

Article 27: Nonconformities

Amendments:

ARTICLE XXVII

NONCONFORMITIES

PURPOSE

This Article is hereby established for the following purposes:

1. **Recognition of Nonconformities**

To recognize that, within the districts established by the adoption or amendment of this Ordinance there exist lots, parcels, structures and uses which were lawful before this Ordinance was adopted or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance.

2. **Regulation of Nonconformities**

To regulate the completion, restoration and reconstruction of nonconforming structures, the extension, enlargement and substitution of nonconforming uses and the circumstances and conditions under which nonconformities shall be permitted to continue.

3. **Classification of Nonconforming Structures and Uses**

To establish two classes (Class A and Class B) of nonconforming structures and uses that distinguish between those that are not desirable (Class B), and those that may not have a significant adverse impact upon nearby properties or the public health, safety and welfare (Class A).

4. **Elimination of Class B Nonconforming Structures and Uses**

To declare that Class B nonconforming structures and uses are incompatible with permitted uses in the district, and are likely to have a negative impact on neighboring properties. It is the intent of this Article to eliminate Class B nonconforming structures and uses as rapidly as is permitted by law without payment of compensation.

5. **Continuation of Nonconformities**

To permit the continuance of nonconformities subject to the requirements of this Article, but not to permit their enlargement, expansion or extension, except where provided for in this Article.

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SEC. 27.1 DEFINITION AND CLASSIFICATION OF NONCONFORMING STRUCTURES AND USES

Two (2) different classes of nonconforming structures and uses (Class A and Class B) are hereby established by this Article, with the terms for completion, restoration, reconstruction, extension or substitution different for each applicable class. The classes shall distinguish between those that are not desirable and should be eliminated as rapidly as possible (Class B), and those that may not have a significant adverse impact upon nearby properties or the public health, safety and welfare (Class A). All nonconforming structures and uses not designated Class A by the Planning Commission shall be classified as Class B nonconforming structures or uses.

SEC. 27.2 CLASS B NONCONFORMITIES

Nonconforming structures and uses that have been designated Class A shall not be subject to the requirements of this Section, but rather shall be subject to the provisions of Section 27.3, Class A Nonconforming Designation. Class B nonconforming structures and uses may be continued, subject to the following regulations and restrictions:

1. Class B Nonconforming Structures

Class B nonconforming structures shall be allowed to continue after the effective date of adoption or amendment of this Ordinance, subject to the following conditions:

- (a) Expansion and Alteration Restricted. Class B nonconforming structures shall not be enlarged upon, expanded, extended, altered in a way which increases their nonconformity, or considered as grounds for adding other structures or uses prohibited elsewhere in the same district. Such structures may be enlarged upon, expanded, extended or altered where such work does not increase their nonconformity, where repairs are determined by the Chief Building Official to be necessary for safety or to ensure the continued advantageous use of the Class B nonconforming structure during its natural life.
- (b) Normal Repairs and Maintenance. This Article shall not prevent work required for compliance with the provisions of the State Construction Code or Michigan housing laws regulating the maintenance of buildings or structures. Normal repair, maintenance or replacement of interior non-bearing walls, fixtures, wiring, plumbing or heating and cooling systems in Class B nonconforming structures may be permitted in accordance with applicable code requirements, provided that such improvements do not result in an enlargement of a nonconforming structure or use, and provided that the cost of such improvements does not exceed the state equalized value of the structure at the time such work is proposed.

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Buildings Under Construction. Nothing in this Article shall require a change in the plans, construction or designated use of any building or structure for which construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and diligently carried on until completion. Construction shall include the placement of materials in a permanent manner or demolition and removal of an existing structure preparatory to rebuilding in accordance with an approved site plan.

- (c) Damaged Structures. Any Class B nonconforming structure that has been destroyed or damaged by fire, explosion, Act of God, public enemy or other means to the extent that the cost of repairs and restoration exceeds the state equalized value of the structure (as determined through the real property assessment for tax purposes prior to the time such damage occurred) shall not thereafter be reconstructed, except in conformity with the provisions of this Ordinance.

