

ARTICLE 21.0 NONCONFORMITIES

Section 21.01 Intent.

It is recognized that there exists within the zoning districts established by this Ordinance single-family dwellings, lots of record, land uses, structures, and sites that were lawful before this Ordinance was adopted or amended and which would be prohibited under the terms of this Ordinance. Such nonconformities are hereby declared to be incompatible with permitted uses in the districts involved. This Article establishes specific standards and procedures for determining whether a land use is nonconforming or unlawful, and for determining whether a nonconforming use has ceased to occupy a particular lot or parcel.

It is the intent of this Article to permit legally nonconforming single-family dwellings, lots of record, land uses, structures, and sites to continue until they are removed but not to encourage their survival. Such nonconformities shall not be used as grounds for adding other structures or uses prohibited elsewhere in the same district. Nonconformities shall not be enlarged upon, expanded or extended, except under limited conditions as established by this Article.

A. Classification of Nonconformities.

Nonconformities shall be classified in one of the following categories:

1. Nonconforming single-family detached dwellings (Section 21.04);
2. Nonconforming lots of record (Section 21.05);
3. Nonconforming uses (Section 21.06);
4. Nonconforming structures (Section 21.07); and
5. Nonconforming sites (Section 21.08).

B. Establishment of Nonconformities.

To be considered a nonconformity under this Ordinance, the lot, use, site or structure must have been in compliance with the zoning requirements which were lawful when it was established, but must be, except for the provisions of this Article, prohibited, regulated, or restricted by the enactment of this Ordinance or subsequent amendments thereto. Nonconformities shall be established by one (1) of the following methods:

1. The nonconformity shall have been a legal nonconformity under the former zoning ordinance and continue to be designated as nonconforming under the provisions of this Ordinance or subsequent amendments thereto;
2. The nonconformity shall have been a legal conformity under the former zoning ordinance and made nonconforming by the provisions of this Ordinance or subsequent amendments thereto; or
3. The nonconformity shall have been created by a lawful public taking or actions pursuant to a court order having the same effect as a violation of this Ordinance.

Section 21.02 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. The Zoning Administrator shall be responsible for determining whether a use is conforming, nonconforming or unlawful in the zoning district where it is located, after consultation with the Township Planner. When there is a question or dispute about the status of a particular use, such determinations shall be made by the Zoning Board of Appeals, subject to the following:

A. Standards for Determining that a Use is Nonconforming.

When there is a question or dispute about the status of a particular use, the Zoning Board of Appeals shall determine that a use is nonconforming upon finding that the following three (3) statements are true:

1. **The use does not conform to 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, 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. Utility records, including but not limited to providers of water, sewer, electric, natural gas or telecommunications service.
 - 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. Dated aerial photos from the State of Michigan, Bay County or other sources accepted by the Zoning Board of Appeals.
 - 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.

See Section 21.06A (Cessation).

Section 21.03 Unlawful Uses.

Any use that is not a conforming use in the district where it is located, or determined to be a nonconforming use, shall be considered an unlawful use established in violation of this Ordinance.

Section 21.04 Nonconforming Single-Family Detached Dwellings.

It is the intent of this Section to regulate the alteration and reconstruction of nonconforming single-family detached dwellings and customary accessory structures consistent with the intent and purposes of this Article and Ordinance, and in a manner that avoids unnecessary hardship for homeowners seeking mortgage financing or homeowner's insurance coverage for a nonconforming dwelling. Accordingly, the provisions of Section 21.06 (Nonconforming Uses) and Section 21.07 (Nonconforming Structures) shall not apply to such nonconforming dwellings and accessory structures as regulated under this Section.

Nonconforming single-family detached dwellings and customary accessory structures may be used, repaired, expanded, altered, or replaced if destroyed, subject to the following:

A. Dwelling as a Nonconforming Use.

An existing, lawfully established single-family dwelling and customary residential accessory structures located in a non-residential zoning district may be repaired, altered, or replaced if destroyed, provided that:

1. Such work shall conform to all applicable standards of this Ordinance as if the lot and use were located in the residential zoning district most similar in terms of the minimum lot width and area requirements to the size of the subject lot.
2. The use, dwelling, and accessory structures shall be maintained in conformance with all other applicable federal, state, and local laws, ordinances, regulations and rules.

