

## **ARTICLE FOUR NONCONFORMITIES**

### **SECTION 400            PURPOSE AND INTENT**

Nonconforming lots, structures and uses as defined herein which were lawful before this Ordinance was adopted may continue until they are discontinued, damaged or removed but shall not be encouraged to continue or be duplicated after a period of non-use. These nonconformities are declared by this Ordinance to be incompatible with the buildings and structures and uses of parcels, lots, buildings and structures permitted by this Ordinance. It is further the intent of this Ordinance that such nonconformities shall not be enlarged, expanded or extended except as provided herein nor shall such nonconformities be used as grounds for adding other buildings and structures and uses of parcels, lots, buildings and structures prohibited elsewhere in the same Land Use District.

### **SECTION 401            REGULATIONS**

No nonconforming use of land shall be moved in whole or in part to any other portion of such land, or to a different parcel, not occupied on the effective date or adoption or amendment of this Ordinance, except as provided in this Article Four.

- A. A nonconforming structure and use may not be added to, extended, reconstructed, structurally altered, or expanded during its life except for any one or combination of the following and subject to the following restrictions:
1. Nonconforming Use. If the nature of the nonconformity is a use which is not otherwise allowed in the zoning district, then the use and structures upon which the use is associated shall not be expanded or enlarged in terms of the area devoted to the use, hours of operation or level of service, or any other extension than what exists at the time of adoption of this Ordinance. Under no condition shall the parcel be expanded and the use be expanded to a contiguous parcel.
  2. Nonconforming Dwelling or Retail Use. If the nature of the nonconformity is a use which is a dwelling in the C-1, C-2, C-3, L-I or G-I districts, or a retail business located in the L-I or G-I districts, and such use is not otherwise permitted; then the use and structures associated with it may expand within the standards and regulations applicable to that zoning district as if it were a permitted use. [Annotation: Section 401.A.2 was changed by amendment 07-06, effective 5/29/07]
  3. Nonconforming Developed Parcel. If the nature of the nonconformity is the parcel is too small and already has existing uses and structures; then such structures shall not be expanded more than the lesser of:

- a. Fifty (50) percent of the building area occupied by the structure at the time of adoption of this Ordinance, or
  - b. The Maximum Lot Coverage for the zoning district; and  
any such expansion shall comply with all other provisions of this Ordinance. Nothing here is intended to prevent the acquisition of adjacent land to bring the parcel into compliance, or to lessen the nonconformity if the use is permitted in the respective zoning district.
4. Nonconforming Undeveloped Parcel. If the nature of the nonconformity is the parcel is too small, and the parcel is vacant; then a use or structure shall not be permitted unless contiguous land is added to the parcel, to make the parcel large enough, unless:
    - a. It is documented by the applicant that sufficient contiguous land cannot be purchased, and
    - b. The nonconforming parcel was created by lawful division in full compliance with the zoning ordinance in effect at the time of the division.
  5. Nonconforming Structure. If the nature of the nonconformity is the structure is too small; then the use shall not be expanded by more than fifty (50) percent in hours of operation or level of service, or other similar extension than what exists at the time of adoption of this Ordinance. Nothing here is intended to prevent any amount of addition to the size of the structure, if:
    - a. The size of the structure is the only nonconformity, and
    - b. The addition results in the structure being in full compliance, or as a second choice, closer to compliance.
  6. Nonconforming Yards. If the nature of the nonconformity is any portion of the existing structure is located within a portion of the required front, side or rear yard, the structure may be expanded provided the expansion does not increase the degree of the nonconformity by enlarging any portion of the structure in the required yard in the direction of the adjoining property line.
- B. Nonconforming Condominium. A nonconforming developed or undeveloped parcel shall not be converted to a condominium, except in conformance with this Ordinance. [Annotation: Item B Nonconforming Condominium was added by Amendment Z10-03, effective 10/30/10]

