

## ARTICLE 26.00

### NONCONFORMING USES AND STRUCTURES

#### Section 26.01 Nonconforming Uses

Any lawful nonconforming use existing at the time of passage of this Ordinance or any prior ordinance may be continued, provided, however, that except in the case of dwellings, the building or the lot or land involved shall neither be structurally altered, nor enlarged unless such revised structure shall conform to the provisions of this Ordinance for the district in which it is located. Provided further, that this Section shall not prohibit structural alterations required by law.

#### Section 26.02 Record Of Nonconforming Uses

Within ninety (90) days following official notification by the Township of each property owner of this Ordinance, or any amendments thereto, each nonconforming user of land, buildings, or land and buildings in combination may file with the Building Inspector a statement of the nature and extent of his nonconforming use. Said statement shall contain the names and addresses of owners and occupants of premises in nonconforming use; the legal description of the land in such use; description of buildings, structures or vehicular units in said nonconforming use; and the specific nature of the nonconforming use. The Building Inspector shall be the recipient of said record and be responsible for making copies of the record, which shall be filed in the office of the Township Clerk as part of the Township records.

#### Section 26.03 Forfeiture Of Right To Continue Nonconforming Use

- A. The statement of the nature of nonconforming use as described in Section 26.02 shall be evidence of intent to continue such use.
- B. When nonconforming use of property is abandoned, thereafter no right shall exist to maintain on said property a nonconforming use. No nonconforming use, if changed to a use permitted in the district in which it is located, shall be resumed or changed back to a nonconforming use.

#### Section 26.04 Classification Of Nonconforming Uses

It is recognized that different types of nonconforming uses bear different types of characteristics. Described herein is the classification system and pertinent characteristics for classifications. This Section establishes Class "A" and Class "B" nonconforming uses.

- A. Class "A" nonconforming uses shall have the following characteristics:
  - 1. The nonconforming use shall not be a nonresidential use in a residential district.
  - 2. The use does not adversely affect the public health, safety and welfare.
  - 3. The use does not nor will not depress the value of adjacent conforming use property.
  - 4. The use does not adversely affect the purposes of the district in which it is located.
  - 5. No useful purpose would be served by the strict application of the provisions or requirements of this Ordinance with which the use does not conform.

- B. Class "B" nonconforming uses shall be all those uses that are not classified as Class "A" nonconforming uses.
- C. The Planning Commission shall have the sole authority to determine the appropriate classification of a nonconforming use. The Zoning Board of Appeals shall consider those items indicated in Section 26.04.A in determining the appropriate classification of a nonconforming use.

**Section 26.05      Application Procedures For Classifications Of Nonconforming Uses**

- A. The property owner or designated representative of the owner may apply for classification of a nonconforming use by following the procedure described below:
  - 1. The applicant shall request in a written communication to the Office of the Township Clerk that they be placed on an agenda of the Planning Commission for determination of classification of a nonconforming use. The request shall include all of the information described in this Section. The applicant shall pay the appropriate fee as established by the Township at the time of submission of such request.
  - 2. The applicant shall state their name, address and telephone number.
  - 3. The applicant shall state the legal description of the subject property.
  - 4. The present use of the property shall be described.
  - 5. The type of desired classification, either Class "A" or Class "B", shall be indicated.
  - 6. Any other information requested by the Planning Commission shall be provided.

**Section 26.06      Regulations Governing Class "A" Nonconforming Uses**

Class "A" nonconforming uses shall be regulated by the provisions of this Article in addition to other applicable provisions of this Ordinance not in conflict with the intent of this Section.

- A. If the structure housing such Class "A" nonconforming use is damaged, reconstruction may take place provided that the actual expense of reconstruction shall not exceed eighty percent (80%) of the fair market value of the structure. The fair market value shall be based on the estimated valuation of the structure prior to the damage occurring. Such reconstruction may take place only with the approval of the Zoning Board of Appeals and in full compliance with the provisions of this Ordinance.
- B. The structure housing such nonconforming use may be enlarged or altered provided that such alteration is approved by the Planning Commission in accordance with Article 18.00.
- C. Minor repairs and normal maintenance of the nonconforming use shall be permitted with applicable permits.
- D. The nonconforming use shall be discontinued if it is abandoned.

**Section 26.07      Regulations Governing Class "B" Nonconforming Uses**

- A. Class "B" nonconforming uses shall be regulated by the provisions of this Article in addition to other

applicable provisions of this Ordinance where such additional provisions are not in conflict with the intent of this Section.

- B. If the structure housing such Class "B" nonconforming use is damaged, reconstruction may take place provided that the actual expense for such reconstruction shall not exceed fifty (50) percent of the fair market value of the structure. The fair market value shall be based on the estimated valuation of the structure prior to the damage occurring. Such reconstruction may take place only with the approval of the Zoning Board of Appeals and in full compliance with the provisions of this Ordinance.
- C. No structure housing such nonconforming use may be altered or enlarged in any way that increases the nonconforming character of the use. Any structure or portion thereof housing such nonconforming use may be altered upon Planning Commission approval in compliance with Article 18.00 of this Ordinance provided that such alteration shall serve to decrease the nonconforming nature of the use.
- D. Repair and normal maintenance work may be performed on Class "B" nonconforming use structures provided that such work shall only be performed on fixtures, wiring or plumbing and may include the replacement of nonbearing walls. The expense involved for such repairs or maintenance may not exceed fifty (50) percent of the State Equalized Valuation of the structure. The cubic content of the structure as it existed at the time of adoption of this Ordinance shall not be increased during the performance of repairs or maintenance.
- E. The nonconforming use shall be discontinued if it is abandoned.