B. Dwelling as a Nonconforming Structure.

Where an existing, lawfully established single-family dwelling is a nonconforming structure with respect to the requirements of this Ordinance, the following standards shall apply:

1. Structural alterations to a nonconforming single-family dwelling that decrease or do not affect the degree of nonconformity shall be permitted. The dwelling may be expanded, provided that:
 - a. The addition shall conform to the dimensional standards and other requirements of the zoning district in which it is located.
 - b. With the alteration, all structures on the lot shall not exceed the maximum lot coverage for the district in which the lot is located.
2. All repairs and maintenance shall conform to the State Construction Code and all other applicable code requirements. A damaged structure shall be adequately secured, and shall be protected against further damage from the elements.

3. A nonconforming single-family dwelling may be reconstructed or replaced if destroyed, provided that:
 - a. Any replacement dwelling shall conform to the dimensional standards of the zoning district where it is located, except where, in the determination of the Zoning Administrator, existing site conditions would prevent reasonable conformance. In such cases, the dwelling may be reconstructed at a location within the lot that maximizes compliance with the dimensional standards of this Ordinance in accordance with the following priorities:
 - (1) Minimum front yard setback (highest priority).
 - (2) Minimum side yard setback (second highest priority).
 - (3) Minimum rear yard setback (third highest priority).
 - (4) All other standards of Article 5.0 (Schedule of Regulations).
 - b. Application for a building permit for reconstruction or replacement of a destroyed dwelling shall be made within 365 calendar days of the date of such damage, and all work shall be completed within the building permit approval period. Where pending insurance claims require an extension of time, the Zoning Administrator may grant one (1) extension of up to 365 calendar days, provided that the property owner submits a certification from the insurance company attesting to the delay.
 - c. A nonconforming dwelling moved within a lot or to another lot shall thereafter conform to the regulations of the zoning district in which it is located.
4. If a nonconforming dwelling becomes physically unsafe or unlawful due to a lack of repairs or unsecured exposure to the elements, or is declared to be unsafe or unlawful by reason of physical condition under the State Construction Code or applicable fire or property maintenance codes, it shall not thereafter be restored, repaired or rebuilt except in conformity with all Ordinance requirements.

Section 21.05 Nonconforming Lots.

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:

1. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customarily accessory building may be erected on any single, legally established lot of record at the effective date of adoption or amendment of this Ordinance, provided the building site width is not less than 40 feet and the area is not less than 4,800 square feet. 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.

2. If two or more lots, or combinations of lots and portions of lots with continuous frontage are in single ownership and are of record at the time of adoption 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 parcels involved shall be considered an undivided parcel for purposes of this Ordinance. No portion of said parcel shall be used or sold in any manner that diminishes compliance with lot width and area requirements established by this Ordinance. No division of any parcel or lot shall be made which creates a lot with a width or area below the minimum requirements of this Ordinance.

Section 21.06 Nonconforming Uses.

Single-family detached dwellings that are a nonconforming use in the zoning district shall be subject to the standards of Section 21.04 (Nonconforming Single-Family Detached Dwellings). All other nonconforming uses shall be allowed to continue after the effective date of this Ordinance or amendments thereto, subject to the following:

A. Cessation.

A nonconforming use that ceases for a period of more than 365 calendar days or is superseded by a conforming use shall not be resumed. 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 all Ordinance requirements.

When determining the intent of the property owner to abandon a nonconforming use, or when there is a question or dispute about the status of a particular use, the Zoning Board of Appeals 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 showing the address associated with the use as vacant or occupied by another use, or showing 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 State of Michigan, Bay County or other sources as accepted by the Zoning Board of Appeals show that the nonconforming use has ceased.**
6. **Other relevant evidence 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 showing that the property, buildings or grounds have fallen into disrepair; that inventory, equipment or fixtures necessary for operation of the nonconforming use have been removed; or that otherwise indicate the nonconforming use has ceased.

