

ARTICLE 26 NONCONFORMING USES, STRUCTURES, AND LOTS

Updated 1-16-2017

Sec. 26.01 CONTINUANCE OF NONCONFORMING USES OR STRUCTURES.

The lawful use of any building or structure and of any land or premises as existing and lawful at the time of enactment of this Zoning Ordinance, or, in the case of an amendment of this ordinance, then at the time of such amendment, may be continued although such use does not conform with the provisions of this ordinance or amendment. It is the intent of this Ordinance to permit these nonconformities to continue, but not to encourage their survival.

Sec. 26.02 NONCONFORMING LOTS. (2016-19, 1-16-2017)

- A. Un-Platted Lots. In any zoning district an un-platted lot (one that is described by metes and bounds) which does not meet the minimum lot area, lot width or road frontage requirements of its zoning district may be used for any use permitted in that district provided the lot was recorded in the office of the Ottawa County Register of Deeds before the effective date of this Ordinance or an affecting amendment. Any use proposed to be established on the lot shall comply with the applicable requirements of that zoning district.
- B. Platted Lots. Where an existing platted lot in a Residential, Agricultural or Rural Estate zoning district has an area of not less than ninety (90) percent of its zoning

district area requirements and where such lot can provide the side yard requirements of its zoning district, a single family dwelling is permitted. An existing platted lot in a Residential, Agricultural or Rural Estate Zoning District of less than ninety (90) percent of its zoning district requirements may be utilized for a single family dwelling, and for such purpose the required side yards may be reduced by the same percentage the area of such lot bears to its zone district requirements, provided that no side yard shall be less than five (5) feet and that off-street parking requirements are met.

Sec. 26.03 EXPANSION.

Structures or uses nonconforming by reason of height and area, or parking and loading provisions only may be extended, enlarged, altered, remodeled or modernized provided that all height and area, parking and loading provisions are met with respect to any extension or enlargement and provided the Zoning Inspector shall determine that any alteration, remodeling, or modernization shall not substantially extend the life of any nonconforming structure. Any structure which is nonconforming at the time of enactment of this ordinance or amendment by reason of parking and loading provisions and which is thereafter made conforming or less nonconforming by the addition of parking or loading space shall not thereafter be permitted to use such additionally acquired parking or any loading space to

meet requirements for any extension, enlargement or change of use to one requiring greater areas for parking and/or unloading.

No other nonconforming use of any land or structure shall hereafter be enlarged or extended except after the approval of the Board of Appeals. Approval shall be granted only upon a finding of all of the following facts:

- A. That the enlargement or extension will not substantially extend the probable duration of such nonconforming use and that all enlargements since the use became nonconforming do not in total exceed fifty percent (50%) of the area of the originally nonconforming area;
- B. That the enlargement or extension will not become a precedent for other variations in the area;
- C. That the enlargement or extension will not interfere with the use of other properties in the vicinity for the uses for which they have been zoned nor with their use in compliance with all of the provisions of this ordinance.

Sec. 26.04 RESTORATION AND REPAIR.

Repairs and maintenance work which are required to keep a nonconforming building or structure in a sound condition may be made. In the event any nonconforming building or structure is damaged by fire, wind, or an Act of God or the Public enemy, it may be rebuilt or restored provided that the cost of rebuilding or restoring the structure the cost thereof shall not exceed

one half (1/2) the value of such building or structure. If the cost or rebuilding or restoring the building or structure exceeds one-half (1/2) the value thereof, then the rebuilding or restoration of the structure shall be permitted only with the approval of the Board of Appeals. Approval shall be granted only upon a finding:

- A. That such rebuilding or restoration will not substantially extend the probable duration of the nonconforming use, or
- B. That circumstances are such that the land previously occupied by the nonconforming use cannot then be advantageously used for a use permitted in the zone.

Sec. 26.05 NONCONFORMING USE DISCONTINUED.

In the event that any nonconforming use is discontinued for a period of one (1) year, any subsequent use shall conform to the uses permitted in the district in which the premises are located.

Sec. 26.06 BUILDING UNDER CONSTRUCTION ON EFFECTIVE DATE OF ORDINANCE.

Any building shall be considered to have been lawfully in use for the purpose for which constructed if on the effective date of this ordinance a building permit had been obtained therefore, if required, and a substantial start has been made on construction. If a building permit is not required than a substantial start has been made on construction to establish a lawful use. A building permit may be revoked if all

construction is not diligently pursued to completion.

Sec. 26.07 BUILDINGS IMPOSSIBLE TO BE BROUGHT INTO CONFORMITY.

Any building or structure constructed or erected after the effective date of this Ordinance, but for any reason does not comply with the provisions of this Ordinance and which cannot legally be brought into conformity with this ordinance shall be removed by the owner. Should the owner fail to remove said building, a hearing shall be held before the Planning Commission, which after said hearing, may order the building or structure removed within 60 days. If the building is not removed within said 60-day period the Charter Township Board may have the building or structure removed and the costs thereof shall be paid for by the owner. Notice of the hearing before the Planning Commission shall be given to the owner or any interested party at least ten (10) days prior to said hearing by certified mail and any owner or interested party may be present at said hearing either in person or by his attorney.

Sec. 26.08 SPECIAL LAND USE DESIGNATION.

In case of a nonconforming use which is a use designated as a Special Land Use by this Ordinance, the nonconforming status may be removed after appropriate action has been taken and the use has been approved in accordance with the provisions of this Ordinance. It shall be the responsibility of the owner or person requesting the Special Land Use designation to initiate the request

in accordance with the procedures specified in Article 20.

Sec. 26.09 NON CONFORMITY CREATED BY EXPANSION OF RIGHT OF WAY.

When, because additional right of way has been acquired, by purchase or by exercise of the power of eminent domain, from a lot with an existing structure on it which is located along the State Trunkline of M-45 (Lake Michigan Drive) for purposes of street construction, street widening, street relocation, or utility location, there results a nonconformance with a required minimum setback or yard requirement, a lot width or lot area requirement, or a parking requirement of this ordinance, existing buildings or structures rendered nonconforming thereby shall, notwithstanding Section 26.03 and Section 26.04 of this ordinance to the contrary, be permitted to be extended, enlarged, altered, remodeled, modernized, rebuilt, or restored, provided that (1) the specific nonconformity created when the right-of-way was acquired is not increased; and (2) all such extended, altered, remodeled, modernized, rebuilt, or restored buildings and structures shall conform to all other requirements of this ordinance. However, the provisions of this section shall not apply to buildings or structures which have a setback from the new right-of-way line of less than 50% of the required minimum setback; such buildings and structures may be extended, enlarged, altered, remodeled, or modernized only if first approved by the Board of Appeals as is provided in Section 26.03, and may be rebuilt or restored only if first approved by the Board of Appeals as is provided in Section 26.04.

Sec. 26.10 APPEAL.

Any party aggrieved by any order, determination, or decision of the Zoning Administrator, Township Board, Planning Commission or Zoning Board of Appeals with respect to a nonconforming situation may appeal to the circuit court.

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