

ARTICLE 32**NONCONFORMING LOTS, USES, STRUCTURES, & SITES****§32.05 - INTENT & PURPOSE**

The intent and purpose of this Article is to:

- (A) Allow for the continuation of lots, uses, structures, and sites that were lawful and existing on the effective date of this Ordinance or an amendment to this Ordinance that are no longer permitted;
- (B) Ensure that this Ordinance complies with MCL 125.3208;
- (C) Encourage the combination of contiguous nonconforming lots of record to create lots that are more consistent with the intent of this Ordinance and the Master Plan;
- (D) Ensure lots have adequate size to accommodate structures and uses;
- (E) Limit the expansion of nonconforming uses;
- (F) Ensure that any expansion of a legally nonconforming structure does not have a significant negative impact on the health, safety, or welfare of surrounding properties or the community;
- (G) Provide for the maintenance of structures used for legally nonconforming uses and for legally nonconforming structures in a manner that does not increase the nonconformity;
- (H) Encourage repair, maintenance, and improvement of legally nonconforming structures in a manner that maintains and improves the neighborhood without creating a negative impact on health, safety, or welfare of surrounding properties or the community;
- (I) Encourage gradual replacement of nonconformities with conformities;
- (J) Encourage a gradual upgrade of improvements associated with site plans; and
- (K) Establish standards for the continuation of legally nonconforming lots, uses, structures, and sites.

§32.10 - GENERAL PROVISIONS

- (A) **Illegal:** Nonconforming lots, uses, structures, or sites existing on the effective date of this Ordinance or an amendment to this Ordinance that were established without a valid permit or approval or that cannot be proven to have existed on the effective date of this Ordinance or an amendment to this Ordinance shall be declared illegal nonconforming lots, structures, uses, or sites and shall not be entitled to the status and rights provided to legally-established nonconforming lots, uses, structures, and sites.
- (B) **Burden:** It shall be the burden of the applicant or property owner to establish that a nonconforming lot, use, structure, or site was legal or existed before the effective date of this Ordinance or an amendment to this Ordinance, if there is any question as to whether or not the lot, use, structure, or site is legally nonconforming.
- (C) **Tenancy & Ownership:** An existing legally nonconforming lot, use, structure, or site may have a change of tenancy or ownership without affecting the status of the legal nonconformity.

§32.15 - LEGALLY NONCONFORMING LOTS

Previously lawful lots of record that could no longer be created under this Ordinance or an amendment to this Ordinance may continue, subject to the standards outlined below.

(A) *Use:* Legally nonconforming lots may be used for a permitted or special land use for the zoning district in which it is located, even if the lot area, lot width, and frontage standards are not met.

(B) *Contiguous:* Two (2) or more lots of record on the effective date of this Ordinance or an amendment to this Ordinance with continuous frontage or separated by a distance not greater than the width of a street right-of-way that are under single ownership or control shall be considered a single lot for the purposes of this Ordinance if any individual lot or lots do not meet the standards of this Ordinance, including, but not limited to, lot area, lot width, frontage, setbacks, and coverages. GRAPHICS

(1) *Division:* A lot described above shall not be divided, sold, or modified in a manner that increases any nonconformity, except as allowed in this Section.

(2) *Permits:* If a lot described above is divided, sold, or modified in a manner that increases any nonconformity, the Township shall not issue any permits for the affected properties.

(3) *Not Applicable:* This Section shall not apply to a lot of record that was created before the effective date of this Ordinance if the following conditions are true:

a. *Lot Area:* The individual lots shall meet the minimum lot area for the zoning district in which it is located or have a lot area of at least one (1) acre, whichever is less; and

b. *Frontage or Access:* The individual lots shall meet the minimum frontage for the zoning district in which it is located or have a frontage of at least sixty-six (66) feet on a public or private street, whichever is less, or shall have an approved access easement or shared driveway; and

c. *Lot Width:* The individual lots shall have a lot width at least equal to the minimum lot width for the zoning district in which it is located for at least sixty (60) percent of the lot's depth; or

d. *Transfer:* An individual lot or portion of a lot is sold or transferred to another adjacent nonconforming lot and the transfer does not create any nonconformities for setbacks or ~~lot~~ building or impervious coverages; or

e. *Existing Dwellings:* Individual lots have existing, separate single or two-family dwelling units.

(C) *Boundary Line Adjustment:* A legally nonconforming lot may be made more nonconforming, without a variance, through a boundary line adjustment, as outlined below. GRAPHICS

(1) *Receiving Lot:* The receiving lot shall be nonconforming or shall have a nonconforming structure and the boundary line adjustment shall eliminate or reduce the nonconformity.

(2) *Purposes:* The boundary line adjustment shall be necessary to achieve at least one (1) of the following goals:

a. *Lot Area:* To increase the lot area of the smaller lot;

b. *Setbacks:* To adjust property lines in a manner that reduces a nonconforming setback; or

c. *Building Coverage:* To increase lot area in a manner that reduces a nonconforming building coverage of the lot with the higher building coverage.

