

ARTICLE XVI. - NONCONFORMITIES

Sec. 1601. - General provisions:

1. *Intent:* Nonconformities are lots, structures, sites, or uses of land that do not conform to one (1) or more provisions of this Ordinance, but which were lawfully established prior to the date of adoption or amendment of this Ordinance. Regulations are hereby established to govern the completion, restoration, reconstruction, extension, and substitution of nonconformities, and to specify the circumstances and conditions under which nonconformities shall be permitted to continue.

The objectives of this Ordinance are as follows:

- A. To permit nonconforming structures and uses of land to remain until discontinued or removed.
- B. To encourage the upgrading of site improvements that were developed in compliance with the standards in force at the time of their construction, but which do not meet the site design standards of this Ordinance.
- C. To promote the combination of contiguous lots of record to create lots that conform to current standards for minimum lot width, lot area and street frontage.
- D. To eliminate nonconforming uses of land that are incompatible with and more intense than permitted uses in a particular zoning district, or to encourage their redevelopment into more compatible uses.
- E. To allow for the perpetuation of certain nonconforming structures or uses of land that do not significantly depress the value of nearby properties and are not contrary to the public health, safety, and welfare.
- F. To terminate and remove illegal structures or uses of land.

Sec. 1602. - Class A nonconforming designation:

1. *Public hearing:* Upon petition, the Planning Commission shall hold a public hearing for consideration of a Class A designation for a nonconforming structure or a use of land.
2. *Conditions for approval of a Class A designation:* After holding a public hearing, the Planning Commission may grant a Class A designation upon finding that all of the following conditions exist:
 - A. A determination that the structure or use of land is nonconforming as defined in this Ordinance.
 - B. The nonconformity does not significantly depress the value of nearby properties.
 - C. The nonconformity is not contrary to the public health, safety, and welfare.
 - D. No useful purpose would be served by the strict application of requirements for such a nonconformity under this Ordinance.
 - E. *Signage:* Signage associated with the use shall be in compliance with Article 15.
 - F. *Plan for site improvements:* A plan for site improvements has been submitted in accordance with the preliminary site plan requirements in Section 910 that is satisfactory to the Planning

Commission. The Planning Commission may require improvements to landscaping, site design and layout, pedestrian access, building materials, screening, off-street parking, exterior lighting, or other improvements as deemed necessary to protect surrounding uses.

- G. Other conditions may be attached to the approval to assure that the structure or use of land does not become contrary to the public health, safety or welfare, or the spirit and purpose of this Ordinance.
3. *Effect of approval of a Class A designation:* Class A nonconforming uses of land shall be permitted to be perpetuated and expanded in accordance with an approved plan and under the provisions of this Ordinance. Class A nonconforming structures shall be permitted to be perpetuated, expanded, improved, or replaced if damaged or destroyed in accordance with an approved plan and under the provisions of this Ordinance.
4. *Effect of denial of a Class A designation:* An application for a Class A designation that has been denied wholly or in part by the Planning Commission may not be appealed to the Zoning Board of Appeals but may be resubmitted for Planning Commission consideration after a minimum of three hundred sixty-five (365) days have elapsed from the date of denial.
5. *Cessation or removal of Class A nonconforming structures or uses of land:* When a Class A nonconforming structure is permanently removed, or when a Class A nonconforming use of land is replaced by a conforming use, the designation shall be deemed removed. Any subsequent structure or use of land shall conform to Ordinance provisions for the district in which it is located.
6. *Rescinding approval of a Class A designation:* Failure of the property owner, or the owner, operator or person having beneficial use of land occupied by a Class A designated nonconforming structure or use of land to maintain or improve the site in accordance with this Ordinance, an approved site plan or any conditions of approval shall be grounds for the Planning Commission to rescind a previously approved Class A designation. Such action shall be subject to the following:
 - A. Public hearing: Such action may be taken only after a public hearing has been held with notice in compliance with Section 307, Public Hearing Notice Requirements, at which time the property owner, or the owner, operator or person having beneficial use of land occupied by a Class A designated nonconforming structure or use of land shall be given an opportunity to present evidence in opposition to rescission.
 - B. Subsequent to the hearing, the Planning Commission's decision with regard to the rescission shall be made and written notification provided to said property owner, or the owner, operator or person having beneficial use of land occupied by a Class A designated nonconforming structure or use of land.
7. *Class A designations for existing single-family residential dwellings:* Single-family residential dwellings, which are so used and so existing in non-residential zoning districts before the effective date of this Ordinance or amendments thereto, are hereby designated as Class A nonconforming structures and Class A nonconforming uses of land. Such dwellings and accessory buildings may be repaired, expanded, or replaced if destroyed, subject to the following conditions:
 - A. The expansion of the dwelling or accessory structures shall conform with all applicable yard dimensions, setbacks, and other requirements for the most similar single-family residential zoning district.

