

**ARTICLE 21**  
**NON-CONFORMING BUILDINGS, LOTS AND USES**

**Sec. 21-01 Intent**

(a) Nonconformities are lots, uses, structures, buildings, or site plans for developed sites which do not conform to one or more provisions or requirements of this Ordinance or to any subsequent amendment, but which were lawfully established prior to the time of adoption of the Ordinance or amendment. Such nonconformities are considered to be incompatible with the current or intended use of land, buildings or structures in the district in which they are located. This Article is intended to meet the objectives stated below by establishing regulations that govern the completion, restoration, reconstruction, extension, and/or substitution of non-conformities, and specify the circumstances and conditions under which nonconformities shall be permitted to continue.

(b) The intent of this Article are to eliminate, or bring into compliance, lots, buildings, structures and uses which legally existed at the date of adoption of this Ordinance, but do not meet the current standards of this Ordinance. This Ordinance also has special provisions to permit certain non-conforming situations considered to be less harmful to continue under certain conditions, but to discourage their expansion, enlargement, or extension. The requirement and standards of this Article are intended to accomplish the following:

(1) Terminate and remove any use, building, accessory structure or any combination thereof that was established after the effective date of this Ordinance and in violation of this Ordinance. Such uses, buildings, or accessory structures are classified as violations of this Ordinance and shall not receive any of the rights, privileges or protection conferred by this Article for non-conforming situations.

(2) Discourage the continuation of non-conforming uses that are more intense than the uses permitted within the zoning district and are considered to be incompatible with permitted uses, or encourage their redevelopment into a more conforming use.

(3) Permit legal non-conforming buildings, structures or uses to remain until they are discontinued, removed or abandoned.

(4) Encourage a gradual upgrading to a more conforming status of site landscaping, parking, paving, signs or other features of a site required by the Zoning Ordinance developed in compliance with the requirements at the time of their construction, but which do not meet the site requirements of this Ordinance.

(5) Encourage the combination of contiguous non-conforming lots of record to create lots which conform or more closely conform to current requirements, are compatible with other lots in the zoning districts in which they are located, to promote the public health, safety and welfare and to eliminate problems associated with the overcrowding of land.

### **Sec. 21-02 Applicability**

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance, upon which actual building construction has been diligently continued and there is a valid building permit. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding such work shall be deemed to be actual construction, provided that such work shall be diligently continued until completion of the building involved.

### **Sec. 21-03 Non-Conforming Uses**

Where, at the effective date of adoption or amendment of this Ordinance, a lawful use on open land, a lot(s), building(s) or accessory structure(s) exists that is made non-conforming by this Ordinance or its amendments, such use may be continued, as it remains otherwise lawful, subject to the following provisions:

(a) **Expansions.** Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, and which existed at the effective date of this Ordinance. Except for single family dwellings as permitted below, a non-conforming use shall not be enlarged,

expanded or extended to occupy a greater area of land, constructed, reconstructed or structurally altered except with approval by the Zoning Board of Appeals (ZBA).

5 (b) **Accessory Uses and Structures.** No new accessory use, building or structure shall be established.

(c) **Relocation.** The non-conforming use shall not be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective  
10 date of this Ordinance.

(d) **Change in Use.** If no structural alterations are made, any non-conforming use of a building, or building and land in combination, may be changed to another non-conforming use if the ZBA finds the proposed use is more appropriate to  
15 the district than the existing non-conforming use. In permitting the change, the ZBA may require conditions and safeguards in accord with the purpose and intent of this Ordinance. Where a non-conforming use of a structure, land, or structure and land in combination is hereafter changed to a more  
20 conforming use, it shall not thereafter be changed to a less conforming use.

(e) **Removal.** Where non-conforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land.

25 (f) **Abandonment or Discontinuance.** If the non-conforming use of land ceases for any reason for a period exceeding one (1) year and the Township Planner determines that the owner has established intent to abandon the non-conforming use, any subsequent use of such land shall conform to the requirements specified by this Ordinance for the zoning district in which it is  
30 located. A non-conforming use shall be determined to be abandoned if one (1) 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 non-conforming use:

35 (1) Utilities, such as water, gas and electricity to the property, have been disconnected.

(2) The property, buildings, and grounds, have fallen into disrepair.

(3) Signs or other indications of the existence of the non-conforming use have been removed.

(4) Removal of equipment or fixtures which are necessary for the operation of the Non-conforming use.

