

**EAST GOSHEN TOWNSHIP  
PLANNING COMMISSION  
Workshop Meeting Agenda  
Wednesday, October 18, 2017  
7:00 PM**

- A. Call to Order / Pledge of Allegiance and Moment of Silence
- B. Chairman will ask if anyone is going to record the meeting
- C. Review of Tracking Log / Determine need for Workshop Meeting
- D. Public Comment on Non-Agenda Items
- E. Approval of Minutes
- F. Subdivision and Land Development Applications
- G. Conditional Uses and Variances
- H. Ordinance Amendments
- I. 2017 Goals
- J. Any Other Matter**
  - 1. The Legal Aspects of Non-Conforming Uses, Presented By, Kristin Camp Esq.**
- K. Liaison Reports
- L. Correspondence

**Bold Items indicate new information to review.**

ARTICLE VII  
**Nonconforming Uses**

**§ 240-39. Applicability.**

The regulations of this article shall apply to existing lots, structures, uses and signs that do not conform to the regulations of the zoning district in which they are located and were either in existence prior to the effective date of this chapter, or subsequent amendments, or are rendered nonconforming by the adoption of this chapter. As such, they shall be known and regarded as nonconforming, and the following regulations, as applicable, shall apply to them. Provided, however, that the burden of proof shall remain upon the landowner to prove that a lot, structure, use or sign is lawfully nonconforming.

**§ 240-40. Alteration, enlargement, restoration and use of nonconformities.**

A. Nonconforming lots.

- (1) A lot which contains no structures and which is held in single and separate ownership on the effective date of this chapter, or subsequent amendments, or rendered nonconforming by this chapter, which does not meet the minimum lot area requirement or lot width requirement at the building line of the zoning district in which it is located, or which is of such unusual dimensions that the owner cannot reasonably comply with one or more of the other dimensional requirements of the zoning district in which it is located, may be used or a structure may be erected thereon for use as limited by the use regulations of the zoning district in which the lot is located, subject to the following conditions:
  - (a) The owner does not own or control contiguous property sufficient to enable the owner to comply with the minimum lot area, width, building coverage, yard and height regulations and design standards of the zoning district in which the property is located. For purposes of this regulation, a nonconforming lot under common ownership with a contiguous conforming or nonconforming lot shall be considered one lot.
  - (b) The proposed structure or use shall comply with the design standards and the width, building coverage, yard and height regulations, except minimum lot size and lot width at the building line, of the zoning district in which

the lot is located. Otherwise, the lot shall not be used or a structure erected unless a variance is granted by the Zoning Hearing Board.

B. Nonconforming structures.

- (1) Continuation. Any lawful nonconforming structure existing on the effective date of this chapter, or subsequent amendments, or rendered nonconforming by this chapter, may continue to exist and be used. Such structures shall not further deviate from the provisions of this chapter, except as explicitly provided herein.
- (2) Restoration. Any lawful nonconforming structure which has been involuntarily damaged by fire, explosion, flood or similar cause or legally condemned as unsafe, may be restored or reconstructed within the limits of the existing foundation or footprint as the damaged structure, provided that:
  - (a) The restored or reconstructed structure shall not exceed its original dimensions.
  - (b) Restoration or reconstruction shall commence within one year from the date of damage, destruction or condemnation, and shall be completed within one year of the date of the commencement of such work.
- (3) Alteration and enlargement.
  - (a) Any lawful nonconforming structure existing on the effective date of this chapter, or subsequent amendments, or rendered nonconforming by this chapter, may be altered or enlarged, provided that such alteration or enlargement conforms to all of the lot area, width, building coverage, height and yard regulations and design standards of the zoning district in which it is located. For example, if a structure is nonconforming by virtue of its encroachment into the front yard setback, it may be altered or enlarged so long as the enlargement conforms to the front yard setback. If the new addition or enlargement cannot meet the required front yard setback, it shall not be permitted unless, upon application, the Zoning Hearing Board grants a variance.
  - (b) If a nonconforming structure is used or occupied by a nonconforming use, any alteration or enlargement of the structure shall be in compliance with the limitations of Subsection C.