B. Compliance with Other Applicable Standards.

Nonconforming uses shall be maintained in compliance with all applicable federal, state, and local laws, 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, 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.

C. Expansion or Substitution of a Nonconforming Use.

See Section 21.09 (Expansion and Substitution).

Section 21.07 Nonconforming Structures.

Single-family detached dwellings that are a nonconforming structure in the zoning district shall be subject to the standards of Section 21.04 (Nonconforming Single-Family Detached Dwellings). All other nonconforming structures shall be allowed to continue after the effective date of this Ordinance or amendments thereto, subject to the following conditions:

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 would increase or intensify a nonconformity shall be subject to the requirements of Section 21.09 (Expansion and Substitution).

B. Normal Repairs and Maintenance.

Normal repair, maintenance or replacement of interior non-bearing walls, fixtures, wiring, plumbing or heating and cooling systems in nonconforming structures may be permitted in accordance with applicable code requirements, provided that:

1. Such improvements shall not result in an enlargement of the floor area or cubic area (volume) of the nonconforming structure; and
2. The cost of such improvements shall not exceed fifty percent (50%) of the state equalized value of the structure at the time such work is proposed. This provision shall not prevent work required for compliance with provisions of the State Construction Code.

C. Buildings under Construction.

Nothing in this Article shall require a change in the plans, construction or designated use of any structure for which construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance, provided that such work shall be completed within 365 calendar days of the effective date.

D. Damaged or Unsafe Structures.

Reconstruction or restoration of a nonconforming structure damaged by any means to an extent that the expense of such reconstruction or restoration shall not exceed the state equalized value of the property shall be permitted, subject to the following:

1. Application for a building permit for such reconstruction shall be made within 365 calendar days of the date of such damage, and all work shall be completed within the building permit approval period.
2. The lot and damaged structure shall be adequately secured from unauthorized access to the Zoning Administrator's satisfaction. The damaged structure shall be protected against further damage from the elements.
3. Where pending insurance claims require an extension of time, the Zoning Administrator may grant one (1) extension of up to 365 calendar days, provided that the property owner submits a certification from the insurance company attesting to the delay.
4. If a nonconforming structure becomes physically unsafe or unlawful due to a lack of repairs or unsecured exposure to the elements, or is declared to be unsafe or unlawful by reason of physical condition under the State Construction Code or applicable fire or property maintenance codes, it shall not thereafter be restored, repaired or rebuilt except in conformity with all Ordinance requirements.

A nonconforming structure or a portion thereof, if destroyed or damaged by any means to the extent such that the expense of such reconstruction would exceed the state equalized value of the property, shall not be reconstructed except in conformity with the regulations of the zoning district in which it is located.

Section 21.08 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 address public health, safety, and welfare by resolving public safety deficiencies and pedestrian/vehicle conflicts, and improving emergency access.
3. The proposed site improvements shall include at least three (3) of the following, as accepted by the Planning Commission:
 - a. Preservation of natural resources or historical site features.
 - b. Pedestrian access improvements.
 - c. Vehicular access and circulation improvements.
 - d. Building design or exterior facade improvements.
 - e. Off-street parking or loading improvements.
 - f. Landscaping improvements.
 - g. Screening and buffering improvements.
 - h. Exterior lighting improvements.
 - i. Drainage and stormwater management improvements.
 - j. Clean up or restoration of a blighted site, removal of contaminated soil, or similar environmental improvements.
4. The scope of any additional site improvements requested by the Planning Commission shall be in reasonable proportion to the scale and construction cost of proposed building improvements, expansions, or other improvements.
5. A reasonable timeline for completion of site improvements to an existing 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 21.09 Expansion and Substitution.

