

FAQ:

When may an existing nonconforming condition continue when consolidating lots?

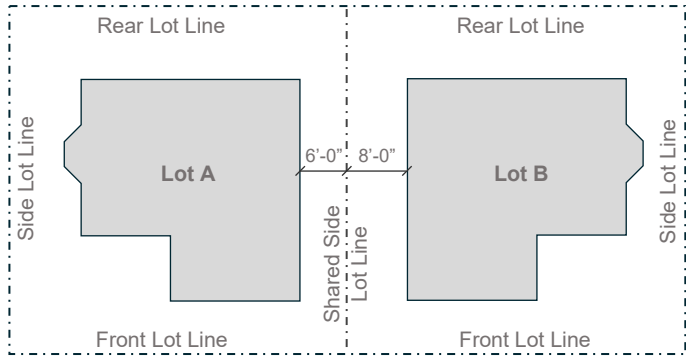
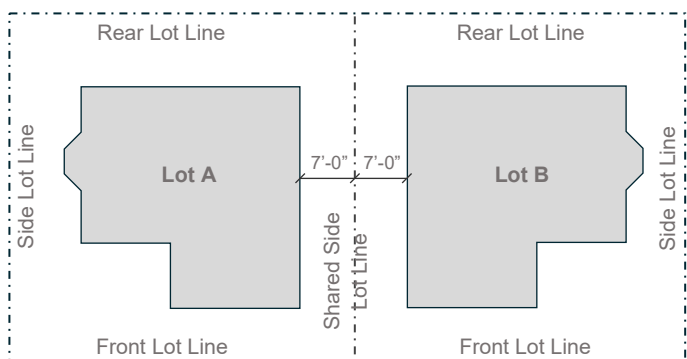
Background:

The Philadelphia Zoning Code defines a nonconformity as ‘a land use, building, parking area, lot, sign, or site improvement that does not conform with the requirements of this Zoning Code because it was established before the adoption of zoning or because it was lawfully established before a Zoning Code amendment was passed’.

The Zoning Code recognizes a property owner’s right to continue a nonconforming condition. Section [14-305](#) provides for the operation, expansion, modification, and replacement of nonconformities and includes limitations to ensure that a nonconformity is not increased or intensified. Section [14-305\(7\)\(b\)](#) expressly permits lot adjustments that do not increase an existing nonconformity.

An increase in an existing nonconformity is clearly established when a lot adjustment results in the same number or additional lots. If a nonconformity is increased or a new non-compliant condition is created on any of the resultant lots, it will result in a permit application refusal.

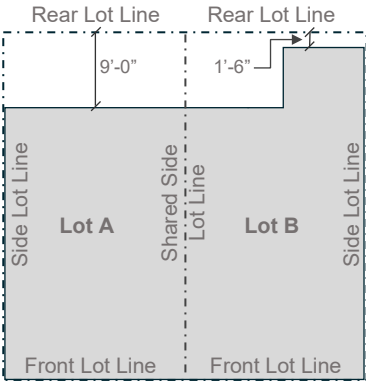
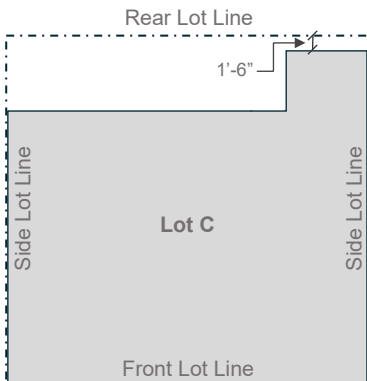
Example 1: A property line between two lots is shifted such that a nonconforming side yard on Lot A is increased and a nonconforming side yard on Lot B is decreased, there is an increase in a nonconformity for Lot B that will result in a refusal.

Example 1	
Existing Condition	Proposed Condition
	
Zoning District: RSD-3 (minimum required side yard is 10 ft). Conclusion: Not permitted. There is an increase in a nonconformity for Lot B that will result in a refusal.	

It becomes more difficult to discern an increase in nonconformity when lots are being consolidated and cumulative impacts must be evaluated.

Example 2: Two lots are being consolidated and Lot A has a compliant rear yard setback and Lot B has a nonconforming rear yard setback, the Zoning Code does not provide clear direction on determining the relative intensity of the nonconformity on resultant Lot C.

Example 2

Existing Condition	Proposed Condition
	
<p>Zoning District: RSA-5 (minimum required rear yard depth is 9 ft).</p> <p>Conclusion: Permitted. The resultant configuration results in a lot with a decreased rear yard than Lot A had; however, there is no new impact and shall be permitted.</p>	

This FAQ addresses the evaluation of existing nonconforming conditions when the underlying lots are consolidated.