(5) Other actions, which in the opinion of the Township Planner, constitute an intention of the part of the property owner or lessee to abandon the non-conforming use.

**(g) Special Standards for Single Family Homes in a Non-Residential District**

(1) A single family residential dwelling in a zoning district which does not permit that use may be expanded to occupy the floor area necessary for living purposes.

(2) A single family dwelling and its accessory structures, in a zoning district which does not permit that use may be continued, replaced, repaired or remodeled if damaged by flood, fire, or vandalism, if approved by the ZBA. Such approval requires a finding that the resulting building footprint and floor area will be the same size or smaller than that of the building before such change. Replacement of such non-conforming single family building shall commence no sooner then receiving a valid building permit and no latter than six (6) months of the date of damage. Work shall be diligently pursued toward completion. The applicant may be required to provide the Township with evidence, visual or otherwise demonstrate to the satisfaction of the Township Planner that work is being diligently pursued. Failure to complete replacement or diligently work toward completion shall constitute abandonment and result in the loss of its non-conforming status unless good cause for the delay is accepted at a hearing before the ZBA.

**Sec. 21-04 Non-Conforming Buildings or Structures**

Where a lawful building or structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance, that building or structure may be continued provided it remains otherwise lawful, subject to the following provisions. Except as noted below, no building or structure may be enlarged unless a variance is granted by the ZBA.

5 (a) **Damage by Fire or Other Catastrophe.** Any non-conforming structure or building, or any structure or building that contains a non-conforming use that is damaged by fire, flood, or other means to a point where the cost of repairs will be in excess of the structure and/or building's precatastrophe market value (as described in paragraph (i) below) shall not be rebuilt, repaired, or reconstructed, except in complete conformity with the provisions of this Ordinance.

10 In the event that the cost of repairing the damage is less than the structure or building's precatastrophe market value (as described in paragraph (i) below), the structure or building may be restored to its precatastrophe status. Such restoration shall take place only upon approval of the Building Official and all construction shall be in full compliance with applicable provisions of this Ordinance and other applicable Township Codes. Any request for such  
15 rebuilding, repair, or restoration shall be made to the Building Official within one hundred eighty (180) days following the incident. Any such rebuilding, repair, or restoration shall be completed within one (1) year from the date of the catastrophe.

20 (b) **Replacement of a Non-Conforming Single Family Dwelling.** A non-conforming building used as a single family residence, and its accessory structures, may be continued, replaced, repaired or remodeled if damaged by flood, fire, vandalism, accident or other natural disaster if approved by the ZBA. Such approval requires a finding that the resulting building footprint  
25 will be the same size or smaller than that of the building before such change or that the building will become more conforming. Replacement of such a non-conforming single family building shall commence within one (1) year of the date of damage and work shall be diligently pursued toward completion. Failure to complete replacement or diligently work toward completion shall  
30 result in the loss of legal, non-conforming status unless good cause for the delay is accepted at a hearing before the ZBA.

35 (c) **Relocation of a Non-Conforming Building or Structure.** Should any non-conforming building or structure be relocated or moved for any reason for any distance, it shall thereafter conform to the regulations for the district in which it is located after it is relocated or moved.

(d) **Safety Related Repairs, Improvements, and Modernization.** Repairs, improvements, or modernization of non-conforming buildings or structures

deemed necessary by the Building Official to maintain a non-conforming building in a structurally safe and sound condition are permitted provided such repairs or improvements do not exceed the market value (as described in paragraph (i) below) of the building or structure during any period of twelve (12) consecutive months. This cost/value calculation shall not include any costs associated with modernization of electrical, plumbing, heating or cooling systems to meet Building Code requirements. Any such repairs, improvements, and modernization shall not result in an enlargement of the non-conforming structure. However, if a non-conforming building or a structure containing a non-conforming use becomes physically unsafe, dangerous, and/or unlawful due to lack of maintenance and repairs and is formally declared as such by the Building Official, it shall not thereafter be restored, repaired, or rebuilt except in full conformity with the regulations in the district in which it is located.

(e) **Non-Safety Improvements and Modernization.** Repairs, improvements, or modernization of non-conforming structures which are not deemed necessary by the Building Department to keep a non-conforming building structurally safe and sound shall be permitted provided such repairs or improvements do not exceed fifty percent (50%) of the market value of the structure (as described in paragraph (i) below) during any period of twelve (12) consecutive months. Any such repairs, improvements or modernization shall not result in an enlargement of the non-conforming structure or building.