- (3) *Limitations:* The boundary line adjustment shall have the following limitations:
- a. *Lot Area:* The lot area of the giving lot shall not be reduced by more than ten (10) percent;
 - b. *Lot Width:* The lot width of the giving lot shall be at least seventy-five (75) percent of the minimum width following the boundary line adjustment for a lot in the zoning district in which it is located; and
 - c. *Building Coverage:* The building coverage of the giving lot shall continue to meet the standards of the zoning district in which it is located.

§32.20 - LEGALLY NONCONFORMING USES

Previously lawful uses that are no longer allowed under this Ordinance or an amendment to this Ordinance may continue and may be altered, subject to the standards outlined below.

- (A) **Expansion:** A legally nonconforming use shall not be enlarged, expanded, or extended, in whole or in part, to occupy a greater area than was occupied by that use on the effective date of this Ordinance or an amendment to this Ordinance, except as allowed below.
- (1) *Residential:* Legally nonconforming single-family and two-family residential uses and the structures those uses occupy may be enlarged, expanded, or extended, in whole or in part, to occupy a greater area than was occupied by that use on the effective date of this Ordinance or an amendment to this Ordinance.
 - (2) *Structure:* A legally nonconforming use may be expanded throughout a structure. The structure shall not be expanded beyond the building envelope that existed on the effective date of this Ordinance or an amendment to this Ordinance.
- (B) **Relocation:** A legally nonconforming use shall not be relocated or moved, in whole or in part, to any portion of the area not occupied by that use on the effective date of this Ordinance or amendment to this Ordinance, except as allowed below.
- (1) *Residential Uses:* Legally nonconforming single-family and two-family residential uses and the structures those uses occupy may be relocated or moved, in whole or in part, to an area not occupied by that use on the effective date of this Ordinance or an amendment to this Ordinance.
 - (2) *Structure:* The expansion of a legally nonconforming use within an existing structure shall not be considered a relocation of the legally nonconforming use.
- (C) **Replacement:** A legally nonconforming use of land may be changed to or replaced with a permitted use for the zoning district in which it is located.
- (D) **Repairs & Maintenance:** Structures used for a legally nonconforming use may be repaired and maintained.
- (E) **Removal:** Destruction or removal of a structure housing a legally nonconforming nonresidential use shall eliminate that use, and all future use shall conform with this Ordinance. A legally nonconforming residential use of a structure may be reestablished within two (2) years of the date the structure's destruction or removal.

- (F) **Substitution:** A legally nonconforming use may be replaced with or changed to another nonconforming use, as outlined below.
- (1) **Decision Criteria:** A legally nonconforming use may be replaced with or changed to another nonconforming use if all of the following are true:
 - a. **Use & Enjoyment:** The new use would have an equal or lesser impact on the use and enjoyment of the surrounding properties and community;
 - b. **Health, Safety, & Welfare:** The new use would have an equal or lesser impact on public health, safety, and welfare; and
 - c. **Appropriate:** The new use would be more appropriate for the lot and surrounding area; and
 - d. **Structure Expansion:** Any structure used for a legally nonconforming use shall not be enlarged or expanded.
 - (2) **Conditions:** Conditions may be placed on the replacement or substitution of a legally nonconforming use that are necessary to secure public health, safety, and welfare and to mitigate the impacts of the use, as outlined below and in §24.45 of this Ordinance.
 - a. **Screening & Landscaping:** Screening and landscaping shall be provided in a manner that meets the current standards of this Ordinance.
 - b. **Impacts:** Negative impacts to the surrounding area, including, but not limited to, lighting, sound, visual impacts, vibrations, odors, drainage, hours of operation, and traffic, shall be minimized.
 - (3) **Reversion:** If a legally nonconforming use is replaced or substituted with a less-intensive use, a use that is more intensive than the new legally nonconforming use shall not be reestablished.
- (G) **Cessation or Abandonment:** A legally nonconforming use that ceases for any reason for a period of one hundred eighty (180) days, unless otherwise noted below, whether or not there is an intent to reestablish the use, shall not be reestablished.
- (1) **Seasonal Uses:** Legally nonconforming seasonal uses shall be considered ceased or abandoned if the use is discontinued for a period of three hundred sixty-five (365) days, whether or not there is an intent to reestablish the use.
 - (2) **Uses in a Structure:** Legally nonconforming uses in a structure shall be considered ceased or abandoned if the use is discontinued for a period of three hundred sixty-five (365) days, whether or not there is an intent to reestablish the use.
 - (3) **Residential Uses:** Legally nonconforming single-family and two-family uses shall be considered ceased or abandoned if the use is discontinued for a period of eighteen (18) months, whether or not there is an intent to reestablish the use.
- (H) **Reversion:** If a legal nonconforming use is eliminated, ceases to exist, or is replaced with a permitted or special land use for the zoning district in which it is located, the legally nonconforming use shall terminate and shall not be resumed. All subsequent use shall be consistent with the standards of this Ordinance for the zoning district in which the land is located.