Answer:

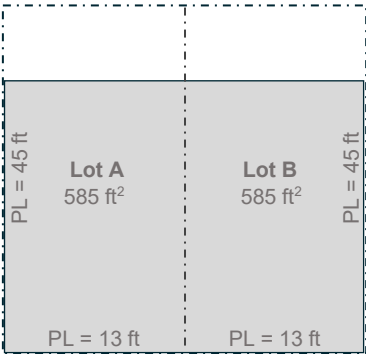
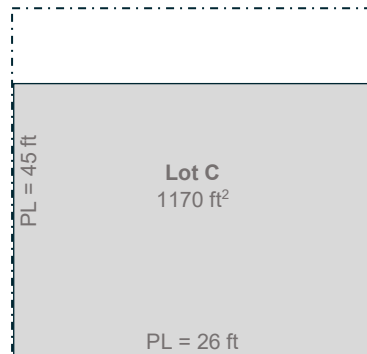
In determining if the nonconforming condition is increased or intensified on the resultant lot, we must compare the resultant condition to the conditions on the existing lot. If the condition on the resultant lot is not worse than conditions on the original lots, it is permissible.

Dimensional

- If an existing dimensional condition is not being made less than compliant for either lot, it may continue:

Example 3: Two lots that do not meet minimum lot area requirements are consolidated and the resultant lot does not meet minimum lot area requirements. While the resultant lot does not meet minimum lot area requirements, it is more compliant than pre-existing lot configuration and shall be permitted.

Example 3

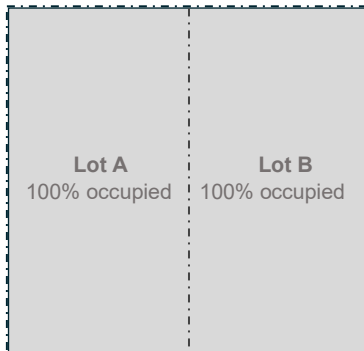
Existing Condition	Proposed Condition
	
<p>Zoning District: RM-1 (minimum lot area is 1440 square feet).</p>	

Conclusion: Permitted. While the resultant lot does not meet minimum lot area requirements, it is more compliant than pre-existing lot configuration and shall be permitted.

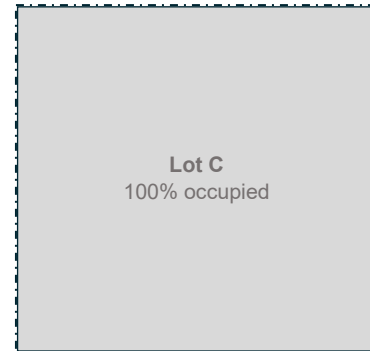
Example 4: The consolidation of two intermediate lots with existing buildings that occupy 100% of each lot in the RM-4 zoning district. While the district allows a max of 75% occupied area; the buildings occupying 100% are legally nonconforming. The resultant configuration does not result in an increase in occupied area and shall be permitted.

Example 4

Existing Condition



Proposed Condition



Zoning District: RM-4 (maximum occupied area is 75% of the lot).

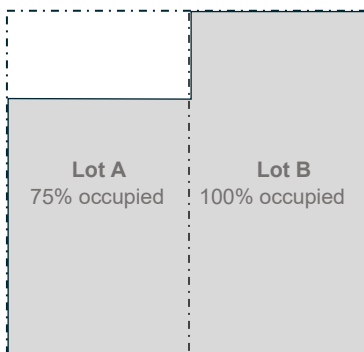
Conclusion: Permitted. The resultant configuration does not result in an increase in occupied area and shall be permitted.

- If a specific dimensional condition is being made less compliant for one lot but not the other, cumulative impacts must be considered. Note: For dimensional nonconformities where no new refusal is triggered, it is not anticipated that there will be an increased impact resulting from the lot consolidation.

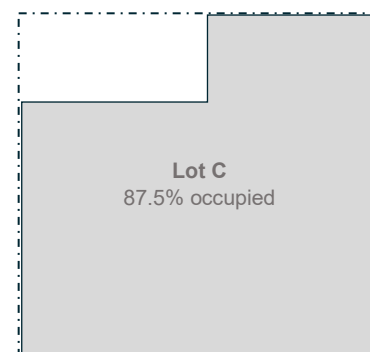
Example 5: Consolidation of two intermediate lots with existing buildings in the RSA-5 zoning district. The district allows a max of 75% occupied area; however, one of the lots is compliant with 75% occupied area and the other lot is legally non-conforming with an occupied area of 100%. The resultant configuration increases occupied area for one of the lots but decreases it for the other; however, there is no new impact and shall be permitted.