If the cost of repairs and restoration is less than the state equalized value of the structure, then it may be restored to the same configuration as existed before such damage, provided that such restoration shall be subject to site plan approval by the Planning Commission. Said restoration shall be commenced within one hundred eighty (180) days of the date of site plan approval and shall be diligently carried on to completion.

- (d) Unsafe Structures. Nonconforming structures that are determined by the Chief Building Official to be unsafe shall not thereafter be restored, repaired or rebuilt, but rather shall be immediately removed.
- (e) Height of Building as Originally Planned. A building may be erected to its full height of use, as originally planned, when foundations and structured members are designed to carry such building, when said building has been partially erected previous to the adoption or amendment of this Ordinance.
- (f) Relocation. Should any Class B nonconforming structure be moved any distance for any reason it shall thereafter conform to the regulations for the district in which it is located.

2. Class B Nonconforming Uses

Class B nonconforming uses shall be allowed to continue after the effective date of adoption or amendment of this Ordinance subject to the following conditions:

- (a) Class B nonconforming uses shall not be enlarged, reconstructed, increased in intensity, extended to occupy a greater area of land or building floor area, altered or moved in whole or in part to any other portion of the lot or parcel or adjoining lot or parcel. No additional structures shall be constructed for a Class B nonconforming use.

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- (b) A Class B nonconforming use may be extended throughout any parts of a building which were manifestly arranged or intended for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.
- (c) No existing structure devoted to a Class B nonconforming use shall be enlarged or extended, except in changing the use of the structure to a use permitted in the district where it is located.
- (d) Where a Class B nonconforming use occupies a structure, removal or destruction of the structure, or damage to the structure to an extent greater than the state equalized value of the structure, shall eliminate the nonconforming use status, and subsequent uses shall conform to the use provisions of the district where it is located.
- (e) If a Class B nonconforming use is changed or superseded by a permitted use, any future use shall be in conformity with the provisions of this Ordinance.
- (f) When a Class B nonconforming use ceases or is discontinued for a period of more than three hundred sixty-five (365) days, it shall not be resumed and subsequent uses shall conform with the regulations of the district where it is located.
- (g) The use shall be maintained in compliance with all applicable federal, state, county and Township laws, ordinances, regulations and codes, other than the use regulations for the district where the use is located. Failure to do so, or failure to bring the use into compliance with current laws, ordinances, regulations and codes within one-hundred eighty (180) days of their effective date, shall constitute grounds for the Township to seek court approval to terminate or remove the use.

SEC. 27.3 CLASS A NONCONFORMING DESIGNATION

It is the intent of this Section to recognize that certain nonconforming structures and uses may not have a significant adverse impact upon nearby properties or the public health, safety and welfare, and to establish a “Class A” designation that the Planning Commission may approve for these nonconforming structures or uses, subject to the following procedure and standards:

1. Application

A written application shall be filed setting forth the following information:

- (a) The address, parcel identification number and legal description of the total land area of the application.
- (b) Use(s). A map showing the existing and proposed use(s) of the subject property and adjacent lands with sufficient detail to properly define nearby parks, public

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lands, roads, highways, available discharge points or routes for surface drainage, sewer and water facilities and zoning district boundaries.

- (c) Site Plan. A plan for alterations, enlargements, extensions, and other site improvements, if any, associated with the application for a Class A designation.
- (d) Any information as may be deemed necessary by the Planning Commission to make a determination on the request.

2. Public Hearing (as amended on 9/30/07)

A public hearing shall be held by the Planning Commission on a request for a Class A designation for a nonconforming structure or use, to acquaint the public and particularly adjoining property owners with the request. One (1) notice shall be published in a newspaper which circulates in the Township, and sent by mail or personal delivery to the owners of property for which approval is being considered; to all persons to whom real property is assessed within three hundred (300) feet of the boundary of the property in question; and to the occupants of all structures within three hundred (300) feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction. This notice shall be given not less than fifteen (15) days before the date the application will be considered. If the name of the occupant is not known, the term “occupant” may be used in mailing notification. The notice shall:

- (a) Describe the nature of the request.
- (b) Indicate the property which is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.
- (c) State when and where the request will be considered.
- (d) Indicate when and where written comments will be received concerning the request.

