

ARTICLE 4.00

NONCONFORMITIES

Section 4.01 -- 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 this 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 foster the elimination of nonconformities by discouraging 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.

The Table 4.1 summarizes the nonconforming regulations contained in this Article:

Table 4.1: SUMMARY OF NONCONFORMING REGULATIONS

Issue	Requirement
Period of nonuse before nonconformity shall cease	Nonconforming use: 180 days Nonconforming Structure, access and land in combination: 12 months Nonconforming structure: 12 months
Replacement of existing nonconforming use with new conforming use	Nonconforming use shall cease
Change in Ownership	No effect on nonconformity
Expansion or extension of nonconforming use within a building	Permitted subject to conditions (see Section 4.05.B(2))
Expansion of nonconforming use beyond existing building	Not permitted
Enlargement of nonconforming structure	Not permitted
Maintenance or structural repairs	Maximum value of repairs: 50% of the assessed value during a period of twelve (12) consecutive months
Renovation or modernization	Maximum value of improvements: 50% of the assessed value during a period of twelve (12) consecutive months
Reconstruction or repair after catastrophe	Permitted if the appraised replacement cost does not exceed 50% of the assessed value of the structure.

Section 4.02 – EFFECTIVE DATE

Whenever this article refers to the "effective date," the reference shall be deemed to include the date any amendments to this Ordinance went into effect if the amendments created a nonconforming situation.

Section 4.03 -- GENERAL REQUIREMENTS

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

A. Regulation of Nonconforming Uses

Any lawful use of the land or buildings existing on the date of enactment or amendment of this Ordinance and located in a district in which it would not be permitted as a new use or structure under the regulations of this Ordinance, is hereby declared to be a “nonconforming use”. Nonconforming uses shall not be in violation of this Ordinance provided the nonconforming use is subject to and the owner complies with the regulations in this Article.

B. Continuation of Nonconforming Uses, Structures and Lots of Record

1. At the effective date of adoption of this Ordinance, any existing lawful use of land that would not be permitted by the regulations imposed by this Ordinance may be continued as long as it remains lawful.
2. At the effective date of adoption of this Ordinance, any existing lawful structure that could not be built under the restrictions on area, lot coverage, height, yards, location on the lot and other area and bulk requirements of this Ordinance, may be continued as long as it remains lawful.
3. The continuation of nonconforming lots of record shall comply with the provisions of Section 4.04.

C. Buildings under Construction

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 this Ordinance and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner.

D. Discontinuation of Nonconforming Uses and Structures

1. Nonconforming Structure or Nonconforming Structure and Land in Combination

When a nonconforming, structure, or structure and land in combination, is discontinued or abandoned for twelve (12) consecutive months or discontinued for any period of time 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. Signs are an exception to this regulation. See Section 8.03.

2. Nonconforming Uses of Land

If any nonconforming use of land is discontinued for any reason for a period of one hundred eighty (180) days, any subsequent use of such land, including access, shall conform to the provisions set forth for the district in which it is located.

E. Purchase or Condemnation

In order to accomplish the elimination of nonconforming uses and structures which constitute a nuisance or are detrimental to the public health, safety and welfare, the City of Midland, pursuant to the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, may, but is not required to, acquire by purchase, condemnation or otherwise, private property for the purpose of removal of nonconforming uses.

F. Establishment of a Conforming Use or Structure

In the event that a nonconforming principal use or structure is superseded or replaced by a conforming principal use or structure on a site, any structure or structure and land in combination shall abide by the regulations of the district in which the structure is located and the nonconforming use may not thereafter be resumed.

G. Change of Tenancy or Ownership

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

H. Unlawful Nonconformity

No land use or structure shall be permitted to continue in existence if it was unlawful at the time it was established. Unlawful land uses and structures include, but are not limited to, uses established without proper zoning approval or a proper building permit.

I. Change of Location

1. Movement of Nonconforming Use

No 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 of the Ordinance.

2. Movement of Nonconforming Building or Structure

Should a nonconforming building or structure in whole or in part be moved to another parcel or to another location on the same parcel for any reason whatsoever, it shall thereafter conform to all of the regulations for the district in which such building or structure will be located.

Section 4.04 -- NONCONFORMING LOTS OF RECORD

The following regulations shall apply to any nonconforming legally created lot, 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. 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.

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” (see definition – Section 2.02) 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.