Example 5

Existing Condition



Proposed Condition

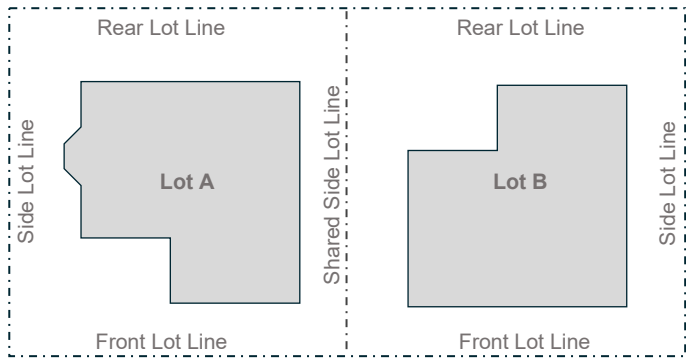
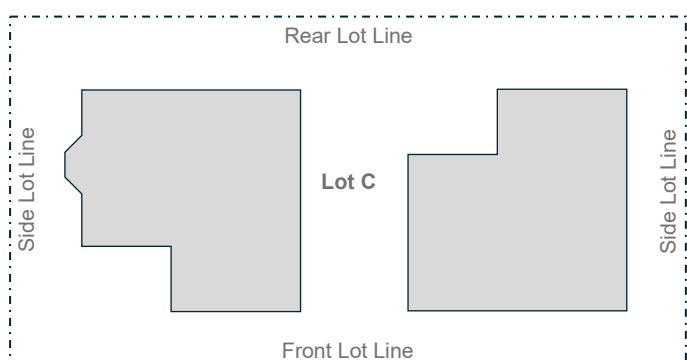


Zoning District: RSA-5 (maximum occupied area is 75% of the lot).

Conclusion: Permitted. The resultant configuration increases occupied area for one of the lots but decreases it for the other; however, there is no new impact and shall be permitted.

- Even if no development is proposed but a new, non-compliant condition is created through the lot adjustment, it shall result in permit application refusal.

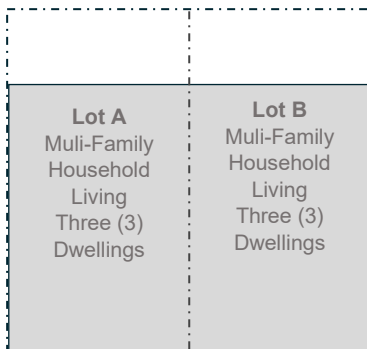
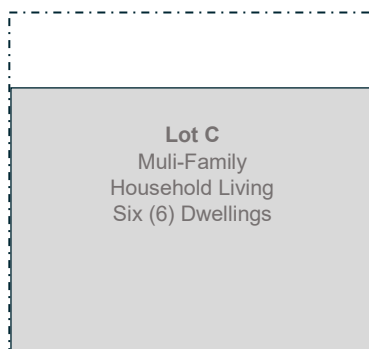
Example 6: Consolidation of two lots with detached principal structures. If the district does not allow multiple principal structures, this is a new non-compliant condition that will result in a refusal.

Example 6	
Existing Condition	Proposed Condition
	
Zoning District: RSD-3 (No more than one principal use is allowed per lot in RSD zoning district). Conclusion: Not Permitted. This is a new non-compliant condition that will result in a refusal.	

Use

- If an existing use condition is not being made less compliant for either lot, it may continue.

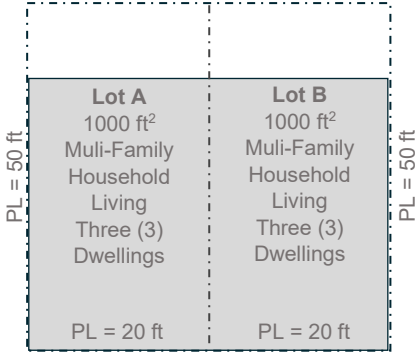
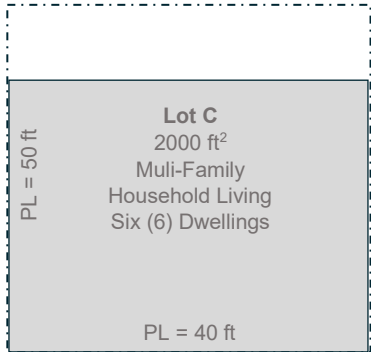
Example 7: There is an existing non-conforming multi-family household living use with three (3) dwellings on each of the two lots in the RSA-5 zoning district, where the use is not permitted under the current Code. The resultant condition does not constitute a change in use classification, a cumulative increase in intensity, and does not make any condition worse. Therefore, it would be permitted.

Example 7	
Existing Condition	Proposed Condition
	
Zoning District: RSA-5 (multi-family household living use is prohibited).	

Conclusion: Permitted. The resultant condition does not constitute a change in use classification, a cumulative increase in intensity, and does not make any condition worse.

