

## **CHAPTER 21**

### **Nonconforming Lots, Structures and Uses**

#### **Section 21.1 Description and Purpose**

The purpose of this chapter is to regulate nonconforming uses, structures, and lots as follows:

- A. The zoning districts established by this Ordinance are designed for the future use of the Township's land by encouraging the development of desirable uses, with appropriate groupings of compatible and related uses and thus to promote and protect the public health, safety, and general welfare.
- B. It is the stated intent of the state of Michigan (and also Gaines Charter Township) that lawful nonconformities be discourage and gradually be eliminated over time. Absent unusual circumstances, lawful nonconformities should not be allowed to expand or increase in size, scope, intensity or duration.
- C. The continued existence of certain nonconformities is frequently inconsistent with this Zoning Ordinance and the Master Plan, and thus, the gradual elimination of such nonconformities is often desirable. Other nonconformities may continue to exist and afford adaptive reuse opportunities that can contribute to neighborhood character, diversity, and services.
- D. The regulations of this chapter are intended to restrict further investments, alterations, or changes that would make nonconformities more permanent in their location in inappropriate districts as well as to afford opportunities for creative use and reuse of those other nonconformities that contribute positively to a neighborhood and are consistent with the goals of the Master Plan.
- E. Restrictions and standards are hereby established for nonconforming uses of land and of structures designed for a permitted use; nonconforming uses of structures not designed for a permitted use; nonconforming structures; and nonconforming lots of record.

#### **Section 21.2 Development of Nonconforming Lots of Record**

- A. In any zoning district in which single-family dwellings are permitted, notwithstanding other limitations imposed by other provisions of this chapter, a single-family dwelling and customary accessory buildings may be erected on any single lot of record after the effective date of this Ordinance, subject to the following conditions:
  - 1. Lot coverage by said dwelling and accessory buildings shall not exceed twenty-five (25%) percent of the total lot area.
  - 2. Side yards may be reduced by the same percentage that the area of such lots bears to its own district requirements, provided that each side yard in no instance shall be less than five (5) feet. All other setback requirements shall be met.

3. If two (2) or more parcels or lots, one of which does not contain a principal building, are located adjacent to each other or have contiguous frontage and are held or owned in single ownership of record, and if all or part of such lots do not satisfy the minimum requirements for lot width, lot area, street frontage, or other dimensions, such lots and parts of lots shall be used so as to meet the requirements for lot width and area.
- B. Any parcel of land in any Commercial, Office, or Industrial District that does not comply with the minimum lot area requirement and/or minimum lot width requirement for the district in which the parcel of land is located, may nevertheless be used for a use permitted in that district if all structures comply with the regulations and requirements of that zoning district, as well as the site plan review requirements of Chapter 25 – Site Plan Review, if applicable.

**Section 21.3 Alteration of Buildings and Structures and  
Enlargement of Facilities, Equipment or Structures;  
Lawful Nonconforming Uses; Abandonment**

- A. Any structure existing and lawful at the time of the enactment of this Ordinance, or amendments thereto, may be continued although the structure does not conform to the current provisions of this Ordinance.
- B. Lawful nonconforming structures may be altered so long that any alteration meets the requirements of the zoning district where it is located or makes the structure more conforming.
- C. If a proposed alteration would reduce parking spaces such that it would make parking less conforming, such changes must be approved by the Site Plan Review Committee.
- D. The lawful use of any land or premises exactly as it existed at the time of enactment of the Zoning Ordinance, or relevant amendment thereto, may be continued although the use does not conform to the current provisions of the Zoning Ordinance.
- E. Except as otherwise specifically provided in this Chapter, no lawful nonconforming use shall be increased, expanded, altered, or intensified.
- F. If a lawful nonconforming use is abandoned for any reason for a period of six months or more, any subsequent use shall fully conform to the requirements of this Ordinance. A lawful nonconforming use shall be considered abandoned (even if six months have not passed) if one or more of the following conditions exists, and shall be deemed to constitute an intent on the part of the property owner to abandon the nonconforming use:
  1. Utilities, such as water, gas and electric to the property, have been disconnected.
  2. The property, buildings, or grounds, have fallen into disrepair.
  3. A building, sign, or other indications of the existence of the nonconforming use have been removed.

4. Removal of equipment or fixtures that are necessary for the operation of the lawful nonconforming use.
- G. Existing residential lawful nonconforming uses can be altered or expanded so long as such alteration or expansion meets the requirements for the zoning district where the property is located.
- H. A lawful nonconforming use may be expanded or extended throughout any portion of a completed existing lawful building that was manifestly designed, constructed, and arranged to accommodate such use when the use was made lawfully nonconforming by this Ordinance. However, a lawful nonconforming use may not be extended to additional buildings, out of doors, or to land outside the original building.
- I. Nonresidential lawful nonconforming uses shall not be expanded in terms of area, size, intensity, buildings, facilities, equipment, or structures unless approved as a special use by the Planning Commission. The Planning Commission shall only grant the special use permit if all of the following standards are met:
1. The expansion shall not result in the conversion of a seasonal operation to a year-round operation, nor shall it result in the hours of operation being extended into the hours of 10:00 p.m. through 7:00 a.m.
  2. Additional traffic generated by an expansion or construction must be reasonably incorporated into the neighborhood and community transportation network and cause no negative impacts to the neighborhood.
  3. The expansion shall not go beyond the limits of the parcel of property upon which such use existed at the time it became lawfully nonconforming.
  4. The noise, vibration, and dust levels that may be generated shall not be increased beyond the levels that existed prior to the expansion.
  5. Outdoor storage areas shall not be expanded or located any closer to an adjoining residential property.
  6. The expansion shall not add more than 50% of new floor area. This percentage shall be based on the floor area originally in use when the use became lawfully nonconforming.
  7. The expansion shall conform to the setback, height, parking, and other applicable requirements for the zoning district involved.
  8. The expansion shall not hinder the future development of surrounding properties in accordance with the Master Plan.
  9. The expansion shall not present a threat to the health, safety, and general welfare of the Township or its residents.
- J. A lawful nonconforming use shall not be changed to another type of lawful nonconforming use, as determined by the Zoning Administrator, unless approved by the Planning Commission as a special use, using the standards of review in Section 21.3(I).

