

**CHELTENHAM TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2384-19

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF CHELTENHAM TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA AMENDING CHAPTER 295, ZONING, TO ADD A PROVISION LIMITING THE EXPANSION OF NONCONFORMING USES TO DIMENSIONAL REQUIREMENTS OF THE ZONING DISTRICT; TO ADD A PROVISION REGARDING COMPLIANCE OF NONCONFORMING BUILDINGS, STRUCTURES, USES, LOTS, PARKING AREAS, SITE IMPROVEMENTS AND ACCESSORY SIGNS WHICH ARE VOLUNTARILY DESTROYED OR RAZED FOR CONFORMITY OF RECONSTRUCTION TO THE ZONING CODE; AND REVISING SECTION 295-2502.E. TO UNIFORMLY REFER TO BUILDINGS AND STRUCTURES

WHEREAS, the recent Commonwealth Court of Pennsylvania case of *Renaissance Real Estate Holdings v. City of Philadelphia Zoning Board of Adjustment* (December 6, 2018) highlights the importance of a zoning ordinance provision governing voluntary destruction of nonconforming structures, uses, lots, parking areas, site improvements and/or accessory signs; and

WHEREAS, the Pennsylvania Municipalities Planning Code (“MPC”) authorizes zoning ordinances to permit, prohibit, regulate, restrict and determine, among other things, the uses of structures and land, and the alteration, raising, removal and use of structures; and

WHEREAS, the Township also desires to address the issue that expansion of a nonconforming use by up to 25% of the gross floor area requires all other dimensional requirements to be complied with and further does not authorize such expansion above the first floor in violation of any yard setback requirements of the applicable zoning district.

NOW THEREFORE, by the Board of Commissioners of Cheltenham Township, hereby ordains as follows (new text underlined, deleted text in strike-out type):

SECTION I. - Amendment to the Code

Chapter 295 entitled “Zoning”, of the Cheltenham Township Code, Article XXV entitled “Nonconforming Structures, Uses and Lots”, is hereby amended as follows:

§295-2502. Nonconforming regulations.

D. Extension or expansion. A nonconforming use, building or structure, not including signs, may be extended or expand in compliance with the following requirements:

...

- (3) The nonconforming use of a building may be expanded within the building provided that the expansion is limited to 25% of the gross floor area occupied by the nonconforming use at the time the use became nonconforming. Any such expansion shall conform to the area, height, setback, width, yard, and coverage regulations of the zoning district in which the nonconforming use is located and to all applicable zoning, stormwater management and related regulations of the Township Code.

E. ~~Buildings and Regulations.~~ The following regulations apply to structures, uses, lots, parking area, site improvements and accessory signs:

- (1) When new ordinance provisions are adopted and affect planned construction which has not been completed:
 - a. A building or structure under construction as of the date of adoption of the new ordinance provisions, to the extent of completion of footings, may be completed as a nonconforming building, provided that a valid permit has been issued.
- (2) A nonconforming building or structure which is destroyed or partially destroyed by fire, explosion, or by any other cause to the extent of 75% or more of the market value thereof, immediately prior to such damage or destruction may be reconstructed and used as before, provided that:
 - a. The reconstructed building or structure shall not exceed the dimensions of the damaged or destroyed building or structure, including height, width, depth, and volume.
 - b. Building or structure construction shall be started within one year from the date the building or structure was damaged or destroyed, and shall be carried out without interruption.
 - c. The building or structure will pose no hazards to safety by virtue of its location.
 - d. The damage was not caused in whole or in part by the action or inaction of the property owner or its employees, agents or contractors.
- (3) Legally condemned nonconforming buildings or structures shall not be rebuilt or used except in conformance with this chapter.
- (4) A nonconforming building, structure, use, lot, parking area, site improvement or accessory sign which is destroyed or razed including, but not limited to, demolished by neglect) through means other than fire, explosion or other casualty, shall be reconstructed in full conformity with this chapter for the zoning district where it is located.

...

SECTION II. - Severability.

The provisions of this Ordinance are severable, and if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Board that this Ordinance would have been adopted even if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

SECTION III. - Failure to Enforce Not a Waiver.

The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

SECTION IV. - Effective Date.

This Ordinance shall take effect and be in force from and after its approval as required by the law.

SECTION V. - Repealer.

All other ordinances and resolutions or parts thereof insofar as they are inconsistent with this Ordinance are hereby repealed.


ORDAINED and **ENACTED** by the Board of Commissioners of Cheltenham Township, Montgomery County, Pennsylvania, in lawful session duly assembled this **15th** day of **May, 2019**.

ATTEST:



Bryan T. Havir
Township Manager and Secretary

**TOWNSHIP OF CHELTENHAM
BOARD OF COMMISSIONERS**

By: 
Daniel B. Norris, President