

ARTICLE 39

NONCONFORMITIES

SECTION 39.01. Intent and Purpose

It is recognized that there exists within the districts established by this Ordinance lots, structures, sites and uses which were lawful prior to the effective date of adoption or amendment of this Ordinance, but that may be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. Such uses, structures, sites, and lots are declared to be incompatible with permitted uses in the districts involved. It is the intent of this Ordinance to permit such nonconformities to continue until they are removed.

This Article is hereby established to:

- Regulate the use and development of nonconforming lots, completion, alteration or reconstruction of nonconforming structures, redevelopment or improvement of nonconforming sites, and maintenance, extension or substitution of nonconforming uses.
- Specify the limited conditions and circumstances under which nonconformities shall be permitted to continue.
- Establish standards for determining whether a use is nonconforming, and whether a nonconforming use has ceased to occupy a particular lot.

SECTION 39.02. Scope

Except as otherwise provided in this Article, any nonconforming lot, use, site or structure lawfully existing on the effective date of this Ordinance or subsequent amendment thereto may be continued so long as it remains otherwise lawful. All nonconformities shall be encouraged to convert to conformity wherever possible, and shall be required to convert to conforming status as required by this Article.

SECTION 39.03. 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. Expansion Restricted

A nonconforming structure may be altered in a manner that does not increase or intensify its nonconformity. Alterations to a nonconforming structure that increase or intensify a nonconformity shall be prohibited.

B. Normal Repairs and Maintenance

This Ordinance shall not prevent work required for compliance with the provisions of the state construction code enforced by the Township. Normal repair, maintenance or replacement of interior non-bearing walls, fixtures, wiring, plumbing or heating and cooling systems (“Minor Improvements”) in 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, and provided that the cost of such improvements does not exceed the state equalized value (as determined by the Township Assessor or assessing agent) of the structure at the time such work is proposed.

It is recognized that the need for more significant improvements may be identified while Minor Improvements are being made. In such cases, the person making the Minor Improvements shall immediately cease work and seek approval for any additional improvements, repairs or reconstruction from the Building Official who shall only permit additional work if the cost of such work does not exceed the state equalized value of the structure (as determined by the Township Assessor or assessing agent) before the Minor Improvements were begun and if all work complies with the state construction code enforced by the Township. If both conditions are not met, then the structure shall not be rebuilt, repaired, or reconstructed, except in complete conformity with the provisions of this Ordinance.

C. Buildings under Construction

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 adopting 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 positions 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 that work shall be diligently carried on until completion of the building involved.

D. Damaged or Unsafe Structures

A non-conforming structure damaged as a result of a natural disaster may be restored to its pre-damaged status if the damage did not reduce its pre-damaged fair market value by more than fifty (50%) percent (as determined by the Township Assessor or assessing agent). A non-conforming structure that is deconstructed, damaged, demolished or removed by the action of any person and/or damaged by a natural disaster in excess of fifty (50%) percent of the structure’s pre-action fair market value shall not be rebuilt, repaired, or reconstructed, except in complete conformity with the provisions of this Ordinance and only if specifically authorized by this Ordinance. A “natural disaster” for purposes of this Section includes fire, wind, tornado, flooding or other Act of God.

Nonconforming structures that are declared to be physically unsafe by the Building Official shall not thereafter be restored, repaired or rebuilt.

E. Exemption for Certain Residential Dwellings

It is recognized that in some instances a strict prohibition against expansion of nonconforming structures may create an undue hardship on the owner of a single-family dwelling unit. In such instances, minor modifications of such structures may be reasonable and necessary to preserve or improve the quality of the neighborhood provided such modifications do not threaten public health, safety or welfare nor prevent the reasonable use of neighboring property. The Building Official may grant exceptions that allow expansion of a nonconforming one family dwelling or detached accessory structure in a way that increases the building's nonconformity if the expansion will satisfy one or more of the following criteria:

1. Where a dwelling and/or detached accessory structure is nonconforming due to insufficient side, rear or front yards a second story may be allowed provided the exterior walls of the second story encroach no further into any required yard than the existing walls of the structure.
2. An addition which serves to square off a dwelling and/or detached accessory structure, that is an addition to the walls of which are no closer to any property line than the closest walls of the existing dwelling and/or detached accessory structure, may be allowed however, provided the addition should not increase the floor area in the required yard by more than one hundred (100%) percent.
3. An addition which increases the first-floor area of a dwelling and/or detached accessory structure, adds additional building area in a required yard but is not simply squaring off the building as discussed above shall be permitted if all the following conditions are satisfied:
 - a. The addition will not encroach further into any required yard than the existing dwelling and/or detached assessor structure;
 - b. No more than five (5%) percent of the floor area of the addition may encroach into a required yard; and
 - c. The addition shall comply with all other requirements of this Ordinance, for example the addition shall not encroach into any other required yard area into which the original does not encroach and shall comply with building spacing requirements.

The proposed expansion of the nonconforming structure and resulting structure shall conform with the character of existing development in the area and shall comply as closely as can reasonably be expected with the provisions of this Ordinance.