Expansion of a nonconforming single-family detached dwellings shall be subject to the standards of Section 21.04 (Nonconforming Single-Family Detached Dwellings). Expansion or substitution of all other nonconforming uses and structures shall be subject to the following:

A. Eligibility.

Applications for approval under this Section shall be submitted by the operator of the use or owner of an interest in the land or structure(s) for which approval is sought, or by the owner's designated agent. Applications that are found by the Township Planner or the approving body to be incomplete or inaccurate shall be returned to the applicant without further consideration.

B. Expansion or Substitution of a Nonconforming Use (Planning Commission).

A nonconforming use may be expanded, or a nonconforming use may be substituted for another nonconforming use, subject to Planning Commission approval in accordance with the following:

1. **Filing of application.** Application for approval of a nonconforming use substitution or expansion shall be made by filing eleven (11) paper copies and at least two (2) digital copies (in a format compatible with Township systems) of a complete and accurate application form, required information, and required review fee and escrow deposit with the Township Clerk or designee, who shall transmit a copy of the application materials to designated Township officials and consultants and the Planning Commission.
2. **Information required.** An application for approval of a nonconforming use substitution or expansion shall contain the following information:
 - a. Name, address, telephone and facsimile numbers, and other contact information for the applicant and owners of record, along with proof of ownership.
 - b. The applicant's interest in the property, and if the applicant is not the property owner of record, a signed authorization of the owner(s) for the application.
 - c. Legal description, address, and tax parcel number of the property.
 - d. A scaled and accurate survey drawing, correlated with the legal description and showing all existing structures, drives, and other improvements.
 - e. A detailed description of the existing use and proposed expansion or substitution. The Planning Commission may require documentation that the existing use is legally nonconforming per the standards of Section 21.02 (Nonconforming Use Determinations).
 - f. Where required by the Planning Commission or by Section 17.02 (Site Plan Approval Required), a site plan shall also be submitted for review.
3. **Technical review.** Prior to Planning Commission consideration, the application materials shall be distributed to designated Township officials and consultants for review and comment.
4. **Planning Commission review and public hearing.** Upon receipt of a complete and accurate application for approval from the Clerk, the Planning Commission shall undertake a study of the application. A public hearing shall be

held on the application and notice shall be given in accordance with Section 2.10 (Public Hearing Procedures).

5. **Criteria for approval.** Subsequent to the public hearing, the Planning Commission shall review the application to the standards and findings required herein and the information provided at the public hearing. The Planning Commission may approve a nonconforming use substitution or expansion upon finding that the existing use and proposed expansion or substitution satisfy all of the following criteria for approval:
 - a. **Use standards.** The existing use and proposed expansion or substitution conform to the following:
 - (1) The nonconformity does not significantly depress the value of nearby properties.
 - (2) The use does not adversely impact the public health, safety, and welfare.
 - (3) The use does not adversely impact the purpose of the district where it is located.
 - (4) No useful purpose would be served by the strict application of Ordinance requirements that apply to the nonconformity.
 - (5) In the case of a use substitution, the proposed nonconforming use is more appropriate than the existing nonconforming use in the zoning district in which it is located.
 - b. **Signage.** The Planning Commission may require that signage associated with the use be brought into compliance with Article 13.0 (Signs).
 - c. **Building improvements.** The Planning Commission may approve an expansion of a nonconforming use that includes new construction, or expansion or structural alteration of the existing building(s) occupied by the use where such work conforms to applicable Ordinance requirements.
 - d. **Site improvements.** If the site is nonconforming with respect to applicable site design standards of this Ordinance, the proposed expansion and associated site improvements shall also conform to the requirements of Section 21.08 (Nonconforming Sites).
 - e. **Other conditions.** The Commission may attach conditions of approval to assure that the use does not become contrary to the purposes of this Article or Ordinance, or the public health, safety or welfare.