Section 4.05 -- MODIFICATION TO NONCONFORMING USES OR STRUCTURES

Except as permitted in this Section, no nonconforming use or structure shall be enlarged, extended, or structurally altered, nor shall any nonconformity be changed to a different nonconformity which increases the intensity of use or nonconformity. Examples of enlargements or increases in intensity include, but are not limited to, the further encroachment of a structure into a required side yard, the addition of sales area to a nonconforming retail use and the start of a nonconforming use which has greater noise, traffic, and/or nuisance impacts than an existing nonconforming use.

A. Applicability

The following regulations shall apply to any nonconforming use or structure, including:

1. Nonconforming use of buildings designed for a conforming use.
2. Nonconforming use of buildings specifically designed for the type of use which occupies them but not suitable for a conforming use.
3. Buildings designed and used for a conforming use but not in conformance with area and bulk, parking, loading, or landscaping requirements.
4. Nonconforming structures, such as fences. Signs are an exception to this regulation. See Section 8.03.
5. Nonconforming uses without structures.
6. Nonconforming driveways.

B. Enlargement, Extension, or Alteration

1. Increase in Nonconformity Prohibited

Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of any nonconformity. For example, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

- a. An increase in the total amount of space devoted to a nonconforming use, or
- b. Greater nonconformity with respect to dimensional restrictions, such as setback requirements, height limitations, density requirements, or other requirements in the district in which the property is located, unless a variance is granted by the Zoning Board of Appeals.

2. Permitted Extension

Any nonconforming use may be extended throughout any part of a building, which was 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. No nonconforming use of land shall be enlarged, increased, or extended to occupy a greater area of land, nor shall any such use be moved in whole or in part to any portion of the lot or parcel than was occupied on the effective date of this Ordinance or amendment thereto, except as follows:

- a. Any nonconforming place of worship, on the effective date of this Ordinance, nonconforming due to a lack of lot area or yard requirements, may be increased in building area provided said expansion conforms to all requirements in this Ordinance.
- b. A dwelling nonconforming due to its location in a non-permitted district may be expanded or enlarged for residential purposes up to fifty percent (50%) of the existing ground floor area. Accessory buildings may be constructed or expanded upon the same lot.

3. Alterations that Decrease Nonconformity

Any nonconforming structure or any structure or portion thereof containing a nonconforming use, may be altered if such alteration serves to decrease the nonconforming nature of the structure or use. Signs are an exception to this regulation. See Section 8.03.

4. Variance to Area and Bulk Requirements

If a proposed alteration is deemed reasonable by the Zoning Board of Appeals by virtue of the fact that it would decrease the nonconforming nature of a structure or use, but such alteration requires a variance from the area or bulk requirements, then such alteration shall be permitted only if a variance is granted by the Zoning Board of Appeals.

C. Repairs, Improvements, and Modernization

1. Permitted Improvements

Ordinary building repairs, repair or replacement of fixtures, wiring or plumbing in a nonconforming structure or portion of a structure containing a nonconforming use shall be permitted provided such repairs or improvements do not exceed fifty percent (50%) of the assessed value of the structure during any period of twelve (12) consecutive months. Any such repairs, improvements, and modernization shall not result in enlargement of the cubic content of the nonconforming structure. The provisions in this paragraph shall apply to all structures except as otherwise provided in this Article for reconstruction of structures damaged by fire or other catastrophe.

2. Required Repairs

Repairs or maintenance deemed necessary by the Building Official to keep a nonconforming building structurally safe and sound are permitted. However, if a non-conforming structure or a structure containing a nonconforming use becomes physically unsafe and/or unlawful due to lack of maintenance and repairs and is 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.

D. Damage by Fire or Other Catastrophe

Any nonconforming structure or structure housing a nonconforming use that is damaged by fire, collapse, explosion, acts of God or acts of public enemy may be reconstructed, repaired or restored provided the following:

1. Reconstruction Expense

The following nonconforming uses or structures may be repaired or restored provided that the expense of such reconstruction is not in excess of fifty percent (50%) structure's pre-catastrophe fair market value as determined by the City Assessor:

- a. Residential Use in Residential Districts
- b. Non-Residential Use in Residential Districts
- c. Uses in Non-Residential Districts
- d. Structure in any District

Persons aggrieved by a determination of the pre-catastrophe fair market value by the City Assessor may appeal such determination to the Zoning Board of Appeals.

2. Timing

The restoration of the structure and the resumption of use shall commence within six (6) months of the time of when the damage occurred. Where pending insurance claims require an extension of time, the Building Official may grant a time extension provided that the property owner submits a certification from the insurance company attesting to the delay.