

**ARTICLE XXVI**

**NONCONFORMING LOTS, NONCONFORMING USES OF LAND,  
NONCONFORMING STRUCTURES AND NONCONFORMING  
USES OF STRUCTURES AND PREMISES**

**SECTION 2600 INTENT**

It is the intent of this Ordinance to permit legal nonconforming lots, structures, or uses to continue until they are removed, but not to encourage their survival.

It is recognized that there exists within the districts established by this Ordinance and subsequent amendments, lots, structures and uses of land and structures which were lawful before this Ordinance was passed or amended which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments.

Such uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after passage of this Ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by addition of other uses of a nature which would not be permitted generally in the district involved.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding such demolition or removal shall be deemed to be actual construction, provided work shall be diligently carried on until completion of the building involved.

The following table summarizes the nonconforming regulations contained in this Section:

**SUMMARY OF NONCONFORMING REGULATIONS**

<u>ISSUE</u>	<u>REQUIREMENTS</u>
Period of nonuse before nonconformity must cease	Nonconforming use: 180 days Nonconforming structure: 12 months
Establishment of new conforming use	Not permitted
Change in ownership	No affect on nonconformity
Nonconforming single family use	May be enlarged, subject to conditions
Substitution of one nonconformity for another including change of use	Permitted under certain conditions Landscaping and other site development standards must be met under present Ordinance standards
<u>ISSUE</u>	<u>REQUIREMENTS</u>
Contiguous nonconformity lots under same ownership	Must be combined
Expansion of nonconformity use within building	Permitted subject to conditions
Expansion of nonconformity use beyond existing building	Not permitted

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Enlargement of nonconforming structure or buildings	The nonconformity may not be increased (example: if a front setback is nonconforming, expansion is still permitted to the side or rear providing the front setback is maintained).
Maintenance, structural repairs	Generally permitted
Renovation, modernization	Maximum value: 25% of fair market value
Rebuilding after catastrophe	Permitted if damage is less than 50% of pre-catastrophe fair market value

### SECTION 2601 DEFINITIONS

For the purposes of this section, the following words and phrases shall have the meaning ascribed to them:

- a. **Effective Date:** Whenever this article refers to the "effective date," the reference shall be deemed to include the effective date of any amendments to this Ordinance if the amendments created a nonconforming situation.
- b. **Nonconforming Building:** A building or portion thereof which was lawfully in existence at the effective date of this Ordinance, or amendments thereto, that does not meet the limitations on building size, location on a lot, or other regulations for the district in which such building is located.
- c. **Nonconforming Lot:** A lot which was lawfully in existence at the effective date of this Ordinance, or amendments thereto, that does not meet the minimum area or lot dimensional requirements of the district in which the lot is located.
- d. **Nonconforming Use:** A use which was lawfully in existence at the effective date of this Ordinance, or amendment thereto, and which does not now conform to the use regulations of this Ordinance for the zoning district in which it is now located.
- e. **Structural Nonconformity:** A nonconformity that exists when the height, size, or minimum floor space of a structure, or the relationship between an existing building and other buildings or lot lines, does not conform to the standards of the district in which the property is located. Also sometimes referred to as a Dimensional Nonconformity.

### SECTION 2602 NONCONFORMING LOTS

Any nonconforming lot shall be used only for a use permitted in the district in which it is located. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot or record at the effective date of adoption or amendment of this Ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district; provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Yard requirement variances may be obtained through approval of the Board of Appeals.

If two or more lots or combination of lots with contiguous frontage in single ownership are of record at the time of adoption or amendment of this Ordinance, and if all or part of the individual lots do not meet the requirements established for lot width and area, the lots involved shall be considered to be an individual parcel for the purposes of this Ordinance. No portion of said parcel shall be used, occupied, or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of an parcel be made which creates a lot with width or area less than the requirements stated in this Ordinance. These provisions shall not apply to contiguous lots in single ownership where each of the lots is occupied by an dwelling unit.

Upon application, the Building and Zoning Administrator may permit the combination, in whole or in part, of nonconforming lots of record into building sites less than the size requirements established by this Ordinance, provided that the combination of lots reduces the degree of

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nonconformity and results in a parcel which is capable of accommodating a structure that is in conformance with the building area, setback, and side yard requirements of this Ordinance.