- B. If an existing structure is destroyed, the replacement dwelling, or accessory structure shall conform with all applicable yard dimensions, setbacks, and other requirements for the most similar single-family residential zoning district.
- C. The dwelling and accessory structures shall conform to all other applicable federal, state, county and Township laws, Ordinances, regulations, and codes.
- D. The use of the dwelling and associated parcel of land shall remain single-family residential, unless an application and site plan in accordance with Article 9 is submitted that conforms to the Ordinance provisions for the district in which it is located

Sec. 1603. - Nonconforming lots:

- 1. *Division of nonconforming lots:* Parcels shall not be divided in a manner that increases nonconformity, causes an existing structure or site improvement to become nonconforming or creates one (1) or more nonconforming lots.
- 2. *Use of a nonconforming lot:* Any nonconforming lot shall only be used as permitted in the district in which it is located. A single nonconforming lot may be developed or improved with a principal building, and customary accessory structures, provided that the following conditions have been met:
 - A. The structures and lot shall conform with all applicable yard dimensions, setbacks, and other requirements, other than minimum lot width and lot area, for the district in which the lot is located.
 - B. The lot is not under contiguous single ownership with other lots that could be combined into one (1) or more conforming lots.
 - C. The lot and principal building shall be served by public water and public sanitary sewer.
- 3. *Use of contiguous nonconforming lots under the same ownership:* If two (2) or more lots or combinations of lots with contiguous frontage in single ownership are of record at the time of passage or amendment of this Article, and if all or part of the lots do not meet the requirements for lot width and area as established by this Article, the lots or combination of lots involved shall be considered to be an undivided parcel for the purposes of this Article. No portion of said parcel shall be used or occupied in a manner which diminishes compliance with lot width and area requirements established by this Article, nor shall any division of the parcel be made which creates a lot width or area below the requirements stated in this Article.

Sec. 1604. - Nonconforming structures:

- 1. *Class A nonconforming structures:* See Section 1602.
- 2. *Class B nonconforming structures:* No such structure may be enlarged or altered in a way that increases its nonconformity, except as provided for herein. Such structures may be enlarged or altered in a manner that does not increase its nonconformity.
- 3. *Normal repairs and maintenance:* Normal repair, maintenance or replacement of Class B nonconforming structures may be permitted in accordance with applicable code requirements, provided that such improvements do not result in an enlargement of a nonconforming structure or an expansion of a nonconforming use of land, and provided that the cost of such improvements

does not exceed the assessed value or, if higher, fifty percent (50%) of the replacement cost of the structure.

4. *Buildings under construction:* Nothing in this Ordinance shall require a change in the plans, construction, or designated use of any building for which construction was lawfully begun prior to the effective date of this Ordinance or amendments thereto and diligently carried on until completion. Construction shall include the placement of materials in a permanent manner or demolition and removal of an existing structure preparatory to rebuilding in accordance with an approved site plan.
5. *Damaged or unsafe structures:* Class B nonconforming structures that are declared to be physically unsafe by the Building Official, or otherwise damaged or destroyed by any means to an extent greater than the assessed value or, if higher, fifty percent (50%) of the replacement cost of the structure shall not thereafter be restored, repaired, or rebuilt except in conformity with the provisions of this Ordinance.
6. *Active farm operations:* Class B nonconforming structures used in active farm operations may be expanded if approved by the Zoning Administrator, subject to the following requirements:
 - A. Agriculture is a permitted use in the district in which it is located and is the intended use of the structure .
 - B. The expansion shall meet all requirements of the zoning district in which it is located.
7. *Single-family dwellings:* See Section 1602.7.

Sec. 1605. - Nonconforming uses of land:

1. *Class A nonconforming uses of land:* See Section 1602.
2. *Class B nonconforming uses of land:* Such uses may continue after the effective date of this Ordinance or amendments thereto, subject to the following conditions:
 - A. The property owner, or the owner, operator or person having beneficial use of land occupied by a Class B nonconforming use of land shall demonstrate that the use is maintained in compliance with all other applicable federal, state, county and Township laws, Ordinances, regulations, and codes. Failure to do so, or failure to bring the use into compliance with revised laws, Ordinances, regulations, and codes within six (6) months of their effective date, shall constitute grounds for the Township to seek court approval to terminate or remove the use at the owner's expense.
 - B. The use shall not be enlarged or increased, extended to occupy a greater area of land, or moved in whole or in part to any other portion of the parcel or structure. No additional signage shall be permitted.
 - C. If the use ceases for a period of more than one hundred eighty (180) days, the use shall not be resumed, and subsequent uses of such land shall conform to Ordinance provisions for the district in which it is located. Structures occupied by seasonal uses shall be excepted from this provision.
 - D. No additional structures may be constructed in association with the nonconforming use. If the structure associated with a nonconforming use is removed or destroyed, the