(f) **Alterations That Decrease Nonconformity.** Any non-conforming structure or building, or any structure or building, or portion thereof containing a non-conforming use, may be altered if such alteration serves to clearly decrease the non-conforming nature of the structure, building, and/or use. The Building Official shall determine if a proposed alteration decreases the degree of nonconformity.

(g) **Permitted Expansions to Single Family Dwellings.** An expansion (footprint or floor area) of a non-conforming single family building or structure shall be permitted when both of the following conditions exist:

(1) Only one (1) side of the building or structure does not conform with setback requirements.

(2) The expansion is on the conforming side of the building and will conform with all setback and height requirements.

(h) **Elimination of Nonconformity.** In the event a non-conforming situation is removed, the corresponding section of the building or structure shall thereafter conform.

5 (i) **Market Value.** For the purpose of this Article, market value shall be determined by an acceptable independent appraisal provided by the applicant. The Township Assessor and Building Official shall review the appraisal. The value of the repairs or improvements shall be based on a written estimate from a licensed contractor provided by the applicant. This estimate shall be  
10 reviewed by the Building Official.

### Sec. 21-05 Non-Conforming Lots

15 The following regulations shall apply to any non-conforming lot of record or non-conforming lot described in a deed or land contract executed and delivered prior to the effective date of the Zoning Ordinance or amendment thereto:

20 (a) **Use of Non-Conforming Lots.** Any non-conforming lot may be used only for a use permitted in the zoning district in which it is located. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory building(s) may be erected on any single lot of record in existence on the effective date of adoption or amendment thereto. This provision shall apply even though the lot fails to meet the requirements for  
25 area or width, or both, that are applicable in the district, provided that the lot is in conformance with all other applicable yard setback, minimum floor area and maximum height requirements for the district in which it is located.

30 (b) **Variance from Area and Bulk Requirements.** If the use of a non-conforming lot requires a variance from the area or bulk requirements, then the use shall be permitted only pursuant to a variance granted by the ZBA.

35 (c) **Non-Conforming Contiguous Lots under the Same Ownership.** To develop a non-conforming lot(s) under the provisions of paragraphs (a) and (b) of this Section, the applicant is required to submit evidence that ownership of the lot is not under contiguous single ownership with other lots that could be combined into a conforming or more conforming lot. The following regulations shall apply to non-conforming contiguous lots under the same ownership.

(1) If two (2) or more lots or combination of lots with contiguous frontage are or have been under single ownership are of record at the time of adoption or amendment of this Ordinance, and if all or part of the individual lots do not meet the requirements established for lot width and area, the lands shall be considered as a singular, individual parcel for the purposes of this Ordinance. Any altering of lot lines or combination of lots shall result in lots that more closely conform to the requirements of this Ordinance.

(2) No portion of the nonconforming parcel shall be used, occupied, or sold in a manner that diminishes compliance with lot width and area requirements established by this Ordinance, nor shall any division of a parcel be made that creates a new lot having a width or area less than the requirements stated in this Ordinance.

(3) These provisions shall not apply to contiguous lots in single ownership where each of the lots is occupied by an existing dwelling unit.

(d) **Combination of Non-Conforming Lots.** The following regulations shall apply to the combination of non-conforming lots.

(1) Any combination, in whole or in part, of non-conforming lots of record shall result in lots that more closely conform to the requirements of this Ordinance to the maximum extent feasible.

(2) Once any combination that creates a conforming lot occurs, the resulting lot shall not retain non-conforming lot of record status and will hereafter be required to comply with the lot requirements of this Ordinance.

## **Sec. 21-06 Non-Conforming Sites**

The intent of this Section is to permit improvements and minor modifications to an otherwise conforming use and building which does not meet all of the various site improvement related regulations of this Ordinance. The purpose is to allow gradual compliance with the site related requirements, for the entire site, for sites which predate the various Ordinance standards for landscaping, paving, and other non-safety site related items.

Improvements or expansions may be permitted by the Planning Commission during special land use or site plan review without a complete upgrade of all site



elements under the following conditions. The Township may require a performance guarantee to ensure that all improvements permitted under this Section will be made in accordance with the approved plan.

(a) The applicant is proposing reasonable site improvements on the overall site in relation to the scale and construction cost of the building improvements or expansion.