### **Section 26.08      Revocation of Classification Designation**

The Planning Commission shall revoke, upon notice to the property owner, the classification of a classified nonconforming property upon a finding that, as a result of any change of conditions or circumstances, the use no longer qualifies for the classification designation.

### **Section 26.09      Change of Nonconforming Use**

A nonconforming use may not be changed to another nonconforming use, except as otherwise permitted in this Article. Whenever a nonconforming use has been changed to a conforming use, or to a use of greater restriction, it shall not thereafter be changed to a nonconforming use or a nonconforming use of lesser restriction.

### **Section 26.10      Elimination of Nonconforming Uses**

In order to accomplish the elimination of nonconforming uses which constitute a nuisance or are detrimental to the public health, safety and welfare, the Township of Bangor, pursuant to Section 208(3) of 2006 P.A. 110, as amended, known as the Michigan Zoning Enabling Act, may acquire by purchase, condemnation or otherwise, private property for the purpose of removal of nonconforming uses. (amended 9/12/06)

### **Section 26.11      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 lawfully-created lot of record in existence at the effective date of adoption or amendment thereto, unless such use has been restricted by a prior affidavit recorded with the Bay County Register of Deeds or as evidenced in the records of the Township. This provision shall apply even though such lot fails to meet the requirements for area, and/or width and/or road frontage, provided that the lot can be developed in compliance with other dimensional requirements (such as setback requirements) without any significant adverse impact on surrounding properties or the public health, safety, and welfare.

**B. Variance from Area and Bulk Requirements**

If the use of nonconforming building requires a variance from the area or bulk requirements, then such use shall be permitted only if a variance is granted by the Zoning Board of Appeals.

**C. Nonconforming Lots in Single Family Dwelling Districts**

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 may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance. This provision shall apply even though such lots fail to meet the requirements for area and width, or both, generally applicable in the district; provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulation for the district in which the lot is located.

**D. Nonconforming Contiguous Lots Under the Same Ownership**

If two or more lots or combination of lots with contiguous frontage in 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 lots involved shall be considered to be an individual, undivided parcel for the purposes of this Ordinance. 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 Ordinance, nor shall any division of a parcel be made which creates a lot with width or area 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 home.

**Section 26.12 Nonconforming Structures**

A. Where a lawful structure exists at the effective date of adoption of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such conforming structure may be enlarged or altered in a way that increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
2. Should such structure be moved for any reason whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

### **Section 26.13 Nonconforming Uses of Land**

- A. Where at the time of passage of this Ordinance, lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, the use may be continued so long as it remains otherwise lawful provided:
1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.
  2. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment to this Ordinance.
  3. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

### **Section 26.14 Nonconforming Uses of Structures**

- A. If lawful use involving individual structures with premises in combination, exists at the effective date of adoption of this Ordinance that would not be allowed in the district under the terms of this Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:
1. No existing structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
  2. Any nonconforming use may be extended throughout any parts of a building that were manifestly arranged or designed 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.
  3. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. Whenever a nonconforming use has been changed to a conforming use, or to a use of greater restriction, it shall not thereafter be changed to a nonconforming use or a nonconforming use of lesser restriction.
  4. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the entire structure shall eliminate the nonconforming status of the land.

### **Section 26.15 Repairs and Maintenance**

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding twenty (20) percent of the current assessed value of the nonconforming structure or nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.

If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to a lack of repairs and maintenance, and is declared by the Building Inspector to be unsafe or

unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulation of the district in which it is located.

In any residential district if any principal structure is nonconforming because of being too close to a side yard line, it may be extended or enlarged provided that the addition does not extend further into the required yard than the existing structure line and that it is not extended into any other required yard.

### **Section 26.16 District Boundary Changes**

Ordinarily, when district boundaries shall hereafter be changed, any nonconforming use may still be continued but subject to all other provisions of this Ordinance. However, if a property owner voluntarily petitions for rezoning of his property on which there exists a land use or structure which would not be permitted in the proposed new zoning district for said property, then said nonconforming land use or structure shall not retain its legal nonconforming status and shall be removed or discontinued within six (6) months after the said rezoning has become effective.

### **Section 26.17 Nonconforming Use of Manufactured Homes**

- A. It is hereby provided that as of the effective date of this Ordinance that any manufactured home not in compliance with the provisions of this Ordinance shall be deemed a legal nonconforming use. Said manufactured home may not be thereafter moved onto or used upon the premises, in the event of any one (1) or more of the following conditions pertaining to the home or premises occurs
1. If said manufactured home is removed from the lot, parcel or tract of land on which it has been located.
  2. If said manufactured home is not connected with fresh water supply and septic tank/drain field sewerage system prior to or on the effective date of this Ordinance.

### **Section 26.18 Valid Nonconforming Use of Manufactured Homes**

The use of any manufactured home placed on a lot, parcel or tract of land in the Township prior to the effective date of this Ordinance, which use is prohibited by this Ordinance, may be continued, subject to the provisions identified herein.