

MILLVILLE CITY CODE
TITLE 17 - ZONING
CHAPTER 17.68 - NONCONFORMING USES AND VARIANCES

[17.68.010: PURPOSE](#)

[17.68.020: CONTINUING EXISTING USES](#)

[17.68.030: CONSTRUCTION APPROVED PRIOR TO ORDINANCE](#)

[17.68.040: NONCONFORMING USES, SUBSTITUTION, EXTENSION, DISCONTINUANCE](#)

[17.68.050: APPLICATION](#)

[17.68.060: VARIANCES](#)

17.68.010: PURPOSE

To control and gradually eliminate those uses of land or structures which, although legal at the time of their establishment, do not now conform to the use regulations of the district within which they are situated. Such uses shall be deemed nonconforming uses. Likewise, it is intended to control and gradually eliminate structures which, although legal at the time of their erection, do not now conform to the height, bulk, and location regulations of the district within which they are situated. Such structures shall be deemed to be nonconforming structures. Any structure or use which was permitted prior to enactment of this title but which is designated by this title as a conditional use shall not be considered a nonconforming use, and shall not be subject to the provisions of this title. (Ord. 99-02-18-01 § 2)

17.68.020: CONTINUING EXISTING USES

Except as herein specified, any use or structure lawfully existing at the time of the enactment or subsequent amendment of this title may be continued, even though such use or structure does not conform with the provisions of this title for the district in which it is located. Except as otherwise provided by law, nothing in this title shall prevent the strengthening or restoring to a safe condition any part of any building or structure declared unsafe by proper authority. (Ord. 99-02-18-01 § 2)

17.68.030: CONSTRUCTION APPROVED PRIOR TO ORDINANCE

A structure or part thereof which does not conform to the regulations of the district in which it is situated but for which a building permit was issued and constructed started prior to the enactment of this title may be completed in accordance with such plans providing work is prosecuted continuously and without delay. Such structure shall be deemed to be nonconforming and shall be subject to the regulations set forth herein. (Ord. 99-02-18-01 § 2)

17.68.040: NONCONFORMING USES, SUBSTITUTION, EXTENSION, DISCONTINUANCE

A nonconforming use shall not be enlarged, extended, or changed unless the use is changed to a use permitted in the district in which it is located, and a nonconforming structure shall not be reconstructed or structurally altered unless such alteration shall result in removing those conditions of the building which render it nonconforming except as follows:

A. Substitution Or Extension:

1. When authorized by the appeal authority in accordance with this section, a nonconforming use which is determined to be of a more desirable nature may be substituted for another nonconforming use.
2. Whenever a nonconforming use has been changed to a conforming use, such use shall not thereafter be changed to a nonconforming use.
3. Repairs and structural alterations may be made to a nonconforming building provided that the floor space of such building is not increased.
4. A nonconforming use may be extended to include the entire floor area of the existing building in which is conducted at the time the use became nonconforming.
5. A nonconforming building or structure which is damaged or partially destroyed by fire, flood, wind, earthquake, or other calamity or act of nature, or the public enemy, to the extent of not more than fifty percent (50%) of its reasonable replacement value at the time, may be restored or rebuilt and the occupancy or use of such building, structure, or part thereof which existed at the time of such restoration is started within a period of one year and is diligently pursued to

completion. In the event such damage or destruction exceeds more than fifty percent (50%) of the reasonable replacement value of such nonconforming building or structure, all repairs or reconstruction shall be made to conform to all regulations for new buildings in the zoning district in which it is located, as determined by the building inspector.

6. Application for substitution or extension of a nonconforming use as provided in this section shall be made and considered in the manner set forth.
- B. "Cessation Of Use" Defined: A use shall be deemed to have ceased when it has been discontinued either temporarily or permanently for a period of one year or more, whether or not with the intent to abandon such use.

Any nonconforming use that has ceased for a period of one year or more shall be terminated and any use thereafter shall conform to the use regulations of the zoning district. (Ord. 2007-8, 2007: Ord. 99-02-18-01 § 2)

17.68.050: APPLICATION

A nonconforming use may be terminated by abandonment, cessation, or destruction. This section is intended to terminate a nonconforming use at the first of any such occurrences.

A building or structure or portion thereof occupied by a nonconforming use which is, or hereafter becomes, vacant and remains unoccupied for a continuous period of one year, except for dwellings, shall not thereafter be occupied except by a use which conforms to the use regulations of the zone in which it is located. (Ord. 99-02-18-01 § 2)

17.68.060: VARIANCES

A. Zoning:

1. Any person or entity desiring a waiver or modification of the requirements of the zoning ordinance as applied to a parcel of property that he or she owns, leases, or in which he or she holds some other beneficial interest may apply to the appeal authority for a variance from the terms of the zoning title.
2. The appeal authority may grant a variance only if:

- a. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning title;
 - b. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district;
 - c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district;
 - d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
 - e. The spirit of the zoning title is observed and substantial justice done.
3. In determining whether or not enforcement of the zoning title would cause unreasonable hardship under subsection A2a of this section, the appeal authority may not find an unreasonable hardship unless the alleged hardship:
- a. Is located on or associated with the property for which the variance is sought; and
 - b. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
4. In determining whether or not enforcement of the zoning title would cause unreasonable hardship under subsection A2a of this section, the appeal authority may not find an unreasonable hardship is self-imposed or economic.
5. In determining whether or not there are special circumstances attached to the property under subsection A2b of this section, the appeal authority may find that special circumstances exist only if the special circumstances:
- a. Relate to the hardship complained of; and
 - b. Deprive the property of privileges granted to other properties in the same zoning district.
6. The applicant shall bear the burden of proving that all the conditions justifying the variance have been met.
7. Variances run with the land.

8. The appeal authority and any other body may not grant use variances.
 9. In granting a variance, the appeal authority may impose additional requirements on the applicant that will:
 - a. Mitigate any harmful effects of variance; or
 - b. Serve the purpose of the standard requirement that is waived or modified.
- B. Building Permits: No building permit shall be issued for any building, construction, or repair of any building unless such fully conforms to all zoning regulations or ordinances of this municipality in effect at the time of application. (Ord. 2007-8, 2007: Ord. 2000-16 § 1: Ord. 99-02-18-01 § 2)