

ARTICLE 10.00 – NONCONFORMITIES

Section 10.01 Intent

Nonconformities are uses, structures, buildings, or lots which do not conform to one or more provisions or requirements of this Ordinance or a subsequent amendment, but which were lawfully established prior to the time of adoption of the Ordinance or amendment. Such nonconformities are not compatible with the current or intended use of land in the district in which they are located. Therefore, it is the intent of this Ordinance to permit such nonconformities to continue under certain conditions, but to discourage their expansion, enlargement, or extension. Accordingly, the purpose of this section is to establish regulations that govern the completion, restoration, reconstruction, extension, and/or substitution of nonconformities, and to specify the circumstances and conditions under which nonconformities shall be permitted to continue.

- A. Within the zoning districts established by this Ordinance and its predecessors, there exist lots, structures and uses which may have been lawful at the time the ordinance came into effect, but which would be prohibited, regulated or restricted under its present terms. Such lots, structures and uses are called “nonconforming”, i.e. they do not conform to the requirements of the ordinance or its amendments. The nonconforming characteristics of these lots, structures and uses may also be known as “nonconformities”.
- B. Since such nonconformities tend to disrupt the harmony of neighborhoods and adversely affect the public health, safety and welfare, it is the intent of this Ordinance to permit them to exist only conditionally. Thus, the continuance of nonconformities is discouraged and most changes to lots, structures and uses shall, if possible, eliminate the nonconformity.
- C. It is further the intent of this Ordinance that the nonconforming characteristics of nonconforming lots, structures and uses shall not be enlarged upon, expanded or extended, nor shall they be used as grounds for adding other structures or uses prohibited elsewhere in the same zoning district.
- D. To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building for which a building permit has been issued and on which actual construction shall have been diligently carried on for 30 days preceding the date of adoption of this Ordinance. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation, demolition, or removal of an existing building has been substantially begun preparatory to rebuilding, such activity shall be deemed to constitute actual construction, provided that works shall be carried on diligently.

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The following table summarizes the nonconforming regulations contained in this Article:

Summary of Nonconformity Regulations

<i>Issue</i>	<i>Requirements</i>
Change to a different nonconforming use	Not allowed
Period of non-use before nonconformity must cease	Nonconforming use of open land: 180 days Nonconforming use of structure or building: 12 months
Change in ownership	No effect on nonconformity
Expansion of nonconforming use	Not allowed
Expansion of nonconforming building/structure	Allowed by SLU permit; no expansion of nonconformity allowed
Maintenance; structural repairs	Generally allowed
Renovation; modernization	Generally allowed
Rebuilding after catastrophe	Allowed if damage is less than 50% of pre-catastrophe fair market value Allowed by SLU permit if damage is more than 50 percent of pre-catastrophe fair market value
Nonconforming contiguous lots under same ownership	Must be combined if vacant

Section 10.02 General Requirements

The following regulations shall apply to all nonconforming uses, structures, and lots:

A. Continuation of Nonconforming Uses and Buildings/Structures

Any lawful nonconforming use existing on the effective date of this Ordinance or amendment thereto may be continued and shall not be considered to be in violation of this Ordinance. A nonconforming use may not be changed to another nonconforming

use. Whenever a nonconforming use has been changed to a conforming use, such use shall not thereafter be re-established.

Any lawful nonconforming building or structure existing on the effective date of this Ordinance or amendment thereto may be continued and shall not be considered in violation of this Ordinance.

B. Discontinuation of Nonconforming Uses

1. Nonconforming Uses of a Structure

When a nonconforming use of a structure, or structure and land in combination, is discontinued or abandoned for 12 consecutive months without a present intention to reinstate the nonconforming use, the structure (or structure and land in combination) shall not thereafter be used except in conformance with the provisions of the district in which it is located.

2. Nonconforming Uses of Open Land

If any nonconforming use of open land ceases for any reason for a period of more than 180 days, any subsequent use of such land shall conform to the provisions of the district in which it is located.

3. Seasonal Uses

In applying this subsection to seasonal uses, the time during the off-season shall not be counted.