F. Nonconforming Signs.

See Article 30 (Nonconforming Signs).

G. Exemption for Replacement of Nonconforming Fences.

It is recognized that there exist fences which were lawful prior to the effective date of adoption or amendment of this Ordinance, but that may be prohibited under the terms of this Ordinance or future amendments. It is further recognized that fences, by the unique nature of their form and means of construction, are susceptible to damage and/or deterioration that warrants their reconstruction or replacement. It is the intent of this Section to allow a legal nonconforming fence that is not constructed in a statutory road right-of-way to be reconstructed or replaced – either in whole or in part – in a manner that does not increase its nonconformity.

1. A legal nonconforming fence may be reconstructed and/or replaced if the nonconforming nature of the fence is not expanded as determined by the Building Official or his/her designee. Any replacement fence shall consist of the same percentage of building materials as the fence it is replacing, or alternative materials of a higher quality as determined by the Building Official. The nonconforming fence shall be replaced within thirty (30) days of its removal or the right to replace the nonconforming fence is lost.
2. The determination of the Building Official or his/her designee may be appealed to the Zoning Board of Appeals (ZBA) per the Administrative Appeals procedures of Article 41 (Zoning Board of Appeals)

SECTION 39.04. Nonconforming Lots of Record

Existing lots of record that are not in compliance with the dimensional requirements of this Ordinance shall only be used, developed, or improved in accordance with the following:

A. Lot Division and Combination

A lot of record shall not be divided in a manner that would increase its nonconformity, cause an existing structure or site improvement to become nonconforming, or create one or more nonconforming lots. Where possible, nonconforming lots of record shall be combined to create lots that comply with the dimensional requirements of this Ordinance.

B. Use of Nonconforming Lots

1. Single Lot of Record. Use of a nonconforming lot of record shall be subject to the regulations of this Ordinance for the district where it is located. In any district in which single family dwellings are permitted, a single family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in

separate ownership and not of continuous frontage with other lots in the same ownership. 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 requirements other than these applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.

Variances from yard requirements shall be obtained only through action of the Board of Appeals, except in the case of front yard setbacks, where the Building Director may grant a permit for a building, where said building is to be built with a setback that is no closer than the average setback of forty (40%) percent of the developed frontage on the block (same street) or five hundred (500) feet each way, whichever is the lesser. In no case, however, may the Building Director grant a permit which allows a building to be built closer than twenty (20) feet to the front property line.

2. Two or More Contiguous Lots Under Single Ownership. If two (2) or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this Ordinance, except under the condition that all the following standards are complied with:
 - a. The lots shall be part of a platted subdivision where the lots therein were in compliance with the zoning regulations in effect at the time of platting.
 - b. The division does not create any lot smaller than the original single platted lots.
 - c. Yard requirements and other requirements of the zoning district in which the lots are located, not including lot area or width are met.
 - d. The lots can each be proven to individually support adequate on site sanitary sewage disposal and water supply or can be connected to a public or community sanitary sewer and water system.
 - e. A minimum of eighty (80%) percent of the similarly situated developed lots in the platted subdivision shall have a lot width and area no greater than that of the subject property. Similarly situated shall, in this instance, mean those lots which share common features of location such as lake front, or off lake lots, or lots located on a main road or other distinguishing characteristics which may have caused the subject property and those lots deemed similar to have been developed and or combined in a fashion substantially dissimilar to the remainder of the developed lots in the platted subdivision.

SECTION 39.05. Nonconforming Sites

The purpose of this Section is to encourage improvements to existing sites in the Township that were developed before the site design standards of this Ordinance were established or amended. This Section establishes standards for prioritizing improvements to existing sites that are intended to gradually bring the site into compliance with current Ordinance standards. Nonconforming sites may be improved or modified without a complete upgrade of all site elements, subject to the following conditions:

1. A nonconforming site shall not be improved or modified in a manner that increases its nonconformity.
2. The proposed site improvements shall resolve public safety deficiencies, including building and fire code violations, emergency access and pedestrian/vehicle conflicts.
3. 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, as determined by the Planning Commission.
4. The proposed site improvements shall include the installation, restoration or expansion of sidewalks within and through the site, where appropriate.

A reasonable timeline for completion of site improvements to a nonconforming site may be approved as part of any plan approval. Failure to complete improvements in accordance with an approved timeline shall be deemed a violation of this Ordinance.

SECTION 39.06. Nonconforming Uses

Nonconforming uses shall be allowed to continue after the effective date of this Ordinance or amendments thereto, subject to the following:

A. Compliance with Other Applicable Standards

Nonconforming uses shall be maintained in compliance with all applicable federal, state, and local laws, the Commerce Charter Township Code, ordinances, regulations and codes, other than the specific use regulations for the zoning district where the use is located.

