairs to and routine maintenance of property where non-conforming situations exist are permitted and encouraged. Major renovation - i.e., work estimated to cost more than ten percent (10%) but less than sixty percent (60%) of the taxed value of the structure to be renovated may be done provided that the work will not result in a violation of any other paragraphs of this Subsection particularly Paragraph 5. In no case, however, shall work costing more than sixty percent (60%) of the taxed value of the structure be done, singularly or cumulatively, within any five (5) year period.

Provided, nothing herein shall prevent the maintenance, repair and extension of a single-family dwelling that is non-conforming as to use, provided done in conformance with the dimensional requirements of the R-6 Residential District.

#### **Section 11.4 Reconstruction Prohibited**

Any non-conforming building or structure or any building or structure containing a non-conforming use for which major repair or reconstruction is proposed in any amount equal to sixty percent (60%) or more of the taxed value of the building or structure or which has been damaged by any cause to an extent equal to sixty percent (60%) or more of its taxed value shall only be repaired and/or reconstructed and used as a conforming structure and a conforming use.

Provided, nothing herein shall prevent the reconstruction of a single-family dwelling that is non-conforming as to use provided such reconstruction conforms to the dimensional requirements of the R-15 or R-20 Residential District.

#### **Section 11.5 Change in Kind of Non-conforming Use**

1. A non-conforming use may be changed to a conforming use. Thereafter, the property may not revert to a non-conforming use.
2. A non-conforming use shall not be changed to another non-conforming use except upon a finding by the Board of Adjustment that the use is more in character with the uses permitted in the District than the previous use.
3. If a non-conforming use and a conforming use, or any combination of non-conforming uses exist on one lot, the use made of the property may be changed only to a conforming use.

4. Conforming uses, except Adult Oriented Businesses, may be established or re-established in non-conforming buildings or structures provided that off-street parking is provided as required by this Ordinance and provided no other provision of this Ordinance for the establishment of new uses is violated.

**Section 11.6**                    **Replacement of Non-conforming Mobile Homes and Mobile Homes in Non-Conforming Mobile Home Parks**

1. A non-conforming mobile home on an individual lot outside of a mobile home park may not be replaced except by a conforming use.
2. Individual mobile homes in non-conforming mobile home parks may be replaced on a one-to-one basis provided that no new non-conforming situation is created. In no event shall any non-conforming mobile home park be allowed to expand unless the entire park is brought into full conformance with this Ordinance.

**Section 11.7**                    **Discontinuance of Non-conforming Uses**

1. When active operation or occupancy of a non-conforming use is discontinued regardless of the purpose or reason for a consecutive period of one hundred and twenty (120) days or removed for any period of time, the property involved may thereafter be used only for conforming uses.
2. For purposes of determining whether a right to continue a non-conforming situation is lost pursuant to this Subsection, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a non-conforming apartment building for one hundred and twenty (120) days shall not result in a loss of the right to rent that apartment thereafter so long as the apartment building as a whole is continuously maintained. But if a non-conforming use is maintained in conjunction with a conforming use, cessation of operation or occupancy of the non-conforming use for the one hundred twenty (120) day period or removal for any period of time, shall terminate the right to maintain it thereafter.

**Section 11.8**                    **Discontinuance of Non-conforming Adult Oriented Businesses**

Notwithstanding the provisions of Section 11.7 above, Adult Oriented Businesses shall be governed by the following:

1. Any Adult Oriented Business that fails to comply with the use and locational requirements of this Ordinance but which was lawfully operating before the effective date of this Ordinance, shall not be deemed to be in violation of this Ordinance but shall be a non-conformity. Any such business which ceases active operation for a period of thirty (30) days regardless of the purpose or reason shall be subject to all the requirements of this Ordinance and the property may thereafter be used only for conforming uses.

2. Any Adult Oriented Business lawfully operating as of the effective date of this Ordinance but which subsequently fails to comply with the use and locational requirements of this Ordinance as the result of changes within the vicinity or amendment to this Ordinance, shall not be deemed to be in violation of this Ordinance but shall be a non-conformity. Any such business which ceases active operation for a period of thirty (30) days regardless of purpose or reason shall be subject to all the requirements of this Ordinance and the property may thereafter be used only for conforming uses.
3. Any Adult Oriented Business that is rendered a non-conforming use as a result of the conditions described in 1. and 2. above shall either cease to operate or meet all of the requirements of this Ordinance for the use no later than sixty (60) days from the date that the Adult Oriented Business becomes a non-conforming use.

### **Section 11.9                      Non-Conforming Signs**

The following requirements are established to regulate non-conforming signs:

- A. Conformance Required: Any sign legally in use prior to the effective date of this ordinance or any amendments hereto which does not satisfy the requirements of this ordinance is declared to be nonconforming and may be continued subject to regulations of this Section.

The eventual elimination, as expeditiously and fairly as possible, of non-conforming signs is as much a subject of health, safety and welfare as is the regulation of signs.

- B. Regulations of Non-Conforming Signs: A nonconforming sign may be continued but it shall not be:
  - a. Changed or replaced with another nonconforming sign, except that copy may be changed.
  - b. Expanded or modified in any way which increases the sign's nonconformity. Nor may illumination be added.
  - c. Moved except to bring the sign into complete conformity with this Article.
  - d. Re-established once the sign structure has been removed.
  - e. Re-established after damage or deterioration as defined in Section 11.9.4.
  - f. Re-established after it has been discontinued regardless of reason or intent for one hundred-twenty (120) days or more.

- C. Damaged or Deteriorated Non-Conforming Signs: If a nonconforming sign suffers more than fifty percent (50%) of its value by damage or deterioration it must be brought into conformance with this ordinance if permitted, or removed. The value shall be determined by the Zoning Administrator or his designee as the depreciated replacement value of the sign.
- D. Maintenance of Non-Conforming Signs: Non-conforming signs shall be subject to all requirements of this ordinance regarding safety, maintenance and repair. Non-conforming signs shall be maintained in good condition including necessary non-structural repairs, incidental alterations or copy alterations, such as repainting and electrical repairs which do not extend or intensify the non-conforming features of the sign.
- E. Non-Conforming Use Signs: Non-conforming uses, i.e., an auto shop in a Residential District, may be permitted one attached sign up to twenty-four (24) square feet in area provided that any existing larger non-conforming sign is removed.
- F. Discontinuance of Certain Non-Conforming Signs:

The following non-conforming signs shall be brought into conformance with the provisions of this ordinance, if permitted, or discontinued and removed entirely, including the entire sign and any associated components or equipment within the following time schedule:

**Non-Conforming Sign Compliance or Discontinuance Schedule**

<b>Sign Type</b>	<b>Deadline for Compliance/Discontinuance</b>
Portable Signs (all types)	180 Days
Temporary Signs	30 Days
Other Expressly Prohibited Signs	180 Days

No non-conforming sign may be brought into conformance with this Section that would create any other non-conforming situation. In any case where two or more signs are non-conforming as a result of not meeting the spacing requirements of the Section, the most recently erected sign(s) shall be considered to be in violation of the standard.

Nothing in this Section shall require the City of Mount Airy to pay compensation for the removal of any sign where compensation may be required by any Federal or State regulation.