§32.25 - LEGALLY NONCONFORMING STRUCTURES

Structures that exist and are lawful on the effective date of this Ordinance or an amendment to this Ordinance may continue and may be altered, even though they do not conform with the dimensional or other standards of this Ordinance, subject to the standards outlined below.

(A) Replacement: A legally nonconforming structure that has been destroyed, damaged, or removed by any means, may be reconstructed, repaired, renovated, replaced, or altered, as outlined below.

- (1) Period for Current Structures:** Such reconstruction, repair, renovation, replacement or alteration of structures that were destroyed, damaged, or removed before the effective date of this Ordinance shall commence within twenty-four (24) months of the date the structure was destroyed, damaged, or removed.
- (2) Period:** Such reconstruction, repair, renovation, replacement, or alteration shall commence within eighteen (18) months of the date the structure was destroyed, damaged, or removed. This period may be extended by up to six (6) months by the Director of Planning and Zoning if the additional delay is necessary due to government action related to permit issuance or insurance processing.
- (3) Limits:** The reconstruction, repair, renovation, replacement, or alteration shall be within the building envelope of the structure as it existed before being destroyed, damaged, or removed, except as outlined below.
 - a. *Current Standards:* A legally nonconforming structure may be expanded or added to if the expansion or addition meets the current standards of this Ordinance.
 - b. *Energy Standards:* A legally nonconforming building may be expanded vertically by up to one (1) foot from the existing building envelope if the expansion is necessary to meet the energy standards of the Building Code. This shall apply even if the additional height results in an increase of the required side-yard setback.

~~e. *Administrative Adjustment:* A legally nonconforming structure may be expanded or added to if it has received an administrative adjustment, as outlined in Article 30 of this Ordinance.~~

(B) Modification or Alteration: Legally nonconforming structures may be modified or altered in a manner that eliminates, removes, or lessens any or all of the nonconforming characteristics. The nonconforming characteristics shall not be reestablished or increased.

(C) Expansion: A legally nonconforming structure may be expanded if the expansion will meet the required setbacks and other developmental standards of this Ordinance at the time of expansion. Additional height above a nonconforming portion of the structure shall not be permitted.

(D) Relocation: A legally nonconforming structure that is moved or relocated any distance for any reason or reconstructed outside of the footprint of the structure as it existed before reconstruction shall conform with the standards of the zoning district in which it is located.

(E) Repairs & Maintenance: Legally nonconforming structures may be repaired and maintained.

(F) Unsafe: If a legally nonconforming structure or portion of a legally nonconforming structure becomes physically unsafe or unlawful due to a lack of repairs or maintenance and is declared to be unsafe or unlawful because of its physical condition by the Building Official or other duly-authorized official, it shall not be restored, repaired, or rebuilt except in full compliance with this Ordinance.

§32.30 - LEGALLY NONCONFORMING SITES

Legally nonconforming sites may be improved and modified without coming into full compliance with all of the applicable standards of this Ordinance, as outlined below.

- (A) **Proportional:** Site improvements of the overall site shall be proportional to the scale and construction cost of the improvements or expansion.
- (B) **Safety:** Site improvements shall address safety-related issues of the site.
- (C) **Landscaping:** Landscaping shall be improved as outlined in the **Landscaping Article 18**.
- (D) **Lighting:** Lighting shall be improved as outlined in the **Lighting Article 19**.
- (E) **Noncompliance:** Site improvements shall reduce the amount of noncompliance.
- (F) **Driveways:** Driveways that do not comply with the access standards of this Ordinance shall be eliminated or improved to meet the access standards of this Ordinance to the greatest extent possible.

§32.35 - RIGHT-OF-WAY EXPANSIONS

When a legally nonconforming front-yard setback has been created as the result of a street right-of-way expansion or dedication, the existing front-yard setback shall be the minimum front-yard setback if all of the following conditions are met:

- (A) **Met Previously:** The structure met the required front-yard setback before the expansion of the street right-of-way. This shall not apply to structures that received a variance for a reduced front-yard setback;
- (B) **No Reduction:** The expansion of the structure, vertically or horizontally, shall not reduce the depth of the front-yard setback;
- (C) **Other Standards:** The expansion of the structure meets the other developmental standards of this Ordinance; and
- (D) **Not Removed:** The structure that established the front-yard setback has not and will not be destroyed or removed for any reason.

§32.40 - COMPLETION

Any structure which has received a valid approval before the effective date of this Ordinance or an amendment to this Ordinance shall be considered as existing and lawful. The design or use of such structure shall not need to be modified to comply with this Ordinance or an amendment to this Ordinance.

End of Article 32.

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