

ARTICLE 9

NONCONFORMING USES, BUILDINGS, STRUCTURES AND LOTS OF RECORD

SECTION 9.1 PURPOSE:

Nonconformities are uses, buildings, structures or lots that do not conform to one or more of the requirements of this Ordinance, or any subsequent amendment, which were lawfully established prior to the effective date of this Ordinance, or any subsequent amendment. The purpose of this Article is to specify the terms and conditions under which a nonconformity is permitted to continue to exist. A nonconformity that was lawful at the time it was established is permitted to continue to exist. A nonconformity shall not be permitted to continue to exist if it was unlawful at the time it was established. To that end nonconforming uses, buildings, and structures shall be placed into two classifications, a Class A nonconformity and a Class B nonconformity. The purpose of this Article is to reduce or eliminate Class B nonconformities over a period of time, while permitting Class A nonconformities to be used, repaired, replaced and enlarged under less stringent regulations.

Section 9.1 Purpose

SECTION 9.2 NONCONFORMING USE PERMITTED; COMPLETION OF NONCONFORMING BUILDINGS OR STRUCTURES:

- A. If a nonconforming building or structure, a building that contains a nonconforming use, or a nonconforming use of land was lawful at the time of enactment of this Ordinance, or any subsequent amendment, then that nonconformity may be continued although it does not conform to the provisions of this Ordinance, or any subsequent amendment, under the terms and conditions of this Article.
- B. To avoid undue hardship, nothing in this Ordinance is deemed to require a change in the plans, construction, or designated use of a building or structure on which substantial construction has been lawfully begun prior to the effective date of this Ordinance, or any subsequent amendment.

Section 9.2 Nonconforming Use

SECTION 9.3 REGULATIONS PERTAINING TO ALL LEGALLY EXISTING NONCONFORMITIES (CLASS A & CLASS B)

- A. Normal maintenance and incidental repairs, including repair or replacement of nonbearing walls, fixtures, wiring, or plumbing may be performed on any nonconforming building or structure or on any building containing a nonconforming use.
- B. A nonconforming building or structure or a building that contains a nonconforming use which is unsafe or unlawful due to lack of repairs or maintenance, as determined by the Zoning Administrator or County Building Official, may be restored to a safe condition.

Section 9.3 & 9.4 Class A & B Nonconformities

SECTION 9.4 CLASSIFICATION OF NONCONFORMITIES

- A. All nonconforming uses, buildings and structures shall be designated either a Class A nonconformity or a Class B nonconformity. Unless designated a Class A nonconformity under subsection 9.4B, the nonconforming use, building or structure shall be deemed a Class B nonconformity. If a Class B nonconformity is damaged or destroyed, the property owner may seek a Class A designation under subsection 9.4B after such damage or destruction. The Class B nonconformity shall then be judged for the Class A designation on the nonconformity as it existed prior to the damage or destruction.
- B. A property owner who desires that his or her property be designated a Class A nonconformity shall file an application with the Zoning Administrator requesting the designation. The application shall include the names and addresses of all people and legal entities with an interest in the property, the legal description of the property, the facts that establish the standards for approving a Class A designation have been met, and the fee as provided in Section 5.3 of this

Ordinance. After the Zoning Administrator receives a completed application, he or she shall forward the application to the Planning Commission for consideration. The Planning Commission shall hold at least one (1) public hearing on the application. The notice of the public hearing shall be the same as for a special use permit before the Planning Commission. The Planning Commission's decision whether to grant the Class A designation shall be based on written findings of fact made pursuant to the standards contained in subsection 9.4C. The Planning Commission may attach reasonable conditions to a Class A designation to assure compatibility of the nonconforming use, building or structure with the surrounding property uses. The property owner shall receive no vested interest rights in the Class A designation, since that designation may be revoked by the Planning Commission under subsection 9.4D.

- C. The Planning Commission shall grant a Class A designation for a nonconforming use, building, or structure if it finds that all the following standards have been met:
1. The nonconforming use, building, or structure was lawful at the time of its inception
 2. The continuation of the nonconforming use, building or structure will not significantly and adversely affect surrounding properties and will not significantly depress property values in the immediate area.
 3. The nonconforming use, building or structure is not located within a wetland regulated by the State of Michigan.
 4. The nonconforming use, building or structure is not located in the Waterfront Greenbelt as regulated by Section 4.6.A, UNLESS located in either the Village Commercial or Village Mixed Use zoning district and approved under the water quality protection alternatives per Section 4.6B.
 5. The nonconforming use, building, or structure is of economic benefit to the Township.
- D. Upon the filing of a request by the Zoning Administrator or by the Planning Commission's own action, a Class A designation shall be revoked by the Planning Commission following the same procedure required for the initial designation upon a finding that as a result of any change of conditions or circumstances the standards for the Class A designation under subsection 9.3C no longer qualify the nonconforming use, building or structure for the Class A designation.