(b) The applicant has addressed safety related site issues on the overall site.

(c) The improvements or minor expansion will not increase noncompliance with site requirements.

(d) The applicant has upgraded the overall site landscaping consistent with *Article 14*.

(e) Driveways that do not conform with the access management requirements of this Ordinance shall be eliminated, provided that the minimum reasonable access shall be maintained, as determined by the standards of *Article 16*.

(f) Signs must conform with *Article 17*.

(g) A site plan shall be submitted in accordance with *Article 18*.

## **Sec. 21-07 Change of Tenancy or Ownership, Purchase, or Condemnation**

(a) In the event there is a change in tenancy, ownership, or management of an existing non-conforming use or structure and/or building shall be allowed to continue provided there is no change in the nature or character of such nonconformity and the use, structure, and/or building is otherwise in compliance with this Ordinance.

(b) The Township Board may acquire, by purchase, condemnation or otherwise private property or an interest in private property for the removal of non-conforming 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.

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

## **Sec. 21-08 Acquisition of Non-Conforming Buildings, Structures, or Uses**

10 The Building Official, from time to time, may recommend to the Township Board, the acquisition of private property for the purpose of removal of nonconformities. Where such acquisition is contemplated, the following procedures shall be followed:

- 15 (a) **Building Official Documentation and Recommendation.** Prior to instituting acquisition, the Building Official shall prepare or cause to have prepared a report for the Township Board. The report shall include the following:

20 (1) A list of all requirements of this Ordinance that are not met by the subject property.

(2) An estimate of the expense of such acquisition.

25 (3) An estimate of the cost of removing the non-conformities.

(4) An estimate of the probable resale price of the property after acquisition and removal of the non-conformities.

30 (5) Recommendations concerning the allocation of costs to be incurred by the Township.

### **(b) Township Board Consideration**

- 35 (1) **Public Hearing.** After receiving and reviewing the report from the Building Official, the Township Board shall determine if acquisition of the non-conforming property should be pursued. If the Township Board decides to pursue acquisition, then it shall first set a public hearing. Not less than fifteen (15) calendar days prior to the public hearing, notice of the time, place, and purpose of the public hearing shall be published in the

official newspaper of the Township, and sent by mail to the owners of property for which acquisition is being considered. The notice shall be sent to the owner's address as stated in the most recent assessment roll.

5                   (2) **Special Assessment.** If any or all of the expense related to acquisition of  
the subject property is assessed to a special district, then the Township  
Assessor shall be directed to furnish the Township Board with a tentative  
special assessment district and tentative plan of assessment. The names  
and addresses of the owners of property located in the district (as stated in  
10                   the latest assessment roll) shall be provided to the Township Board.  
Notice of the time, place, and purpose of the public hearing shall be sent  
by mail to the owners of property located in the tentative special  
assessment district.

15                   (3) **Township Board Determination.** If, following the public hearing, the  
Township Board finds that elimination of the non-conforming use,  
structure, and/or building would be for a legitimate public purpose, then it  
shall declare by resolution of the Township Board that the Township shall  
proceed to acquire the non-conforming use, structure, and/or building in  
20                   accordance with the laws of the State of Michigan and applicable  
Township Ordinances. The Township Clerk shall send by registered mail  
a certified copy of the resolution of the Township Board to the owners of  
property to be acquired and to owners of property in any special  
assessment district, at the addresses stated in the latest assessment roll.

25                   (c) **Removal of Non-Conformity.** Upon passing of title of the property so  
acquired by the Township, the Township Board shall cause the discontinuance  
or removal of the non-conforming use, or the removal or demolition or  
remodeling of the non-conforming building or structure.

30                   (d) **Disposition of Property.** The Township Board may thereafter elect to retain  
all or part of the property so acquired for municipal purposes. If acquisition  
costs and expenses are to be assessed against a special assessment district, the  
amount to be assessed shall be reduced by the market value of any part of the  
35                   property retained for municipal use, as determined by the Township Assessor.  
The Township Board shall thereafter order the sale of the portion of the  
property not retained for municipal purposes, but only for use in conformance  
with this Ordinance. The Township Board shall confirm the expenses related  
to the project and report the assessable cost to the Township Assessor, who

shall then prepare an assessment roll in the manner provided for law. Such an assessment may, at the discretion of the Township Board, be paid in one (1) or more, but not to exceed ten (10) annual installments.