C. Purchase or Condemnation

In order to accomplish the elimination of nonconforming uses and buildings/structures which constitute a nuisance or are detrimental to the public health, safety and welfare, Paw Paw Township may acquire, by purchase, condemnation or otherwise, private property for the purpose of removal of a nonconformity pursuant to Section 208(3) of Public Act 110 of 2006, as amended.

D. Change of Tenancy or Ownership

In the event there is a change in tenancy, ownership, or management, an existing nonconforming use or building/structure shall be allowed to continue provided there is no change in the nature or character of such nonconformity.

Section 10.03 Nonconforming Uses or Buildings/Structures

No nonconforming use or building/structure shall be enlarged, extended, or structurally altered except as permitted in this Section.

A. Expansion, Extension, and Enlargement

1. Nonconforming Use

The area, density, and/or manner of operation of a nonconforming use shall not be altered by expansion, extension, or enlargement. Any such alteration shall be determined to result in an increase in nonconformity.

2. Nonconforming Building/Structure

A nonconforming building/structure shall not be altered by expansion, extension, or enlargement unless a special land use permit is granted pursuant to Article 7.00. Any such alteration shall not result in an increase in any nonconformity.

B. Repairs, Improvements, and Modernization

1. Such ordinary repairs and maintenance work as may be necessary to keep a nonconforming use or building/structure in sound condition, or as may be required to conform with federal, state or local law, or as is needed to improve or modernize the use or building/structure, may be made provided that no such work shall expand, extend or enlarge the nonconforming use or building/structure.
2. If a nonconforming use or building/structure is damaged or destroyed by fire, flood, wind, or other calamity to the extent of 50 percent or more of its fair market value at the time of such damage or destruction, said use or building/structure shall not be continued or reestablished unless a special land use permit is granted pursuant to Article 7.00. Any such replacement shall not result in an increase in the initial nonconformity.
3. If a nonconforming use or building/structure is damaged or destroyed by fire, flood, wind, or other calamity to the extent of less than 50 percent of its fair market value at the time of such damage or destruction, the use or building/structure may be repaired or otherwise restored and reconstructed so as to be no more nonconforming than at the time of the damage or destruction. Any such reconstruction right shall be considered terminated by abandonment if reconstruction is not started within 12 months from the time of the damage or destruction and completed within 18 months from the time the building permit is issued.

Section 10.04 Nonconforming Single Family & Two-Family Dwellings

Notwithstanding the foregoing, a single family or two-family dwelling located in a zoning district which does not permit same may be altered by expansion, extension, enlargement and/or rebuilt. In addition, one (1) accessory building not exceeding 600 square feet in area may be erected for a nonconforming single family or two-family dwelling lacking an existing accessory building.

Section 10.05 Nonconforming Lots of Record

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

A. Use of Nonconforming Lots

Any nonconforming lot shall be used only for a use permitted in the district in which it is located. Notwithstanding limitations imposed by other provisions of this Ordinance, a permitted use may be erected on any single lot of record in existence at the effective date of adoption or amendment thereto. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, provided that the lot can be developed as proposed without any significant adverse impact on surrounding properties or the public health, safety, and welfare.

B. Area and Bulk Requirements

No division of any parcel shall be made which creates a lot with area or width/frontage less than the area or bulk requirements of this Ordinance for the zoning district in which it is situated.

C. Nonconforming Contiguous Lots Under the Same Ownership

If a nonconforming lot of record abuts one or more nonconforming lots of record in the same ownership, such lots shall be combined and considered as one lot for the purposes of this Ordinance. No portion of the combined lots shall be used, occupied, or sold in a manner which diminishes compliance with lot area or frontage requirements of this Ordinance, nor shall any division of the combined lot be made which creates a lot with area or width/frontage less than the requirements stated in this Ordinance. These provisions shall not apply to contiguous lots in single ownership where each of the lots is occupied by an existing principle use/building.

D. Combination of Nonconforming Lots

The Township Assessor may permit the combination, in whole or in part, of nonconforming lots of record into building sites less than the size requirements established by this Ordinance, provided that the combination of lots reduces the degree of nonconformity and results in a parcel which is capable of accommodating a structure that is in conformance with the building area and setback requirements of this Ordinance.