

ARTICLE 22
Nonconforming Uses, Buildings and Structures

§ 170-22.1. Intent

The intent of this Article is to provide regulations governing lots, buildings, structures and uses which were lawful prior to the enactment of this Chapter, or amendments hereto, but are regulated under the provisions of this Chapter.

§ 170-22.2. Applicability

- A. This article shall not apply to any structure for which there is a valid building permit or where construction was lawfully started prior to the effective date of this chapter. Actual construction shall include placing and attaching construction materials in a permanent position.
- B. For projects that include demolition or removal of an existing structure prior to rebuilding, demolition shall be deemed to be actual construction.
- C. If there is a change in occupancy or ownership of an existing nonconforming use, structure or lot, it shall be allowed to continue provided the nature or character of the nonconformity has not changed.
- D. If a nonconforming use, structure or land, independently or in combination, ceases operation for a period of more than six (6) months, the nonconforming use, structure or land shall thereafter conform to the regulations of the zoning district in which the property is located. Structures operated by approved seasonal uses shall be exempt from this provision as long as the use remains in operation over consecutive seasons. A nonconforming use shall be determined to be abandoned if one or more of the following conditions exist, as determined by the township.
 - (1) Utilities, such as water, gas and electricity to the property, have been disconnected.
 - (2) The property, structures and grounds have fallen into disrepair.
 - (3) Signs or other indications of the nonconforming use have been removed.
 - (4) Equipment or fixtures which are necessary for the operation of the nonconforming use have been removed.

- (5) Other actions, which are determined by the township to constitute an intention on the part of the property owner or lessee to abandon the nonconforming use.

- E. The provisions of this article are not intended to preclude normal repairs and maintenance on nonconforming structures subject to the provisions of § 170-22.5E.

- F. Any structure or use established in violation of this chapter shall, for the purposes of this chapter, be considered a nuisance and shall not receive any of the rights, privileges or protection conferred by this article.

- G. A summary of the nonconforming regulations included in this article is provided in the table below.

SUMMARY OF NONCONFORMING REGULATIONS		
Nonconforming Situation	Required Action	Section
Illegal use or structure.	Not permitted.	Article 44
A nonconforming use is abandoned for over six (6) months.	Next use must be conforming.	Section 22.2
Change in ownership of a nonconforming lot, use or structure.	No effect on nonconforming status or rights.	Section 22.2
Creation of permitted use on a nonconforming lot.	Permitted, provided current ordinance standards are met.	Section 22.3
Establishment or expansion of a nonconforming use.	Not permitted.	Section 22.4
Expansion of a nonconforming use within a conforming structure.	Permitted.	Section 22.4
Establishment of a permitted use or construction of a structure on a nonconforming single family lot when contiguous to one or more nonconforming lots under the same ownership.	Lots must be combined.	Section 22.3
Construction or expansion of a structure on a nonconforming lot when adjacent lots are not under the same ownership.	Permitted, provided all other requirements are met.	Section 22.3
Expansion of a single family residence that has a one or more nonconforming setbacks.	Permitted, provided the expansion maintains conformity with other setbacks. ZBA approval is required if expansion will extend into an already nonconforming setback.	Section 22.5
Increase in height of a nonconforming structure.	Permitted, provided the increased height complies with the current requirement. ZBA approval is required if the proposed height exceeds the current requirement.	Section 22.5
Safety related maintenance and structural repairs to a nonconforming structure.	Permitted up to 50% of market value.	Section 22.5
Non-safety related modifications to a nonconforming structure.	Permitted.	Section 22.5
Repairs necessitated by catastrophe	Permitted up to 50% of market value.	Section 22.5
Maintenance or expansion of a nonconforming site or structure due to expanded public right-of-way.	Permitted provided the nonconformity is not increased.	Sections 22.7

§ 170-22.3. Nonconforming lots

A nonconforming lot is a lot which lawfully existed at the effective date of this chapter, but does not conform to the current lot size, lot width or other regulations of the zoning district in which it is located.

- A. A nonconforming lot shall only be used for a use permitted in the district in which it is located.
- B. Single family dwellings and accessory structures may be erected on any lot of record at the effective date of this chapter provided the structures comply with all other applicable setbacks, floor area, height and access requirements for the district in which it is located.
- C. If a nonconforming single family lot requires deviation from dimensional requirements of the ordinance to erect or enlarge a structure, it shall only be permitted if a variance is granted by the Zoning Board of Appeals.
- D. If two (2) or more individual, single family zoned lots with contiguous frontage are owned by the same person/entity and do not meet the lot width and area requirements, the parcels shall be combined if any changes are proposed to the current building footprint.
- E. No portion of said parcel shall be used, occupied or sold in a manner which diminishes compliance with lot width and area requirements established by this chapter, nor shall any division of a parcel be made which creates a lot width or area less than the requirements contained Article 18.

§ 170-22.4. Nonconforming uses

A nonconforming use is a use which lawfully existed at the effective date of this chapter but does not currently conform to the use regulations of the zoning district in which it is located. Any lawful nonconforming use of land established prior to the effective date of adoption of this chapter shall not be considered to be in violation of this chapter and may be continued, subject to the following provisions.

- A. A nonconforming use shall not be enlarged, increased or extended to occupy a greater area of land than was occupied at the effective date of this chapter.
- B. An existing nonconforming use may be expanded provided the expansion is within the building footprint that existed at the effective date of this chapter.
- C. If a nonconforming use is moved, it shall conform to the regulations of the district it is relocated to.