C. Nonconforming uses.

- (1) Continuation. Any lawful nonconforming use of a structure or of land legally existing on the effective date of this chapter, or subsequent amendments, or rendered nonconforming by this chapter, may continue to exist and be used.
- (2) Alteration and expansion. Any lawful nonconforming use of a structure or land may be altered or expanded, but only in strict conformity with the following regulations:
  - (a) Such alteration or expansion shall conform to all of the lot area, width, building coverage, height and yard regulations and design standards of the zoning district in which it is located.
  - (b) The alteration or extension of the nonconforming use shall be limited to and permitted on only the same lot that was in existence when the use first became nonconforming.
  - (c) The total increase in area of the nonconforming use of a structure shall not exceed an aggregate total of more than 25% of the total floor area which is devoted to the nonconforming use. Floor area shall be based upon the total floor area of the structure at the time the use first became nonconforming. For example, if all other requirements of this chapter are met, a nonconforming use may be expanded once by 10%, and a second time by not more than 15% of the total floor area of the structure as it existed at the time the use first became nonconforming. If prior to the effective date of this restriction the use has been expanded by a percentage greater than 25%, it shall not be entitled to any further expansion under this section.
  - (d) The total increase in area of the nonconforming use of land shall not exceed an aggregate total of more than 25% of the total area of the lot which is devoted to the nonconforming use.
  - (e) The alteration or expansion of a nonconforming use of a structure or of land shall be permitted only if a special exception is granted by the Zoning Hearing Board pursuant to Article IX.
- (3) Change in use. Once changed to a conforming use, whether within a structure or on land, the conforming use shall not be

permitted to revert to a nonconforming use. A nonconforming use may be changed to another nonconforming use only when approved by the Zoning Hearing Board as a special exception pursuant to Article IX and under the following conditions:

- (a) The applicant shall prove that the proposed nonconforming use cannot reasonably be changed to a use permitted in the zoning district in which it is located.
- (b) The applicant shall prove that the proposed change in use will have the same or less impact than the existing nonconforming use with respect to the following factors:
  - [1] Traffic impact, including trip generation, traffic congestion, traffic safety and traffic access to the property.
  - [2] The performance standards specified in § 240-24.
  - [3] Compatibility with nearby dwellings.
  - [4] Landscaping.
  - [5] Stormwater management.

D. Nonconforming signs. Nonconforming signs shall be governed by § 240-22B.

#### **§ 240-41. Transfer of ownership.**

Whenever the title to a lot is transferred, such transfer shall not by itself adversely affect the lawful status of a lawful nonconforming lot, structure, use or sign.

#### **§ 240-42. Abandonment of nonconforming use or structure.**

Whenever a lawful nonconforming use of land or of a structure is abandoned or discontinued or the use is removed for a period of 12 consecutive months, or the structure constituting or housing the nonconformity is razed and not reconstructed within a period of 12 consecutive months, such abandonment or discontinuance shall be presumed to constitute an intention to abandon or discontinue such use, and subsequent use of such land or structure shall conform to the regulations of the zoning district in which it is located, unless the Zoning Hearing Board, as a matter of law, determines that such abandonment has not occurred.

**§ 240-43. District changes.**

Whenever the boundaries of a zoning district are changed, and the change results in a transfer of a lot from one zoning district to another zoning district, the provisions of this article shall apply to any lawful nonconforming uses or structures existing in the zoning district to which the lot has been transferred.

**§ 240-44. Rules of interpretation.**

- A. No special exception shall be granted under the provisions of this article with respect to any property in violation of the lot area, width, building and impervious coverage, setback, height and yard regulations and design standards of this zoning district in which the property is located, unless a variance is granted by the Zoning Hearing Board from the regulation which is otherwise applicable. The owner of a nonconforming use or other nonconformity has no inherent right to expand, alter or use any nonconformity in conflict with the applicable zoning district regulations.
- B. In those zoning districts in which the district regulations establish different design standards or lot area, width, building and impervious coverage, setback, height or yard regulations for uses permitted as of right, by special exception or by conditional use, no lot shall be construed to be nonconforming for purposes of the regulations of this article which complies with the minimum lot area and other regulations applicable to uses permitted as of right. The regulations applicable to uses permitted by special exception or by conditional use shall not render the lot nonconforming, unless the owner demonstrates that the lot cannot reasonably be used for any use permitted as of right in such zoning district, or the Zoning Hearing Board grants a variance from the applicable regulations.
- C. No provision of this article which establishes a specific percentage limitation upon the expansion of a nonconforming use shall be construed to automatically authorize an expansion to the maximum permitted, nor shall a variance related to any nonconformity be granted from the applicable zoning district regulations in excess of the minimum variance necessary to afford relief. It shall be incumbent upon the applicant to prove the need for such expansion consistent with established principles of law.