1. The owner, operator or person having beneficial use of land or structures occupied by a nonconforming use shall be responsible for demonstrating compliance with this requirement.
2. Failure to do so, or failure to bring the use into compliance with current laws, the Commerce Charter Township Code, ordinances, regulations and codes within 180 days 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. Expansion Prohibited

Nonconforming uses shall not be enlarged, increased in intensity, extended to occupy a greater area of land or floor area, or moved in whole or in part to any other portion of the lot or structure.

C. Cessation

A nonconforming use that ceases for a period of more than 365 days or is superseded by a conforming use shall not be resumed. The legal nonconforming status of a use shall end if the use ceases with an intent to abandon it. If a structure associated with a nonconforming use is removed, or damaged by any means to an extent that the repair cost exceeds the state equalized value of the property, the nonconformity shall be deemed removed. All subsequent uses shall conform to the use provisions of this Ordinance.

SECTION 39.07. Nonconforming Use Determinations

This Section is intended to provide reasonable standards for determining whether a use is nonconforming, and whether a nonconforming use has been removed, discontinued or otherwise ceased to occupy the land or structure in question. When there is a question or dispute about the status of a particular use, such determinations shall be made in writing by the Township Building Director, with specific findings identified and a copy placed in the property file. Such determinations shall be subject to the following:

A. Standards for Determining that a Use is Nonconforming

The Building Director shall determine that a use is nonconforming upon finding that the following three (3) statements are true:

1. The use does not conform with the purpose and use regulations of the district where it is located.
2. The use is in compliance with all other applicable federal, state, and local laws, the Commerce Charter Township Code, ordinances, regulations and codes.
3. Evidence from a minimum of three (3) of the following sources demonstrates that the use was lawfully established prior to the effective date of adoption or amendment of this Ordinance:
 - a. Local, county or state government files or records, including but not limited to permits, inspection reports, dated photographs or notarized statements of government officials, agents, representatives or employees.
 - b. Dated telephone directories, or similar dated records that provide information about the occupants or uses located on a street by address or lot number.

- c. c. Utility records, including but not limited to providers of water, sewer, electric, natural gas or telecommunications service.
- d. d. Dated advertising or other information published in a newspaper or magazine including but not limited to advertisements, articles, features or photographs that address the use of the land in question.
- e. e. Dated aerial photos from Oakland County, the Southeastern Michigan Council of Governments (SEMCOG) or other sources accepted by the Building Director.
- f. Other relevant information, including but not limited to date-stamped photographs, diary or log entries, affidavits or notarized statements.

B. Standards for Determining that a Nonconforming Use has Ceased

The Building Director shall determine that a nonconforming use has been removed, discontinued or otherwise ceased to occupy the land or structure in question upon finding that a minimum of three (3) of the following six (6) statements are true:

1. Local, county or state government files or records show that the nonconforming use has ceased. Such evidence may include, but shall not be limited to permits, inspection reports, dated photographs or notarized statements of government officials, agents, representatives or employees.
2. Dated telephone directories, or similar dated records that provide information about the occupants or uses located on a street by address or lot number, show that the nonconforming use has ceased. Such evidence may include, but shall not be limited to entries that show the address associated with the use as vacant or occupied by another use, or show the telephone number associated with the use as disconnected or in use at another location.
3. Utility records, including, but not limited to providers of water, sewer, electric, natural gas or telecommunications service, show that the nonconforming use has ceased. Such evidence may include, but shall not be limited to records indicating that the address of the use is vacant or occupied by another use, the utility service associated with the use has been disconnected or the business, organization or individual associated with the use has moved to another location.
4. Dated advertising or other information published in a newspaper or magazine show that the nonconforming use has ceased. Such evidence may include, but shall not be limited to advertisements, articles, features or photographs that address the use of the land in question.
5. Dated aerial photos from Oakland County, the Southeastern Michigan Council of Governments (SEMCOG) or other sources as accepted by the Building Director show that the nonconforming use has ceased.

6. Other relevant information shows that the nonconforming use has ceased. Such evidence may include, but shall not be limited to date-stamped photographs, diary or log entries, affidavits or notarized statements.

SECTION 39.08. Cessation of a Nonconforming Use by Township Action

The elimination of nonconforming structures and uses shall be considered to be for a public purpose and for a public use. The Township Board of Trustees shall have the authority to institute and prosecute proceedings for the condemnation of nonconforming uses and structures under the power of eminent domain, in accordance with Public Act 359 of 1947, as amended. The Township Board may, at its discretion, acquire private property by purchase, condemnation or otherwise for the purpose of removing a nonconforming use or structure, provided that the cost of acquiring such private property be paid from general funds or assessed to a special district established for that purpose.

SECTION 39.09. Substitution of Nonconforming Uses

A nonconforming use may not be substituted with another nonconforming use and shall be considered an unlawful use established in violation of this Ordinance.

SECTION 39.10. Unlawful Uses

There are two categories of permitted uses: conforming uses and legal nonconforming uses. All other uses shall be considered unlawful uses established in violation of this Ordinance.

SECTION 39.11. Change of Tenancy or Ownership

Change of tenancy, ownership or management does not change the nonconforming status of any existing nonconforming lot, structure, site or use.