**SECTION 2603 NONCONFORMING USES OF LAND**

Where, at the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is made no longer permissible under the terms of this Ordinance as enacted or amended such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- a. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
- b. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance;
- c. If such nonconforming use of land ceases for any reason for a period of more than thirty (30) days, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located.
- d. Where non-conforming off-street parking, landscaping, signage, fences, and other similar land uses exist, those uses shall be made to conform to the terms of this Ordinance when any use, principal or accessory, is expanded either by expansion of the main building or the addition of an accessory building, necessitating site plan changes.

**SECTION 2604 NONCONFORMING STRUCTURES**

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a. No such structure may be enlarged or altered in a way which increases its nonconformity. Such structures may be enlarged or altered in a way which does not increase its nonconformity.
- b. Should such structure be destroyed by any means to an extent of more than sixty (60) percent of its replacement costs, exclusive of the foundation, it shall be reconstructed only in conformity with the provisions of this Ordinance.
- c. Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is removed.
- d. Any nonconforming structure or any structure or portion thereof containing a nonconforming use, may be altered if such alteration serves to decrease the nonconforming nature of the structure or use. The Zoning Board of Appeals shall determine if a proposed alteration will decrease the degree of nonconformity.

**SECTION 2605 NONCONFORMING USES OF STRUCTURES AND LAND**

If a lawful use of a structure, or of structure and land in combination, exists at the effective date of adoption or amendment of this Ordinance, that would not be permitted in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- b. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, and which existed at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.

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- c. If no structural alterations are made, any nonconforming use of a structure, or structure and land in combination, may be changed to another nonconforming use of the same or a more restricted classification provided that the Board of Appeals, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Appeals may require conditions and safeguards in accord with the purpose and intent of this Ordinance. Where a nonconforming use of a structure, land, or structure and land in combination is hereafter changed to a more conforming use, it shall not thereafter be changed to a less conforming use.
- d. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which such structure is located, and the nonconforming use may not thereafter be resumed.
- e. When a nonconforming use of a structure, or structures and land in combination, is discontinued or ceases to exist for six (6) consecutive months or for eighteen (18) months during any three-year (3-yr.) period, the structure, or structure and land in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located. Structures occupied by seasonal uses shall be excepted from this provision.
- f. Where nonconformity use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

### **SECTION 2606 NONCONFORMING SITES**

The intent of this Section is to permit improvements and minor modifications, as described in Article XXIII, Landscape Standards and Article XXIV, Site Plan Review, to a conforming use and building which does not meet all of the various site improvement related regulations of this Zoning Ordinance. The purpose is to allow gradual compliance with the site related requirements for sites which predate the various Zoning Ordinance standards for landscaping, paving and other non safety site related items.

Such improvements or expansions may be permitted without a complete upgrade of all site elements under the following conditions:

- a. The applicant is proposing reasonable site improvements in relation to the scale and construction cost of the building improvements or expansion.
- b. The applicant has addressed safety related site issues.
- c. The applicant has upgraded the site landscaping consistent with Section 2302.
- d. The improvements or minor expansion will not increase noncompliance with site requirements.
- e. A sketch plan shall be submitted in accordance with Section 2403.

### **SECTION 2607 REPAIRS AND MAINTENANCE**

On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing to an extent not exceeding fifty (50) percent of the assessed value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this Ordinance shall not be increased.

Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

### **SECTION 2608 USES UNDER EXCEPTION PROVISIONS NOT NONCONFORMING USES**

Any use for which a special exception is permitted as provided in this Ordinance shall not be deemed a nonconforming use, but shall, without further action, be deemed a conforming use in such district.

### **SECTION 2609 CHANGE OF TENANCY OR OWNERSHIP**

There may be a change of tenancy, ownership, or management of any existing nonconforming uses of land, structures and land in combination.

**SECTION 2610 ACQUISITION OF NONCONFORMING USES**

The City Council may acquire, by purchase, condemnation, or otherwise, private property, or an interest in private property, for the purpose of removing nonconforming uses. The cost and expense, or a portion thereof, of acquiring the private property may be paid from general funds or assessed to a special district in accordance with the applicable statutory provisions relating to the creation and operation of special assessment districts. The elimination of nonconforming uses and structures in a zoned district as provided is declared to be for a public purpose for a public use. The City Council may institute and prosecute proceedings for the condemnation of nonconforming uses and structures under the power of eminent domain in accordance with the provisions of the City Charter relative to condemnation, or in accordance with Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.41 of the Michigan Compiled Laws, or any other applicable statute.