## Article II - Planning Agencies

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**Section 201. Creation of Planning Agencies.** The governing body of any municipality shall have the power to create or abolish, by ordinance, a planning commission or planning department, or both. An ordinance which creates both a planning commission and a planning department shall specify which of the powers and duties conferred on planning agencies by this act; each shall exercise and may confer upon each additional powers, duties and advisory functions not inconsistent with this act. In lieu of a planning commission or planning department, the governing body may elect to assign the powers and duties conferred by this act upon a planning committee comprised of members appointed from the governing body. The engineer for the municipality, or an engineer appointed by the governing body, shall serve the planning agency as engineering advisor. The solicitor for the municipality, or an attorney appointed by the governing body, shall serve the planning agency as legal advisor.

**Section 202. Planning Commission.** If the governing body of any municipality shall elect to create a planning commission, such commission shall have not less than three nor more than nine members. Except for elected or appointed officers or employees of the municipality, members of the commission may receive compensation in an amount fixed by the governing body. Compensation shall not exceed the rate of compensation authorized to be paid to members of the governing body. Without exception, members of the planning commission may be reimbursed for necessary and reasonable expenses. However, elected or appointed officers or employees of the municipality shall not, by reason of membership thereon, forfeit the right to exercise the powers, perform the duties or receive the compensations of the municipal offices held by them during such membership.

**Section 203. Appointment, Term and Vacancy.**

- (a) All members of the commission shall be appointed by the appointing authority of the municipality. All such appointments shall be approved by the governing body, except where the governing body is the appointing authority.
- (b) The term of each of the members of the commission shall be for four years, or until his successor is appointed and qualified, except that the terms of the members first appointed pursuant to this act shall be so fixed that on commissions of eight members or less no more than two shall be reappointed or replaced during any future calendar year, and on commissions of nine members no more than three shall be so reappointed or replaced.
- (c) The chairman of the planning commission shall promptly notify the appointing authority of the municipality concerning vacancies in the commission, and such vacancy shall be filled for the unexpired term. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment for the unexpired term according to the terms of this article.
- (d) Should the governing body of any municipality determine to increase the number of members of an already existing planning commission, the additional members shall be appointed as provided in this article. If the governing body of any municipality shall determine to reduce the number of members on any existing planning commission, such reduction shall be effectuated by allowing the terms to expire and by making no new appointments to fill the vacancy. Any reduction or increase shall be by ordinance.
- (e) The governing body may appoint by resolution at least one but no more than three residents of the municipality to serve as alternate members of the planning commission. The term of office of an alternate member shall be four years. When seated pursuant to the provisions of section 207, an alternate shall be entitled to participate in all proceedings and discussions of the commission to the same and full extent as

provided by law for commission members, including, specifically, the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in this act and as otherwise provided by law. Alternates shall not serve as a member of the zoning hearing board or as a zoning officer. Any alternate may participate in any proceeding or discussion of the commission but shall not be entitled to vote as a member of the commission nor be reimbursed pursuant to section 202 unless designated as a voting alternate member pursuant to section 207.

**Section 204. Members of Existing Commissions.** (204 repealed Dec. 21, 1988, P.L.1329, No.170)

**Section 205. Membership.** All of the members of the planning commission shall be residents of the municipality. On all planning commissions appointed pursuant to this act, a certain number of the members, designated as citizen members shall not be officers or employees of the municipality. On a commission of three members at least two shall be citizen members. On a commission of four or five members at least three shall be citizen members. On a commission of either six or seven members at least five shall be citizen members, and on commissions of either eight or nine members at least six shall be citizen members.

**Section 206. Removal.** Any member of a planning commission once qualified and appointed may be removed from office for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the governing body taken after the member has received 15 days' advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing. Any appointment to fill a vacancy created by removal shall be only for the unexpired term.

**Section 207. Conduct of Business.**

(a) The commission shall elect its own chairman and vice-chairman and create and fill such other offices as it may determine. Officers shall serve annual terms and may succeed themselves. The commission may make and alter by laws and rules and regulations to govern its procedures consistent with the ordinances of the municipality and the laws of the Commonwealth. The commission shall keep a full record of its business and shall annually make a written report by March 1 of each year of its activities to the governing body. Interim reports may be made as often as may be necessary, or as requested by the governing body.