- K. Any nonresidential lawful nonconforming use expansion that is approved is also subject to the Site Plan Review requirements of Chapter 25 of this Ordinance.
- L. Any lawful nonconforming use that is listed as a conditional or special use allowed with a special use permit in the district in which it is located, shall be required to seek a special use permit before any nonconforming use expansions are approved.

#### **Section 21.4 Repair of Buildings and Structures**

- A. Except as expressly otherwise provided herein, routine repairs and maintenance work may be done as required to keep a lawful nonconforming building or structure in a sound condition.
- B. Any building or structure shall be considered existing and lawful and, for the purposes of Chapter 21, to have been in use for the purpose for which constructed if, on the effective date of this Ordinance, all of the following shall apply:
  - 1. A building permit (as well as all other permits and approvals) had been obtained and lawful construction was substantially begun.
  - 2. If a building permit is not required, construction must be progressing substantially.
  - 3. Construction on said structure must have been complete within one year of the date when the building permit was issued.
  - 4. The structure or building was lawful when commenced or constructed.
- C. Destruction.
  - 1. *Residential Structures and Buildings.* Except for signs (as specified below), any lawfully nonconforming residential structure or building destroyed or damaged by fire, flood, explosion, wind, earthquake, war, riot, or other public calamity or act of nature, may be replaced or reconstructed to the same size, footprint, location, and extent as before the damage occurred, provided that rebuilding substantially commences not later than six (6) months after the destruction and so long thereafter as the building permit remains valid.
  - 2. *Nonresidential Structures and Buildings.* Except for signs (as specified below), lawful nonconforming uses or structures shall not be reestablished, rebuilt, or restored to their prior nonconforming condition in any zoning district after damage or destruction of the lawful nonconforming use or structure if the estimated expense of reconstruction exceeds fifty percent (50%) of the estimated replacement cost of the use or entire building or structure. The estimated expense of reconstruction or estimated replacement cost shall be determined by the Township Building Inspector, upon advice from the Township Assessor. Persons aggrieved by the determination of the estimated replacement cost or the estimated reconstruction cost by the Building Inspector may appeal such determination to the Zoning Board of Appeals.

3. *Signs.* If a sign loses its lawful nonconforming designation or status, the sign (and all portions thereof) shall be removed immediately and shall not be repaired, moved, replaced or rebuilt unless it fully complies with all requirements of this Ordinance. A lawful nonconforming sign shall lose its lawful non-conforming designation and status if the Zoning Administrator determines that any of the following is applicable:
- a. The sign is relocated, removed, moved, rebuilt or replaced.
  - b. The sign is destroyed. A sign shall be deemed destroyed if any of the following occurs:
    - i. The sign is torn down or demolished;
    - ii. The sign is wrecked or ruined;
    - iii. Such damage has been done to the sign that it cannot be returned to its prior state by routine repair, but only by replacement or material rebuilding; or
    - iv. More than 50% of the face of the sign has been shattered, or a portion of the sign face touches the ground.
  - c. Even if a sign has not been destroyed, but damage or deterioration has occurred to the point of 50% or more, the sign shall be deemed to have lost its lawful nonconforming status.
  - d. The structure or size of the sign is altered in any material way other than a change of copy or normal maintenance which does not physically alter the sign.
  - e. There is a material change in the use of the premises where the sign is located.
  - f. A building permit is issued for any construction on the premises where the sign is located which increases the total building square footage by more than 5% or 5,000 square feet, whichever is less.

If a lawful nonconforming sign suffers 50% or more damage or deterioration, it loses its lawful nonconforming status and must be brought into full compliance with this Ordinance or be removed. In order to determine whether or not a sign has been damaged or has deteriorated by 50% or more, the costs of physically repairing the sign shall be compared to the costs of physically replacing the sign. If less than 50% damage or deterioration has occurred pursuant to such comparison, the sign may be repaired to its exact original state.

## **Section 21.5 Elimination of Nonconforming Lots, Structures and Uses**

The Township may eliminate any and all nonconforming lots, structures and/or uses it deems in the best interest of the Township to eliminate, by whatever means are provided by law in such cases.

**Section 21.6 Burden of Proof**

The burden of proof for establishing or proving the existence or any aspect of a lawful nonconforming structure, lot or use (as well as the size, scope, intensity, and extent thereof) is on the owner of the property involved.