

## Article 5 Nonconforming Uses

### Section 5.01 Nonconformities

The intent of this Ordinance is to continue to allow for a lawful use of any building or land existing on the effective date of this Ordinance, or any amendment thereto, although it may not conform with this Ordinance or amendment, but to encourage their improvement if it enhances the character of the campus, building and structures.

### Section 5.02 Classifications

There shall be the following classes of nonconforming uses:

- A. Class I. Those where the use of the building or land does not conform to the zoning district use regulations; and
- B. Class II. Those where the use of the building or land does comply with the zoning district use regulations, but does not meet the dimensional or parking regulations of the ordinance.
- C. Class III. Those where the use of the building or land was a use as of right or a legal non-conforming use, but is later allowed only by a special land use permit in the zone in which it is located.

### Section 5.04 General Regulations.

- A. **Enlargement or structural alterations.** Nonconforming uses of property shall be subject to the following regulations.
  - 1. A Class I. nonconforming use shall not be enlarged or structurally altered when such alteration requires a building permit, nor shall they be expanded or increased in intensity of use, unless the Zoning Board of Appeals or Planning Directors grants an exception as described in this Zoning Ordinance.
  - 2. A Class II. nonconforming use shall not be enlarged or structurally altered when such alteration requires a building permit, unless the resultant building creates no further violation of this ordinance than lawfully existed at the time of the enlargement or alteration. However, upon approval of the Planning Directors, a Class II. nonconforming use may be expanded to add floor space above the first floor to the extent of the first floor encroachment, and a porch or other architectural features which once existed and encroached in the required setback may be reconstructed, subject to the following conditions:
    - a. Prior to the issuance of a building permit, the building plans for the addition shall be approved by the Planning Directors, who will consider the relationship of the addition with the scale, materials and architectural style of the existing structure and surrounding structures.
    - b. The addition shall not substantially degrade the light and air available to the neighboring properties.
    - c. The addition shall not include or utilize window or wall air conditioning units or other appliances or devices which may unnecessarily disturb neighbors due to their proximity to adjacent structures.

- d. Ice, snow and stormwater from the addition shall be maintained within the boundaries of the subject property and shall not present a safety hazard to residents, guests or neighbors
3. A Class III. nonconforming use shall not be enlarged or structurally altered without first obtaining a special land use permit for the existing use and the alteration, if enlargement or alteration would result in any of the following:
  - a. An increase or decrease in the square footage of the building by more than ten percent;
  - b. Introduction of a new use on the site which is anticipated to increase daily motor vehicle trip-ends;
  - c. Addition of a separate building or structure occupied on a regular basis;
  - d. Addition or deletion of parking spaces; or
  - e. Significant alteration of traffic patterns adjacent to the site.
4. A Class II. nonconforming use shall not be enlarged or structurally altered when such alteration requires a building permit, unless the resultant building creates no further violation of this Ordinance than lawfully existed at the time of enlargement or alteration.
- B. Repair or Improvement of Nonconforming Buildings. A nonconforming use may be repaired or improved provided that such repair or improvement to a Class I. nonconforming use is approved by the Planning Directors and will do one or more of the following:
  1. Improve the structure only to add an unenclosed porch or another similar architectural feature that is keeping with the surrounding architectural style.
  2. Improve the structure only to provide barrier free access or accommodation.
  3. Improve the structure only to accomplish changes recommended by the City Historic Districts Commission.
  4. Clearly and convincingly improve the health, safety or welfare of the surrounding campus.
- C. Notice. Before deciding on the request for enlargement of a Class II. nonconforming use for repair or improvement of a Class I. non-conforming use, the Planning Directors shall notify all persons to whom real property is assessed within 300 feet of the boundary of the property in question. Notice shall be mailed and shall describe the request and indicate the deadline for written comments to be received by the Planning Directors. The Planning Director's decision may be appealed to the Zoning Board of Appeals by an aggrieved person.
- D. Reconstruction and Restoration. A nonconforming use damaged by fire, explosion, act of God or other similar causes may be restored or rebuilt, provided that such restoration for a Class I. nonconforming use does not exceed fifty percent of its true cash value, exclusive of land and foundations, as determined for property tax assessment purposes.
- E. Change of Use. A Class I. nonconforming use shall not be changed to other than a permitted use unless the Zoning Board of Appeals grants an exception as described earlier in this ordinance.
- F. Prior Construction Approved. Nothing in this ordinance shall prohibit the completion of construction and use of a nonconforming building for which a building permit has been properly issued and substantial construction commenced prior to the effective date of this ordinance, provided that the entire building shall have been completed according to plans filed with the permit application within one year after the issuance of the building permit.
- G. Nonconforming Land Uses. The nonconforming uses of land, where no building is located, may be continued, provided that the nonconforming land use shall not in any way be expanded or extended either on the same property or adjoining property.

- H. Nonconforming Use Certificate. A nonconforming use certificate may be issued by the **Zoning Administrators** for a nonconforming use. The certificate shall specify the nature of the nonconformity and such other pertinent matters as may be deemed appropriate by the Zoning Administrators. Upon application for a nonconforming use certificate by all owners of record of the land in question, the Zoning Administrators shall issue or deny such certificate within thirty days or such greater time as may be mutually agreed upon. The application shall be in writing upon the form prepared by the Zoning Administrators and shall be accompanied by such information as the applicant deems pertinent or as the Zoning Administrator may request. An applicant may appeal the denial of a certificate to the Zoning Board of Appeals. This administrative remedy shall be exhausted before a person alleges the existence of a nonconforming use by defense to a zoning enforcement action or otherwise.

### **Section 5.05 Loss of Nonconforming Use Status.**

- A. Loss. Status as a nonconforming use shall be lost and the nonconformity shall be deemed a violation of this Zoning Ordinance if any of the following occur:
1. Increase the non-conformity. Unless otherwise allowed or except where permitted by the Zoning Board of Appeals, expansion or change of the use or structure in such a way as to increase the size, degree or intensity of the nonconformity;
  2. Zoning Violation. Except for the initial nonconformity, any violation of the Zoning Ordinance; or
  3. Abandonment of the Use. Intent to abandon a nonconforming use may be presumed where the use ceases for more than a year and the owner has not expressed in writing an intent to maintain the use within thirty days after being requested in writing to do so.

If nonconforming use status is lost, all future use shall be in conformity with this Zoning Ordinance and the initial nonconforming use may not be continued or re-established.

- B. Reduction. If a nonconforming use or structure is reduced or changed in such a way as to decrease the size, degree, or intensity of the nonconformity, the use or structure may not thereafter be expanded or changed to cause an increase in the nonconformity.

### **Section 5.06 Illegal uses.**

Nonconforming uses of buildings or land established without a required building permit or land use permit, or those nonconforming uses which cannot be proven conclusively as existing prior to the effective date of the section upon which the nonconformity is based, are declared illegal uses and shall be discontinued.

### **Section 5.07 District Boundary Changes.**

Whenever the boundaries of a district are changed so as to transfer an area from one district to another district of another classification, this section shall also apply to any existing uses or structures that become nonconforming as a result of the boundary changes.

### **Section 5.08 Elimination**

In accordance with Act 110 of the Public Acts of 2006, as amended (M.C.L 125.3101 et seq.) the City and Township may acquire private properties on which nonconforming uses or structures are located, by purchase, condemnation or other means, and may remove such uses and structures. The resultant property

may be leased or sold for a conforming use or may be used for a public use. The net cost of such acquisition may be assessed against a benefit district, may be paid from other sources of revenue, or may be paid by a combination of special assessments and other revenue.

DRAFT