(b) The chairman of the planning commission may designate alternate members of the commission to substitute for any absent member or member who has recused himself or has been disqualified by the governing body, and, if, by reason of absence, recusal or disqualification of a member, a quorum is not reached, the chairman of the commission shall designate as many alternate members of the commission to sit on the commission as may be needed to reach a quorum. Any alternate member of the commission shall continue to serve on the commission in all proceedings involving the matter or case for which the alternate was initially appointed until the commission has made a final decision on the matter or case. Designation of an alternate pursuant to this section shall be made on a case-by-case basis in rotation according to declining seniority among all alternates.

**Section 208. Planning Department Director.** For the administration of each planning department, the appointing authority may appoint a director of planning who shall be, in the opinion of the appointing authority, qualified for the duties of his position. Each such appointment shall be with the approval of the governing body, except where the governing body is the appointing authority. The director of planning shall be in charge of the administration of the department, and shall exercise the powers and be subject to the duties that are granted or imposed on a planning agency by this act, except that where a municipality creates both a planning commission and a planning department, the director of planning shall exercise only those powers and be subject to only those duties which are specifically conferred upon him by ordinance enacted pursuant to this article.

**Section 209.1. Powers and Duties of Planning Agency.**

- (a) The planning agency shall at the request of the governing body have the power and shall be required to:
  - (1) Prepare the comprehensive plan for the development of the municipality as set forth in this act, and present it for the consideration of the governing body.
  - (2) Maintain and keep on file records of its action. All records and files of the planning agency shall be in the possession of the governing body.
- (b) The planning agency at the request of the governing body may:
  - (1) Make recommendations to the governing body concerning the adoption or amendment of an official map.
  - (2) Prepare and present to the governing body of the municipality a zoning ordinance, and make recommendations to the governing body on proposed amendments to it as set forth in this act.
  - (3) Prepare, recommend and administer subdivision and land development and planned residential development regulations, as set forth in this act.
  - (4) Prepare and present to the governing body of the municipality a building code and a housing code and make recommendations concerning proposed amendments thereto.
  - (5) Do such other acts or make such studies as may be necessary to fulfill the duties and obligations imposed by this act.
  - (6) Prepare and present to the governing body of the municipality an environmental study.
  - (7) Submit to the governing body of a municipality a recommended capital improvements program.
  - (7.1) Prepare and present to the governing body of the municipality a water survey, which shall consistent with the State Water Plan and any applicable water resources plan adopted by a river basin commission. The water survey shall be conducted in consultation with any public water supplier in the area to be surveyed.
  - (8) Promote public interest in, and understanding of, the comprehensive plan and planning.
  - (9) Make recommendations to governmental, civic and private agencies and individuals as to the effectiveness of the proposals of such agencies and individuals.
  - (10) Hold public hearings and meetings.
  - (10.1) Present testimony before any board.
  - (11) Require from other departments and agencies of the municipality such available information as relates to the work of the planning agency.
  - (12) In the performance of its functions, enter upon any land to make examinations and surveys with the consent of the owner.
  - (13) Prepare and present to the governing body of the municipality a study regarding the feasibility and practicability of using renewable energy sources in specific areas within the municipality.
  - (14) Review the zoning ordinance, subdivision and land development ordinance, official map, provisions for planned residential development, and such other ordinances and regulations governing the development of land no less frequently than it reviews the comprehensive plan.

**Section 210. Administrative and Technical Assistance.** The appointing authority may employ administrative and technical services to aid in carrying out the provisions of this act either as consultants on particular matters or as regular employees of the municipality. A county planning agency, with the consent of its governing body may perform planning services for any municipality whose governing body requests such assistance and may enter into agreements or contracts for such work.

**Section 211. Assistance.** The planning agency may, with the consent of the governing body, accept and utilize any funds, personnel or other assistance made available by the county, the Commonwealth or the Federal government or any of their agencies, or from private sources. The governing body may enter into agreements or contracts regarding the acceptance or utilization of the funds or assistance in accordance with the governmental procedures of the municipality.

**Section 212. Intergovernmental Cooperation.** For the purposes of this act, the governing body may utilize the authority granted under 53 PA.C.S. §§ 2303(a) (relating to intergovernmental cooperation authorized) and 2315 (Relating to effect of joint cooperation agreements).