SECTION 9.5 REGULATIONS CONCERNING CLASS A NONCONFORMITIES

The following regulations shall apply to all Class A nonconforming uses, buildings and structures:

- A. If a nonconforming building or structure or a building that contains a nonconforming use is damaged or destroyed by any means or is removed by the owner, then such nonconforming building or structure may be restored, rebuilt or repaired to its original configuration and on its original footprint.
- B. A nonconforming building or structure or a building that contains a nonconforming use may be enlarged or altered in any way, provided such enlargement does not increase the degree or extent of any nonconformity on both the horizontal and vertical planes.
- C. A nonconforming use shall not be extended to any part of the lot that was not lawfully occupied by such nonconforming use on the effective date of this Ordinance , or any subsequent amendments, unless in conformity with the requirements of this Ordinance. However, a nonconforming use may be extended throughout any part of the building, which was designed for such use, and which existed at the time the use became nonconforming.
- D. A Class A nonconforming use, building or structure may be replaced by another Class A nonconforming use, building, or structure if the Planning Commission finds (following the procedures of subsection 9.4B above), that the new nonconforming use, building or structure qualifies for a Class A designation and the new nonconforming use, building or structure will not increase the extent or intensity of the nonconformity on the property.

SECTION 9.6 REGULATIONS CONCERNING CLASS B NONCONFORMITIES

The following regulations shall apply to all Class B nonconforming uses, buildings and structures:

- A. A Class B nonconforming use, building or structure that is damaged by fire, collapse, explosion, an act of God, or an act of the public enemy following the effective date of this Ordinance, or any subsequent amendment, may be reconstructed, repaired or restored, and resumed under the terms and conditions of this subsection. Except as provided herein, if a nonconforming building or structure can be reconstructed, repaired or restored in complete conformance with this Ordinance, then such complete conformance shall be required. However, if the Planning Commission finds that the cost of complete conformance with this Ordinance would be unreasonable under the circumstances, then the nonconforming building or structure shall be reconstructed, repaired or restored to the greatest degree of conformance found by the Planning Commission to be reasonable. In addition, any such reconstruction, repair and restoration, or resumption shall be completed within thirty-six (36) months following the damage, or other reasonable time as determined by the Planning Commission.
- B. Except for repairs and maintenance authorized under Section 9.3 above, a nonconforming building or structure or a building containing a nonconforming use shall not be enlarged or altered, unless such enlargement or alteration is in complete conformity with the provisions of this Ordinance.
- C. A nonconforming use shall not be extended to any portion of the lot or extended throughout any part of a building in which it is located that was not lawfully occupied by such a nonconforming use on the effective date of this Ordinance, or any subsequent amendments, unless such extension is in complete conformity with the requirements of this Ordinance.
- D. A Class B nonconforming use, building or structure may not be replaced by another Class B nonconforming use, building or structure. However, a Class B nonconforming use, building or structure may be replaced with a Class A nonconforming use, building or structure if the Planning Commission finds, (following the procedures in subsection 9.4B above), that the new nonconforming use, building or structure qualifies for a Class A designation and that the new nonconforming use, building or structure will not increase the extent or intensity of the nonconformity on the property.

SECTION 9.7 CHANGE OF NONCONFORMING USE, BUILDING OR STRUCTURE

If a nonconforming use, building or structure is changed to a more conforming use, building or structure or is replaced by a conforming use, building or structure, the nonconforming use, building or structure shall not revert to its original nonconforming status.

SECTION 9.8 NONCONFORMING LOTS OF RECORD

The following regulations shall apply to nonconforming lots of record.

- A. Except as provided in subsection 9.8B below, any lot which does not meet the dimensional requirements of the district in which it is located may be used for any purpose authorized within that district. Any required variances may be requested pursuant to the procedures and standards of this Ordinance.
- B. If two (2) or more contiguous lots, parcels or portions of lots or parcels are under the same ownership and do not individually meet the lot width, depth and/or area requirements of this Ordinance, then those contiguous lots, parcels or portions of lots shall be considered an undivided lot or parcel for the purposes of this Ordinance, and no portion of such undivided lot or parcel shall be used or divided in a manner that diminishes compliance with the lot width, depth and/or area requirements established by this Ordinance.

SECTION 9.9 ABANDONMENT OF NONCONFORMING USE, BUILDING OR STRUCTURE

If a property owner has an intent to abandon a nonconforming use, building or structure and in fact abandons this nonconforming use or structure for a period of one (1) year or more, then any subsequent use of the property or structure shall conform to the requirements of this Ordinance. When determining the intent of the property owners to abandon a nonconforming use, building or structure, the zoning administrator shall consider the following factors:

- A. Whether utilities, such as water, gas, and electricity to the property have been disconnected.
- B. Whether the property, buildings, and grounds have fallen into disrepair.
- C. Whether signs or other indications of the existence of the nonconforming use have been removed.
- D. Whether equipment or fixtures necessary for the operations of the nonconforming use have been removed.
- E. Other information or actions that evidence an intention on the part of the property owner to abandon the nonconforming use, building or structure.