3. Standards for Approval of a Class A Designation

The Planning Commission may approve a Class A designation for a nonconforming structure or use only upon determining that the following conditions exist:

- (a) Continuance of the nonconforming structure or use would not create an immediate danger to public health, safety or welfare of the neighborhood and the community as a whole.
- (b) Continuance of the nonconforming structure or use does not and is not likely to significantly depress the value of nearby properties.

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- (c) Continuance of the nonconforming structure or use does not and is not likely to create a general nuisance to the nearby properties.
- (d) No useful purpose would be served by strict application of the provisions of this Ordinance with which the use or structure does not conform.
- (e) The structure or use was lawful at the time of its inception, and is nonconforming as defined in this Ordinance.
- (f) The change of one nonconforming use to another nonconforming use shall result in a change in use which will have less of a negative impact on neighboring properties than the existing nonconforming use of land and would therefore bring the use and development of the property into greater conformity with the spirit and intent of the Ordinance. In permitting such change the Planning Commission may require appropriate conditions and safeguards in keeping with the spirit and intent of other provisions of this Ordinance and to protect the neighboring properties from a negative impact.
- (g) The proposed alteration, extension, expansion or replacement will not have a negative impact on neighboring properties and will bring the use into greater conformity with the spirit and intent of the Ordinance. In permitting such alteration, extension, expansion or replacement the Planning Commission may require appropriate conditions and safeguards in keeping with the purpose of this Article and Section, and to mitigate any negative impacts of the nonconforming structure or use.

Conditions may include a requirement that all signage on the structure or land in question be brought into compliance with the sign regulations of this Ordinance, improvements to the site to bring the site more into conformance with current Ordinance site design standards, and other improvements as deemed necessary to protect surrounding uses.

4. Planning Commission Decision

Subsequent to a public hearing, the Planning Commission may deny, approve or approve with conditions a request for a Class A designation, after review of the application and the standards established in this Section. The decision of the Planning Commission shall be incorporated in a statement to be made part of the official minutes of the meeting and shall contain the conclusions relative to the application under consideration. The Commission shall specify the basis for the decision and any conditions imposed. No vested interest shall arise out of a Class "A" designation.

5. Effect of Approval of a Class A Designation

Class A nonconforming structures may be permitted to be perpetuated, expanded, enlarged, altered, improved or reconstructed if damaged or destroyed only after approval

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of the Planning Commission, and in accordance with an approved plan, the provisions of this Section and any conditions of approval. Should such a structure be moved for any reason for any distance whatsoever, it shall conform to the regulations for the district in which it is located after it is moved.

Class A nonconforming uses may be perpetuated, expanded, enlarged, increased or extended, either on the same or adjoining lot or parcel, only after approval of the Planning Commission, and in accordance with an approved plan, the provisions of this Section and any conditions of approval. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance, except after approval of the Planning Commission.

6. Effect of Denial of a Class A Designation (as amended 4/9/09)

The following shall not be eligible for appeal to the Zoning Board of Appeals:

1. An application for a Class A designation that has been denied by the Planning Commission.
2. An administrative decision made by the Chief Building Official regarding a modification of a Class B structure or use that has been previously denied by the Planning Commission for Class A status.

Notwithstanding the above, a previously denied application for Class A status may be resubmitted for Planning Commission consideration as a new application after a minimum of three hundred sixty five (365) days have elapsed from the date of denial by either the Planning Commission or Chief Building Official.