- nonconformity shall be deemed removed and subsequent uses of such land shall conform to Ordinance provisions for the district in which it is located.
- E. If the use is superseded by a permitted use, subsequent uses of such land shall conform to Ordinance provisions for the district in which it is located.
3. *Determination of status of a use of land as nonconforming:* A determination of the status of a use of land as nonconforming shall be made by the Zoning Administrator only upon finding that the following conditions have been met:
- A. A finding that the use of land does not conform to the use regulations of the district in which it is located.
 - B. A finding that the use of land is in compliance with all other applicable federal, state, county and Township laws, Ordinances, regulations, and codes.
 - C. A finding that evidence from a minimum of three (3) of the following sources clearly demonstrates that the use of land was legally established as a conforming use prior to the date of adoption of this Ordinance or amendments thereto:
 - (1) Local and county government files or records: Such evidence may include, but shall not be limited to permits, inspection reports, dated photographs or notarized statements of Township officials, agents, representatives, or employees.
 - (2) The "R.L. Polk City Directory" or other dated telephone directories serving Washtenaw County.
 - (3) Utility records, including, but not limited to telecommunication service providers, Detroit Edison, Michigan Consolidated Gas Co., or the Ypsilanti Community Utilities Authority.
 - (4) Dated advertising or other information published in a newspaper or magazine serving Washtenaw County.
 - (5) Dated aerial photos from Washtenaw County governmental departments, the Southeastern Michigan Council of Governments (SEMCOG) or other sources as approved by the Zoning Official.
 - (6) Other relevant information, as may be accepted by the Zoning Official: Such evidence may include but shall not be limited to date-stamped photographs, diary or log entries, affidavits, or notarized statements.
4. *Determination of cessation of a nonconforming use of land:* A Class B nonconforming use that is determined to be abandoned shall not be reestablished, and any subsequent use shall conform to this Ordinance.
5. *Substitution of nonconforming uses of land:* Upon petition, the Planning Commission shall hold a public hearing for consideration of a request to substitute one (1) nonconforming use for another nonconforming use on the same parcel. Subsequent to a public hearing, the Planning Commission may grant approval of such a request upon finding that all of the following conditions exist:
- A. The proposed nonconforming use is equally appropriate or more appropriate to the district than the existing nonconforming use. Where a nonconforming use is changed to a more conforming use, it shall not thereafter be changed to a less conforming use.
 - B. Signage: Signage associated with the proposed nonconforming use shall be in compliance with Article 15.

- C. Plan for site improvements: A plan for site improvements has been submitted in accordance with the preliminary site plan requirements in Section 910, that is satisfactory to the Planning Commission. The Planning Commission may require improvements to landscaping, site design and layout, pedestrian access, building materials, screening, off-street parking, exterior lighting, or other improvements as deemed necessary to protect surrounding uses.
- D. Other conditions may be attached to the approval to assure that the use of land does not become contrary to the public health, safety or welfare, or the spirit and purpose of this Ordinance.

Sec. 1606. - Nonconforming sites:

The purpose of this section is to encourage improvements and minor modifications to nonconforming sites by establishing standards for prioritizing site improvements that are designed to gradually bring the site into compliance with the site design requirements of this Ordinance. Nonconforming sites shall not be improved or modified in a manner that increases noncompliance with this Ordinance. Nonconforming sites subject to review in accordance with Section 1602 and Article 9 may be improved or modified without a complete upgrade of all site elements under the following conditions:

1. The proposed site improvements shall include exterior lighting, landscaping, screening, and building improvements that are in reasonable proportion to the scale and construction cost of proposed building improvements, expansions, or other improvements.
2. The proposed site improvements resolve public safety deficiencies, including building and fire code violations, emergency access and pedestrian/vehicle conflicts.
3. The proposed site improvements include the installation, restoration or expansion of sidewalks and non-motorized paths within and through the site consistent with the provisions of this Ordinance.
4. A reasonable timeline for completion of site improvements may be approved as part of any site plan approval. Failure to complete improvements in accordance with an approved timeline shall be deemed a violation of the approved site plan.

Sec. 1606- Change in Tenant or Ownership

There may be a change of tenancy, ownership, or management of an existing non-conforming use, building or structure, provided there is no change in the nature of character, extent, or intensity of such non-conforming use, building, or structure.