#### **SECTION 402 REPAIRS AND MAINTENANCE**

Nothing in this Ordinance shall prevent the repair, reinforcement, improvement or rehabilitation of nonconforming buildings, structures, or part thereof existing at the effective date of this Ordinance, rendered necessary by wear and tear, deterioration or depreciation; nor prevent compliance with the provisions of the Michigan Construction Code, relative to the maintenance of buildings or structures; provided, however, that the cost of such repair,

reinforcement, improvement, rehabilitation or compliance shall not exceed sixty (60) percent of the reproduction value of such building at the time such work is done; and provided, further, there shall be no change of use which would expand the nonconformity of such building at the time such work is done; and provided, further, there shall be no change of use of said building or part thereof.

**SECTION 403 RECONSTRUCTION AND REPLACEMENT**

- A. No nonconforming building or structure damaged by fire, act of God or other causes to the extent that the damage is total (i.e. the insurance coverage, if it existed, would pay the full replacement cost of the structure) shall be repaired or rebuilt, except in conformity with the provisions of this Ordinance.
- B. Reconstruction, repair or restoration of the structure shall be completed within one (1) year following the damage and resumption of use shall take place within ninety (90) days of completion. The one (1) year timeframe may be extended by the Zoning Board of Appeals if it finds one of the following conditions to exist:
  - 1. The delay was not avoidable due to weather;
  - 2. The delay was a result of an on-going criminal investigation;
  - 3. The delay was a result of a dispute between the owner and an insurance company concerning what is covered by insurance; and
  - 4. The delay was a result of property being held in probate.
- C. When repairing or rebuilding any building which is located in a high risk erosion area, affirmative steps to minimize future erosion damage may be required.

**SECTION 404 COMPLETION**

Nothing in this Ordinance shall require any change in the construction or intended use of a building or structure, the construction of which shall have been diligently prosecuted prior to the passage of this Ordinance or any amendment thereto, and the construction of which shall have been completed within twelve (12) months after said date of adoption or amendment.

**SECTION 405 ABANDONMENT**

Any building, structure or land that has been used for nonconforming purposes but which has not been occupied by such nonconforming use for one (1) year or more shall not thereafter be used unless it conforms to the provisions of this Ordinance. An extension may be granted by the Zoning Board of Appeals for the following reasons:

- A. Property held in Probate;
- B. Insurance settlement in dispute; or

C. Criminal investigation.

**SECTION 406 HISTORIC BUILDINGS**

Historic buildings may be exempt from **Section 401** of this Ordinance and may be expanded. Nonconforming historic buildings may be permitted with prior review and approval by the Commission as provided in the Historic Overlay, Article 20 of this Ordinance, if the proposed expansion or replacement is an enhancement of an historic district, or registered historic building.

**SECTION 407 CHANGE OF OWNERSHIP OR TENANCY**

There may be change of tenancy, ownership or management of an existing nonconforming use, building or structure, provided there is no change in the nature or character of such nonconforming use, building or structure.

**SECTION 408 NONCONFORMING SPECIAL USES**

Uses that previously existed as permitted uses but which under this ordinance are treated as special uses in the district in which they are located, shall not be considered to be nonconforming. Provided, however, that any subsequent change, expansion or adjustment to such use or its associated site shall be undertaken in compliance with this ordinance.

**SECTION 409 MARIHUANA FACILITIES**

- A. No marihuana facility operating or purporting to operate prior to December 15, 2017, shall be deemed to have been a legally existing use nor shall the operation of such marihuana facility be deemed a legal nonconforming use under this Ordinance.
- B. A property owner shall not have vested rights or nonconforming use rights that would serve as a basis for failing to comply with this Ordinance or any amendment thereto.
- C. Discontinuation of a state medical marihuana facility license shall constitute prima facie evidence that a nonconformity has been discontinued. [Annotation: Section 409 Marihuana Facilities was added by amendment Z18-03, effective 3/2/18]