

ARTICLE VII: NONCONFORMING USES AND STRUCTURES

SECTION 7.01: INTENT

Nonconforming uses and structures are those which do not conform to a provision or requirement of this Ordinance but were lawfully established prior to the time of its applicability. It is recognized that those nonconforming uses which adversely affect orderly development and the value of nearby property are not permitted to continue without restriction.

The zoning regulations established by this Ordinance are designed to guide the future use of land in West Branch Township by encouraging appropriate groupings of compatible and related uses and thus to promote and protect the public health, safety and general welfare. The continued existence of nonconforming uses is frequently inconsistent with the purposes for which such regulations are established.

The Ordinance distinguishes by class the various nonconforming uses and structures. Different regulations are established for each class. The degree of restriction over each class is a function of the degree to which that class of nonconformity is a nuisance or incompatible with the purposes and regulations of this Ordinance.

All uses or structures created in violation of any preceding Marquette County Zoning Ordinance shall not be considered a nonconforming use or structure, have no vested right, and are violations of this Ordinance.

SECTION 7.02: CLASS A NONCONFORMING USES AND STRUCTURES

Class A nonconforming uses and structures are those which have been so designated by the Planning Commission, after application by any interested person or the Zoning Administrator. The Planning Commission shall find that the continuance thereof would not be contrary to the public health, safety and general welfare, or to the spirit of this Ordinance; that the use or structure does not and is not likely to significantly depress the value of nearby properties; that the use or structure was lawful at the time of its inception; that it meets the standards set out in Section 6.04 of this Ordinance; and that no useful purpose would be served by strict application of the provisions or requirements of this Ordinance with which the use or structure does not conform.

SECTION 7.03: PROCEDURE FOR OBTAINING CLASS A DESIGNATION

A written application shall be filed with the Planning Commission which shall include:

- A. Name and address of property owner and applicant if not the same;
- B. A legal description of the property or lot;
- C. A map illustrating property boundaries, all existing buildings and uses of land including existing drives and parking areas; and
- D. An explanation describing the present nonconforming use or structure.

The Planning Commission shall, upon receipt of said application, schedule a public hearing in accordance with the procedures set forth in Section 8.02 of this Ordinance. Upon hearing the facts and information, the Planning Commission shall make its decision in writing and set forth the findings and reasons on which it is based, pursuant to the standards identified in Section 6.04. Conditions may be attached, including any time limit, where necessary to assure that the use or structure does not become contrary to the public health, safety, or welfare, or the spirit and purpose of this Ordinance.

SECTION 7.04: PROVISIONS FOR CLASS A NONCONFORMING USES AND STRUCTURES

Where, at the effective date of adoption or amendment of the Ordinance, a lawful use of land exists that is no longer permissible under the terms of this Ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- A. No such Class A Nonconforming Use or Structure shall be enlarged or increased, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance, except after approval of the Planning Commission.
- B. No such Class A Nonconforming Use or Structure 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.
- C. No Class A Nonconforming Use or Structure shall be extended to displace a permitted (conforming) use.
- D. Class A nonconforming Use or Structure shall not be changed to another nonconforming use, except after approval of the Planning Commission. Before granting such approval, the Planning Commission shall determine that such change in use will have a less deleterious effect on neighboring properties than the existing nonconforming use.
- E. No Class A Nonconforming Use or Structure shall be expanded to add another nonconforming use or structure, except after approval by the Planning Commission. The proposed nonconforming use shall satisfy the standards as set forth in Section 6.04.
- F. Class A Nonconforming Uses or Structures shall not be altered or expanded without the prior approval of the Planning Commission, except that the following structural alterations may be permitted without prior approval of the Planning Commission:
 - 1. Structural alterations or additions increasing the bulk of a structure are permitted provided all regulations contained in the Ordinance are met.
 - 2. Structural alterations which do not add to the bulk of structures or increase the intensity of use of the structure.
 - 3. Where a variance has been obtained for a setback nonconformity, Planning Commission approval is not additionally required.

SECTION 7.05: REGULATIONS PERTAINING TO CLASS A NONCONFORMING USES AND STRUCTURES

No Class A nonconforming Use or Structure shall be resumed if it has been discontinued for a continuous period of at least eighteen months or if it has been changed to a conforming use for any period. No Class A Structure shall be used, altered, or enlarged in violation of any condition imposed in its designation.

SECTION 7.06: CLASS B NONCONFORMING USES AND STRUCTURES

All nonconforming uses and structures not designated as Class A are considered as Class B. It is the purpose of this Ordinance to eliminate Class B Nonconforming Uses and Structures as rapidly as is permitted by law without payment of compensation. No Class B Nonconforming Use shall be resumed if it has been discontinued for a continuous period of at least eighteen (18) months or if it has been changed to a conforming use for any period, or if the structure in which such use is conducted is damaged by fire or other casualty to the extent that the cost of reconstruction or repair exceeds fifty (50) percent of the reproduction cost of such structure.

No Class B Nonconforming Structure shall be enlarged or structurally altered. No Class B Nonconforming Use shall be changed to a substantially different nonconforming use, nor enlarged so as to make use of more land area than was used at the time of becoming nonconforming. No Class B Nonconforming Use or Structure shall be permitted to continue in existence if it was unlawful at the time of its inception.

SECTION 7.07: NONCONFORMING LOTS

Any nonconforming parcel of land shown as a lot in a map recorded with the County Register of Deeds, or described in a deed or land contract or lease agreement which has been perpetual, executed together with an affidavit or acknowledgment of a notary public, prior to the effective date of this Ordinance, and which lot actually exists as shown or described may be used for permitted uses even though the lot area and/or dimensions are less than those required for the District in which the lot is located, provided that yard dimensions and other requirements of the District, not involving lot area or width, are met. If a parcel contains more than one nonconforming lot, which is contiguous and in one ownership and would make one or more conforming lots, then only one structure would be permitted per conforming parcel.

In addition, if a parcel contains more than one nonconforming lot which is contiguous and in one ownership but would not make one or more conforming lots, then only one structure would be permitted per parcel. The spirit of this provision is to limit density in areas of historically small lots to provide for proper isolation for wells, septic systems, drainage and similar public health considerations. No vested right shall arise to the property owner for any parcel created in violation of any preceding zoning ordinance.

SECTION 7.08: GENERAL STANDARDS

The Planning Commission shall review the particular facts and circumstances of each Class A proposal in terms of the intent of this Article and the general standards as set out in Section 6.04 of this Ordinance. Each individual proposal shall follow the procedure outlined in Section 8.02 of this Ordinance.