

3.19 NON-CONFORMITIES, LEGACY USES AND ADAPTIVE RE-USE

A. Existing Nonconformities. Nothing in this section shall be construed to restrict the authority of the Town of Chester to abate public nuisances or to abate or remove public health risks or hazards. Any lawful lot, building or use in existence at the time of adoption or amendment of these Bylaws may be continued. Such lot, building or use shall meet all other requirements of these Bylaws, and is subject to the following provisions.

B. Nonconforming Lots.

1. Any existing lawful lot that does not meet the specified dimensional requirements in these Bylaws, may be maintained and developed for the purposes permitted in that district as long as all other requirements for that district are met.
2. **Existing Small Lots.** In accordance with the Act [§ 4412], any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of this bylaw, may be developed for the purposes permitted in the district in which it is located, even though the lot does not conform to minimum lot size requirements of the district in which the lot is located, provided such lot is not less than one eighth acre or has a minimum width or depth dimension of at least 40 feet.
 - a. If an existing small lot subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot may be separately conveyed if the lots are conveyed in their preexisting, nonconforming configuration, provided such lot is not less than one eighth acre or has a minimum width or depth dimension of at least 40 feet.

C. Nonconforming Structures

1. Any legal structure or part thereof, which is not in conformance with the provisions of these bylaws concerning setback, height, size, or other structural requirements (including such things as parking, lighting, buffers, and lowest floor elevation in floodplain zoning) shall be deemed a nonconforming structure. Legal nonconforming structures exist as a result of construction prior to adoption of bylaws, or construction under an earlier set of less restrictive bylaws. Any nonconforming structure may be allowed to exist indefinitely, but shall be subject to the following provisions:
2. Subject to conditional use approval by the DRB, a nonconforming structure may be restored or reconstructed after unintentional loss provided the reconstruction is commenced within two years and does not increase the degree of non-conformance that existed prior to the damage.
3. A nonconforming structure which has been demolished shall not be reconstructed except in conformance with these bylaws. The DRB may grant a waiver from this provision if a hardship would be created by rebuilding in strict conformance with the requirements of these bylaws. In considering a waiver from these provisions,

the DRB shall take into consideration the ability of the applicant to use remaining features of the property such as foundation, water supply, sewage disposal system, underground utilities, etc.

4. A nonconforming structure shall not be moved, altered, extended, or enlarged in a manner which will increase the existing degree of non-conformance.
5. The phrase 'shall not increase the degree of non-conformance' shall be interpreted to mean that the portion of the structure which is nonconforming shall not increase in size (or decrease in the event of failing to meet minimum standards such as parking and lighting). Therefore, portions of a structure within a setback area cannot be enlarged, portions above the maximum height cannot be expanded where parking is deficient the number or size of spaces cannot be reduced, etc. This phrase is not intended to prevent existing unfinished space from being finished or other similar scenarios provided there is no increase in size.
6. Nothing in this section shall be deemed to prevent normal maintenance and repair of a nonconforming structure provided that such action does not increase the degree of non-conformance.
7. The DRB shall permit the alteration or expansion of a nonconforming structure for the sole purpose of conformance with mandated environmental, safety, health, or energy codes.

D. Nonconforming Uses, Legacy Uses and Adaptive Re-use

1. **Nonconforming Uses.** Any use, which does not conform to uses allowed in the district in which it is located or is otherwise not in conformance with the provisions of these bylaws, shall be deemed a nonconforming use. Nonconforming uses are those that exist legally as a result of existing prior to adoption of bylaws, or permitted under an earlier set of less restrictive bylaws. Any nonconforming use may be continued indefinitely, but shall be subject to the following provisions:
 - a. The nonconforming use shall not be changed to another nonconforming use without approval by the DRB, and then only to a use that, in the opinion of the DRB, is of the same or of a more conforming nature.
 - b. The nonconforming use shall not be re-established if such use has been discontinued for a period of two-years or has been changed to, or replaced by, a conforming use. Intent to resume a nonconforming use shall not confer the right to do so. **See also 2. Legacy Uses.**
 - c. The nonconforming use shall not be expanded, extended, moved or enlarged unless the DRB finds that such expansion, extension, movement, or enlargement does not increase the degree of non-conformance. Examples of enlarged or expanded uses can include increased hours of operation, increased numbers of tables, number of employees or an increase in the size of the operation through the expansion of a conforming structure.

- d. The DRB shall permit the alteration or expansion of a nonconforming use for the sole purpose of conformance with mandated environmental, safety, health, or energy codes.

2. **Legacy Uses.** The DRB may determine that a past or present nonconforming use, by virtue of its benign history and cultural heritage in Chester, is a Legacy Use and is therefore deemed an allowed and conforming conditional use in the district in which it is located. The applicant shall demonstrate that a past or present nonconforming use has sufficient benign history and cultural heritage in Chester to be determined a Legacy Use. Determination as a Legacy Use is indefinite in duration, but a Legacy Use may be re-established, expanded, extended or enlarged only following conditional use review and approval by the DRB and a zoning permit issued by the Zoning Administrator.

3. Adaptive Re-use.

- a. **Purpose.** To encourage the continued viability of older, special-use buildings that have outlived their original function by allowing for a variety of possible new uses to be established within the existing building in a manner that is compatible with the character of the area for the district in which it is located.
- b. **Applicability.** The adaptive reuse of special-use buildings within all zoning districts is subject to review by the Development Review Board and must meet the conditional use requirements specified in Section 4.8 and the adaptive re-use provisions in Section 3.19.D.
- c. **Eligible Building Criteria.** The Development Review Board will determine whether the adaptive reuse provision shall apply to any proposed building based upon either or both of the following criteria:
 - i. The building was originally built for purposes that are not currently allowed in the zoning district in which it is located.
 - ii. The building, by the nature of its size, type, construction method or location on the parcel, does not meet the regulations including dimensional standards for the zoning district in which it is located.
- d. **Review Process and Standards.** Conditional Use Approval by the Development Review Board is required for all adaptive re-use proposals, subject to the following additional standards:
 - i. An applicant may propose one or more uses to be established within an eligible building;
 - ii. Any rehabilitation or restoration associated with an adaptive re-use shall not significantly alter the façade or historic character of the structure. Any proposed exterior renovations shall conform to the guidelines set forth in the most recent edition of the U.S. Secretary

of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, whether or not the building qualifies or is designated as an Historic Building;

- iii. The Development Review Board may waive the zoning district dimensional standards or surface water protection setbacks if needed to support the proposed use.