C. Expansion of Nonconforming Structures (Zoning Board of Appeals).

A nonconforming structure shall not be expanded or altered in a manner that increases or intensifies its nonconformity, except in accordance with Zoning Board of Appeals approval and the following requirements:

1. **Filing of application.** Application for approval to enlarge or expand a nonconforming structure shall be made by filing eleven (11) paper copies and at

least two (2) digital copies (in a format compatible with Township systems) of a complete and accurate application form, all required information per Section 23.05 (Applications), and required review fee and escrow deposit with the Township Clerk or designee, who shall transmit a copy of the application materials to designated Township officials and consultants and the Zoning Board of Appeals.

2. **Technical review.** Prior to Zoning Board of Appeals consideration, the application materials shall be distributed to designated Township officials and consultants for review and comment.
3. **Zoning Board of Appeals review and public hearing.** Upon receipt of a complete and accurate application for approval from the Clerk, the Zoning Board of Appeals shall undertake a study of the application. A public hearing shall be held on the application and notice shall be given in accordance with Section 2.10 (Public Hearing Procedures).
4. **Criteria for approval.** Subsequent to the public hearing, the Zoning Board of Appeals shall review the application to the standards and findings required herein and the information provided at the public hearing. The Zoning Board of Appeals may approve an expansion or alteration of a nonconforming structure upon finding that the existing structure and proposed changes satisfy all of the following criteria for approval:
 - a. The nonconformity results from noncompliance with zoning district regulations for minimum lot area, minimum lot width, required yards, off-street parking and loading requirements, or transition buffer or landscape strip requirements. A structure that is nonconforming because of height requirements shall not be permitted to expand in a way that would increase this nonconformity.
 - b. The existing and proposed uses of such structure(s) shall be permitted in the district in which they are located.
 - c. The proposed expansion or alteration shall conform to all applicable requirements of the zoning district in which the structure is located.
 - d. The Zoning Board of Appeals shall make the following findings of fact before approving such a request:
 - (1) Retention of the nonconforming structure is reasonably necessary for the proposed improvement, or that requiring removal of such structure would cause undue hardship;
 - (2) The improved nonconforming structure would not adversely affect the public health, safety, and welfare; and
 - (3) The proposed improvement is reasonably necessary for continued use of the structure.
5. **Other conditions.** The Zoning Board of Appeals may attach conditions to the approval to assure that the proposed expansion or alteration of the

nonconforming structure does not become contrary to the purpose of this Article and Ordinance; or to the public health, safety, and welfare.

D. Replacement of a Nonconforming Accessory Structure.

A nonconforming accessory structure in the Rural Districts or Residential Districts, or accessory to any RURAL USES or RESIDENTIAL USES, shall not be reconstructed or replaced with a new structure except in accordance with the following requirements:

1. Such replacement shall be subject to administrative approval of a zoning permit per Section 2.03 (Zoning Permits), and applicable building permits.
2. Documentation of the location, dimensions, setbacks from lot boundaries and road rights-of-way, height, roof pitch, and type of construction and materials for both the existing and the proposed structures shall be provided with the zoning permit application, subject to field verification by the Zoning Administrator.
3. The existing structure shall be located entirely within the boundaries of the lot, outside of all road rights-of-way, and a minimum of ten (10) feet from any structure on an adjacent lot.
4. The proposed structure shall be constructed on the site of the existing structure without variation or alteration of the structure's orientation on the lot.
5. The proposed structure shall match or fit within the existing structure's footprint and foundation dimensions.
6. The proposed structure shall not be taller than the height of the existing structure, and shall conform to the maximum height requirements of Article 5.0 (Schedule of Regulations).

Section 21.10 Change of Tenancy or Ownership.

There may be a change of tenancy, ownership or management of any existing nonconforming lot, structure, site or use, provided that there is no change in the nature of the nonconformity.

Section 21.11 Cessation of Nonconformities 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 may acquire private property by purchase, condemnation, or other means for the removal of nonconforming uses. The cost of acquiring the private property may be paid from general funds or assessed to a special district, as provided in the Michigan Zoning Enabling Act. The Township Board may institute proceedings for condemnation of nonconforming uses and structures under the power of eminent domain in accordance with applicable Michigan statutes.