7. Cessation or Removal of Class A Nonconforming Structures or Uses

If a Class A nonconforming structure is permanently removed, or when a Class A nonconforming use is discontinued or ceases to exist for a period of more than three hundred sixty-five (365) days, the Class A designation may be revoked by the Planning Commission. If the Class A nonconforming use is changed or replaced by a conforming use, the designation shall be deemed removed.

Any subsequent structure or use shall conform with the provisions of this Ordinance for the district where it is located, unless a change to another nonconforming use has been approved by the Planning Commission.

8. Revocation of Class A Designation

Upon a finding that the structure or use no longer qualified for Class A designation, as a result of any change of conditions or circumstances, or failure to maintain or improve a

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Class A nonconforming structure or use in accordance with the provisions of this Section, an approved site plan or any conditions of approval, the Planning Commission may take action to revoke the Class A designation. Such action shall be subject to the following:

- (a) **Public Hearing.** The Planning Commission shall hold a public hearing subject to the notice requirements set forth in Section 27.3.2, at which time the owner, operator or person having use of property occupied by a Class A designated nonconforming structure or use shall be given an opportunity to present evidence in opposition to revocation.
- (b) **Determination.** Subsequent to the hearing, the decision of the Commission with regard to the revocation shall be made and written notification provided to said operator or person having use of property occupied by a Class A designated nonconforming structure or use.

SEC. 27.4 CHANGE OF TENANCY PERMITTED

There may be a change in tenancy, ownership, or management of an existing nonconformity without affecting its nonconforming status, provided that there is no change in the nature or character of the nonconformity.

SEC. 27.5 REMOVAL OF NONCONFORMITIES BY TOWNSHIP ACTION

The Township may acquire by purchase, condemnation or otherwise, private property or an interest in private property for the purpose of removing nonconformities. The elimination of the nonconformities in a zoning district may be declared to be for a public purpose and for a public use. The Township Board may institute and prosecute proceedings for condemnation of nonconformities under the power of eminent domain in accordance with Public Act 149 of 1911, as amended, being Sections 213.21 to 213.41 of the Michigan-Compiled Laws, or other applicable statute.

END OF ARTICLE 27.

THE FOLLOWING INFORMATION DOCUMENTS HISTORY OF REVISIONS TO THIS ARTICLE SINCE ITS ADOPTION ON JUNE 7, 2004

SEC. 27.4	CHANGE OF TENANCY PERMITTED
SEC. 27.5	REMOVAL OF NONCONFORMITIES BY TOWNSHIP ACTION

Charter Township of Plymouth Zoning Ordinance No. 99
Article 27: Nonconformities
Amendments:

ALL AMENDMENTS TO
ARTICLE XXVII (27)

Charter Township of Plymouth Zoning Ordinance No. 99

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Amendments:

ALL AMENDMENTS TO ARTICLE XXVII (27)

The following language was amended on 4/09/09

6. Effect of Denial of a Class A Designation

An application for a Class A designation that has been denied by the Planning Commission shall not be eligible for appeal to the Zoning Board of Appeals, but may be resubmitted for Planning Commission consideration as a new application after a minimum of three hundred sixty five (365) days have elapsed from the date of denial.

The following language was amended on 9/30/07

2. Public Hearing

A public hearing shall be held by the Planning Commission on a request for a Class A designation for a nonconforming structure or use, to acquaint the public and particularly adjoining property owners with the request. One (1) notice shall be published in a newspaper which circulates in the Township, and be sent by mail or personal delivery to the owners of property for which approval is being considered; to all persons to whom real property is assessed within three hundred (300) feet of the boundary of the property in question; and to the occupants of all structures within three hundred (300) feet. This notice shall be given not less than five (5) nor more than fifteen (15) days before the date the application will be considered. If the name of the occupant is not known, the term "occupant" may be used in mailing notification. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses or organizations, one (1) occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four (4) dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses, or organizations, notice may be given to the manager or owner of the structure who shall be requested to put the notice at the primary entrance to the structure.

At a minimum, the notice shall describe the nature of the request, indicate the property that is the subject of the request, state when and where the request will be considered and indicate where written comments concerning the request may be sent.