

ARTICLE 18
NONCONFORMING USES, LOTS, OR STRUCTURES
(entire Article amended February 6, 2009)

18.1 INTENT AND PURPOSE

- A. Nonconforming Uses:
It is the intent of this Article to allow nonconforming uses of lots, and buildings in the Township to continue, but to limit expansion of nonconforming uses so as to protect the rights of adjacent property owners and occupants.
- B. Nonconforming Lots:
It is the further intent of this Article to allow the use of nonconforming lots until such time as these lots come into common ownership with adjacent lots.
- C. Nonconforming Buildings:
Buildings that are nonconforming may continue but shall only be expanded if in full compliance with the regulations of this Ordinance.
- D. Structures and Buildings within Flood Hazard Areas:
All structural changes or repairs to buildings and structures located within any Flood Hazard Area shall be in full compliance with the state building code and environmental protection regulations, as well as, federal flood insurance and disaster relief policies.

18.2 NONCONFORMING USES

Except where specifically provided to the contrary, and subject to the provisions of this article, the lawful use of any building or structure or of any land or premises which is existing and lawful on the effective date of this ordinance, or in the case of an amendment of this ordinance, then, on the effective date of such amendment, may be continued although such use does not conform with the provisions of this ordinance or any amendment thereto.

- A. A nonconforming use shall not be:
 - 1. Changed to any other nonconforming use, unless the change makes the use less nonconforming.
 - 2. Re-established after discontinuance, vacancy, lack of operation, or otherwise for a period of one (1) year.
 - 3. Re-established after it has been changed to a conforming use.

- B. A nonconforming structure occupied by a nonconforming use shall not be structurally changed unless the change makes the structure less nonconforming. Except as provided in Article 13 Special Uses. See also Section 18.05.

18.3 NONCONFORMING LOTS

- A. **Common Ownership of Nonconforming Lots.**
Where two or more nonconforming lots are adjacent to each other and in common ownership, such lots will be combined so that the lot or lots created by this combination comply or come closer to compliance with the minimum requirements of this ordinance.
- B. **Creation of Nonconforming Lots Prohibited.**
No lot or lots in common ownership and no court, parking area, or other space shall be reduced to less than the minimum required under this ordinance. No lot or other area shall be further reduced if already less than the minimum required in this ordinance. No portion of an existing lot of record or tract shall be sold if the newly created lot does not meet the area and dimension requirements of the district in which it is located.
- C. **Use of Nonconforming Lots Allowed.**
If a lot which is platted or a parcel otherwise of record as of the effective date of this ordinance, does not comply with the area and/or width requirements of its zoning district, then such lot may be used for a use allowed in the zoning district in which it is located provided that:
 - 1. The property owner (current or past) has not owned concurrently any adjacent parcel, lot or other property since the minimum lot dimension requirements for that zoning district in which the lot is located have been in effect.
 - 2. There is complete compliance with all setback requirements for the zoning district in which the lot is located.
 - 3. No permit shall be issued for the construction of a building or structure in which there will be drinking water and/or sanitary facilities if such water supply and/or sewage disposal facilities do not comply with the rules and regulations governing such facilities of the Allegan County Health Department and/or the state of Michigan.

18.4 NONCONFORMING BUILDINGS OR STRUCTURES

- A. Generally:
Except where specifically provided to the contrary and subject to the provisions of this article, a building or structure which is existing and lawful on the effective date of this ordinance, or, in the case of an amendment of this ordinance, then on the effective date of such amendment, may be maintained and continued although such building or structure does not conform with the provisions of this ordinance or any amendment thereto.
- B. Reference 18.05 and 18.06:
A nonconforming structure occupied by a nonconforming use shall not be structurally changed except in conformance with 18.05 and/or 18.06 below.
- C. Expansion of a Conforming Use Structure:
1. Except for structures located within a Flood Hazard Area or encroaching upon a public right-of-way, structures that are nonconforming by reason of required setbacks but are conforming as to use shall be allowed to expand so long as any expansion is fully conforming at every structural level and if the existing structure, is a dwelling, it shall be in compliance with Section 3.11 Dwelling Requirements, sub-sections C and I.
 2. Any proposed expansion or addition to an existing dwelling that is nonconforming to Section 3.11 Dwelling Requirements, sub-sections C and I, shall be prohibited. Excludes decks that are open and not supported by the dwelling.
 3. The portion of such structure that is nonconforming as to setback shall not be expanded or added to at any structural level.
- D. Reconstruction of a Conforming Use Structure:
1. Except in Flood Hazard Areas or within a public right-of-way, such structures may be partially reconstructed, up to no more than 75% of the value of the existing structure, on the same footprint and so long as there is no increase in the useable floor area or footprint of the non-conforming portion of the structure.
 2. Where a nonconforming single family dwelling occupied by a conforming use is destroyed by accident, act of a public enemy, or act of God (except in a Flood Hazard Area or within a public right-of-way) such structure may be completely restored on the same footprint and useable floor area so long as there is no increase in the useable floor area, except that any dwelling not in compliance with Section 3.11 Dwelling Requirements, shall only be replaced by a structure that meets the minimum requirements of Section 3.11.