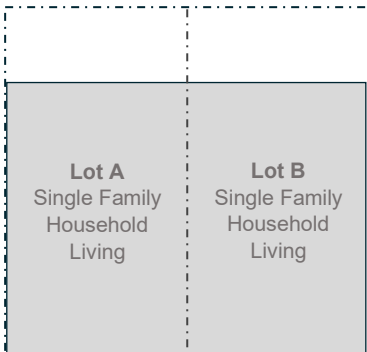
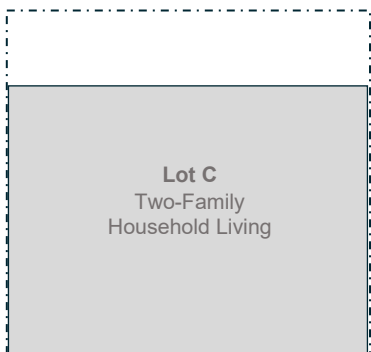
2. If a condition of use is being made less compliant, it shall result in permit application refusal:

Example 8: There is an existing nonconforming 3 family dwelling on each of the two lots with an area of 1,000 sq ft in the RM-1 zoning district. The lot area of each lot is nonconforming and provides 92.6 % of the 1,080 sq ft area required under the current Code. The consolidated condition of 6 units on a lot 2,000 sq ft provides 83.3% of the required 2,400 sq ft. The resultant configuration results in a less compliant lot area that will result in refusal.

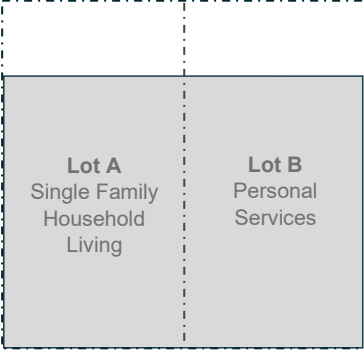
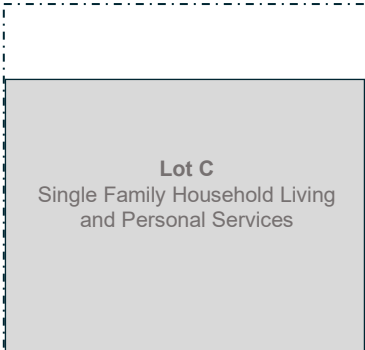
Example 8	
Existing Condition	Proposed Condition
	
Zoning District: RM-1 (multi-family household living use is prohibited). Conclusion: Not Permitted. The resultant configuration results in a less compliant lot area for the number of dwellings provided.	

3. If there is no use change proposed but a new, non-compliant condition is created through the lot adjustment, it shall result in permit application refusal.

Example 9: Consolidation of two lots with a single-family use on each lot. If the district does not allow for a two-family dwelling, this is a new non-compliant condition that will result in a refusal.

Example 9	
Existing Condition	Proposed Condition
	
Zoning District: RSA-5 (single-family household living use is permitted, two-family household living is prohibited). Conclusion: Not Permitted. This is a new non-compliant condition that will result in a refusal.	

Example 10: Consolidation of two lots; one with single-family use and one with an existing nonconforming commercial use (personal services). If the district does not allow for multiple principal uses, this is a new non-compliant condition that will result in a refusal.

Example 10	
Existing Condition	Proposed Condition
	
<p>Zoning District: RSA-5 (multiple principal uses on a lot prohibited).</p> <p>Conclusion: Not Permitted. Multiple principle uses is a new non-compliant condition that will result in a refusal.</p>	

Additional Notes:

A condition granted by variance, special exception, or proviso is not classified as a nonconformity. Refer to [Code Bulletin Z-1401](#) for direction on applications impacting a prior Zoning Board of Adjustment Approval.

New construction, additions, expansions, and changes in use shall be evaluated under the code in effect at the time of permit application. The extension or replacement of the nonconforming structure on the resultant lot shall be evaluated in accordance with the requirements of Section [14-305](#).

Lot consolidations resulting in split zoning districts shall be evaluated in accordance with the rules set forth in Section [14-107\(2\)](#).

Landscaping and street tree requirements shall not apply to lot consolidation unless triggered by the construction or extension of a building or a change in use.

Accessory structures and uses must be on the same lot as the principle structures and uses that they are accessory to. If a lot line relocation impacts an accessory structure or use it shall be evaluated to confirm compliance with the code.

Questions?

Call 311 or (215) 686-8686 (if outside Philadelphia) or submit an online form via <http://www.phila.gov/li/get-help>.

Disclaimer:

This interpretation, policy or code application is intended to provide guidance to staff for consistency of review and is subject to change without notice. Application of this interpretation, policy or code application to specific projects may vary. There may be other ways to comply with the Code. If so, you are not required to use this method. You may want to investigate other options or consult with a professional identifying an equally code compliant solution.