- D. In nonresidential districts, nonconforming uses may be changed to another nonconforming use provided the ZBA finds that the proposed use is equal to or more conforming to the uses permitted in the district in which it is located. In permitting this change, the ZBA may require appropriate conditions in accord with the purpose and intent of this section. Where a nonconforming use is hereafter changed to an equal or more conforming use, it shall not thereafter be changed to a less conforming use.
- E. In a residential district, where a nonconforming use is abandoned, the structure may only be changed to a use that is permitted by the district in which it is located.
- F. Where nonconforming use status applies to a mobile home, trailer coach or manufactured housing unit located outside a licensed mobile home park, nonconforming use status shall be extinguished and eliminated if the mobile home, trailer coach or manufactured housing unit is moved to a different lot outside a licensed mobile home park.
- G. Those alleged nonconforming uses which cannot be proved to have lawfully existed prior to the effective date of this chapter shall be declared illegal and shall be discontinued and made subject to the enforcement provisions of Article 40, Administration, Enforcement and Penalties, of this chapter.

§ 170-22.5. Nonconforming structures

A nonconforming structure is a structure or portion thereof that lawfully existed at the effective date of this chapter, but does not conform to the current provisions of this chapter. Any lawful nonconforming structure established prior to the effective date of this ordinance shall not be considered to be in violation of this ordinance and may be continued, subject to the following provisions.

- A. Nonresidential nonconforming structures shall not be expanded, unless a variance is obtained from the ZBA per the standards contained in Article 41, Zoning Board of Appeals.
- B. A residential nonconforming structure may be expanded provided the expansion will be within required setbacks and that other dimensional and Building Code requirements are met. For example, a home with a nonconforming front yard setback may be expanded in the rear so long as the rear yard setback and lot coverage remains conforming.
- C. A residential nonconforming structure may be expanded into a required front, side or rear yard, upon approval from the ZBA in accordance with the following standards. A proposed expansion which does not meet the following requirements shall only be permitted after obtaining a variance from the ZBA per the criteria contained in Article 41, Zoning Board of Appeals.

- (1) The expansion does not extend closer to the lot line than any existing, nonconforming part of the structure.
 - (2) The addition does not extend beyond the predominant existing building line along the same block.
 - (3) The addition retains compliance with all other setback, lot coverage and height requirements.
 - (4) The addition will meet all Building Codes and any other applicable Township ordinance requirements.
 - (5) The resultant addition will be compatible in terms of scale and design with the existing structure and the established character of the neighborhood.
- D. Any nonconforming structure, or structure containing a nonconforming use, that is damaged by fire, flood or other means in excess of 50% of the structures pre-catastrophe assessed value, as determined by the township assessor, shall not be reconstructed except in conformity with the provisions of this chapter.
- E. Routine maintenance, repairs and improvements may be conducted on any nonconforming structure or structure containing a nonconforming use, provided the structure is not enlarged or the use is not expanded.
- F. Maintenance, repairs or alterations deemed necessary by the Building Department to keep a nonconforming structure or structure containing a nonconforming use structurally safe or fit for human occupancy shall be permitted, provided the cost does not exceed 50% of the market value of the building or structure within a 12 month period. Such repairs are permitted provided the structure is not enlarged or the use expanded. If repairs or alterations exceed 50% of the assessed value as determined by the township assessor, it shall conform to the provisions of this Chapter.
- G. A nonconforming structure shall not be moved unless the new location conforms to the requirements of this chapter for the district in which it is located.
- H. If a structure is altered so as to eliminate, remove or lessen any of its nonconforming characteristics, then such nonconforming characteristics shall not be later reestablished or increased.

§ 170-22.6. Nonconforming sites

Nonconforming sites contain development improvements which lawfully existed at the effective date of this chapter, but do not now conform to the regulations of the zoning district in which it is located.

- A. Site improvements or expansions on sites which do not meet all of the current regulations may be permitted without a complete upgrade of all site elements provided the following conditions are met.
 - (1) Safety-related site issues must be met.
 - (2) Driveways that do not conform to Article 27, Access Management shall be eliminated, provided that the minimum reasonable access shall be maintained.
 - (3) Non-conforming site elements shall more closely conform to the current ordinance requirements.
 - (4) Cracked or damaged pavement and curbing shall be repaired.
 - (5) Required non-motorized pathways shall be installed.
 - (6) Signs shall conform with Chapter 145, Signs.
- B. Existing nonconformities shall not be increased or expanded.
- C. A site plan shall be submitted and reviewed in accordance with Article 33, Site Plan Review.

§ 170-22.7. Right-of-Way Changes

Where a nonconforming front yard setback, parking lot setback or greenbelt is created as a result of additional road right-of-way being acquired, the building or parking lot may be maintained, improved or expanded without a variance from the Zoning Board of Appeals, provided the following conditions are met:

- A. The required front yard or parking setback was in compliance prior to the acquisition of the additional road right-of-way.
- B. The front yard or parking setback shall not be further reduced as a result of building or parking lot expansion.

§ 170-22.8. Purchase or condemnation

- A. The Township Board of Trustees may acquire, by purchase, condemnation or otherwise, private property or an interest in private property for the removal of nonconforming buildings, structures or uses. The cost and expense, or a portion thereof, of acquiring the private property may be paid from general funds or assessed to a special district in accordance with the applicable statutory provisions relating to the creation and operation of special assessment districts for public improvements in townships.

- B. The elimination of the nonconforming structures or uses is declared to be for a public purpose and for a public use. The Township Board of Trustees may institute and prosecute proceedings for condemnation of nonconforming structures or uses under the power of eminent domain in accordance with Act 149 of the Public Acts of 1911, as amended, being § 213.21 to § 213.41 of the Michigan Compiled Laws or other applicable statute.