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18.5 RESTORATION, REPAIR AND STRUCTURAL CHANGES OF BUILDINGS OR STRUCTURES CONTAINING A NONCONFORMING USE.

- A. Minor Repair: Repair or replacement of nonbearing walls, fixtures, wiring, or plumbing may be performed in or on a nonconforming structure or portion of a structure containing a nonconforming use provided:
1. During any consecutive 12-month period, the extent of repair or replacement shall not exceed 10 percent of the current replacement cost of the nonconforming structure.
 2. Cubic volume of the structure shall not be increased.
- B. Major Repair: Except as provided in 18.06, where there is any nonconforming structure containing a nonconforming use, and repair or replacement of bearing walls, foundation or roof is needed then such repair or replacement shall only take place under the following conditions:
1. If the nonconforming structure or portion of the structure containing a nonconforming use is declared by the Township Building Official to be physically unsafe or unlawful due to physical condition, such structures shall not be reconstructed or rebuilt except in conformity with the current regulations of the district in which it is located.
 2. A building damaged by fire, collapse, or an act of God (except a flood) to such an extent that the cost of repair exceeds 75 percent of the assessed value of the structure at the time the damage occurred, may be repaired or reconstructed on the same foot-print so long as there is no increase in the useable floor area. If the structure to be reconstructed or repaired is proposed to be altered in any way from the original then all such work shall be in full compliance with the provisions of the zoning district in which it is located, Section 3.11 Dwelling Requirements, and the state construction code requirements for new construction.
 3. A building damaged by wear and tear, deterioration, and depreciation to the extent that the cost of rehabilitation exceeds 75 percent of the assessed value of the structure existing at the time when the repairs or rehabilitation is proposed to be made shall be repaired or rehabilitated according to the provisions of this ordinance and the state construction code requirements for new construction.
 4. A building permit shall be obtained for the reconstruction of a building. The assessed value of the structure, prior to the start of construction (or prior to the damage to be repaired), shall be determined by the Township

Assessor using state guidelines for such estimate. The cost of reconstruction shall be determined by the building official using either standard construction cost factors or a comparison of bids or both.

18.6 EXPANSION OF LEGAL PRE-EXISTING NONCONFORMING COMMERCIAL USES

Expansion of a legal pre-existing nonconforming commercial use may be allowed as a special land use provided all lot size provisions in the C-1 Business District can be met and that the requirements and standards of Article 13 Special Uses are satisfied.

18.7 BUILDINGS OR STRUCTURES LOCATED WITHIN A FLOOD HAZARD AREA

For all buildings and structures located within a Flood Hazard Area, any repair, reconstruction or improvement of such structure, the cost of which equals or exceeds 50% of the assessed value of the structure either, (1) before the improvement or repair started, or (2) if the structure is damaged and is being restored, before the damage occurred, shall comply with the following standards:

- A. All new construction, replacement, or improvement of residential structures shall have the lowest floor, including basement, elevated to at least one (1) foot above the base flood level.
- B. All new construction, replacement or improvement of non-residential structures shall have either:
 - 1. The lowest floor, including basement, elevated to at least one (1) foot above the base flood level; or
 - 2. Be constructed such that below the base flood level, together with utility and sanitary facilities, the structure is watertight with walls substantially impermeable to the passage of water and the structural components having the capability of resisting hydrostatic and hydrodynamic loads and effective buoyancy in full compliance with the state building code.

For the purpose of this section “improvement” shall be when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure. The term does not include any project for improvement of a structure to comply with existing state health, sanitary or safety code specifications which are solely necessary to assure safe living conditions.