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NONCONFORMITIES

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ARTICLE 23: NONCONFORMITIES

SECTION 23.01: PURPOSE

It is purpose of this Article to provide for the regulation of legally nonconforming structures, lots of record, and uses, and also to specify circumstances and conditions under which nonconformities shall be permitted to continue. It is necessary and consistent with the regulations prescribed by this Ordinance that nonconformities, which adversely affect orderly development and the value of nearby property, not be permitted to continue without restriction. The zoning regulations established by this Ordinance are designed to guide the future use of land located in the Charter Township of Marquette by encouraging appropriate groupings of compatible and related uses and to promote and protect the public health, safety, and general welfare. The continued existence of nonconformities is frequently inconsistent with the purposes for which regulations are established; therefore, the gradual elimination of nonconformities is generally desirable. The regulations of this Article permit nonconformities to continue, but are intended to restrict further investments which would make them more permanent. This Article distinguishes major nonconforming uses, minor nonconforming uses, major nonconforming structures, minor nonconforming structures, and nonconforming lots of records. The degree of restriction made applicable to each separate category is a function of the degree to which that category of nonconformity is a nuisance or incompatible with the purposes and regulations of this Ordinance.

SECTION 23.02: DEFINITIONS

- A. **A legal nonconformity** is any land use, structure, lot of record, or sign (See Article 22, *Signs for Details on Nonconforming Signs*) legally established prior to the effective date of this Ordinance or subsequent amendment to it which would not be permitted by, or be in full compliance with, the regulations of this Ordinance.
- B. **A nonconforming use** is an activity using land, buildings, signs, and/or structures for purposes which were legally established prior to the effective date of this Ordinance or subsequent amendment to it and which would not be permitted to be established as a new use in a zoning district in which it is located by the regulations of this Ordinance.
1. A *major nonconforming use* is any principal use not permitted by right (Y), or by a Special Use Permit (S), as designated in Article 15, *Principal Uses Permitted in Districts, Section 15.05, Table XIV, Use vs. District Nomograph*.
 2. A *minor nonconforming use* is any existing nonconforming use which is not classified as a major nonconforming use. If an existing nonconforming use is designated as requiring a Special Use Permit (S) in Article 15, *Principal Uses Permitted in Districts, Section 15.05, Table XIV, Use vs. District Nomograph*, then the existing nonconforming use is considered to be a minor nonconforming use.

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SECTION 23.02: DEFINITIONS – (Cont.)

- C. **A nonconforming structure** is any building or structure, other than a sign, legally established prior to the effective date of this Ordinance or subsequent amendment, which does not fully comply with the standards set forth in this Ordinance.
1. **A major nonconforming structure** is any nonresidential building or structure located on a parcel which at any point borders a residential use and which exceeds either the maximum building height for the district in which it is located or which does not fully comply with the bufferyard requirements of this Ordinance.
 2. **A minor nonconforming structure** is any nonconforming building or structure which is not classified as a major nonconforming building or structure.
- D. **A nonconforming lot of record** is any validly recorded lot which at the time it was recorded fully complied with all applicable laws and ordinances but which does not fully comply with the lot requirements of this Ordinance concerning minimum area or minimum lot width.
- E. **A nonconforming sign** is any sign legally established prior to the effective date of this Ordinance or subsequent amendment to it which is not in full compliance with the regulations of this Ordinance.

SECTION 23.03: CONTINUANCE OF NONCONFORMITIES

- A. Except as otherwise provided in this Article, any nonconforming lot, use, sign, or structure lawfully existing on the effective date of this Ordinance or subsequent amendment thereto may be continued so long as it remains otherwise lawful. All nonconformities shall be encouraged to convert to conformity wherever possible and shall be required to convert to conforming status as required by this Article.
- B. A nonconformity shall not be enlarged upon, expanded, or extended, including extension of hours of operation, unless the alteration is in compliance with all requirements of this Ordinance. Normal maintenance and incidental repair of a legal nonconformity shall be permitted, provided that this does not violate any other section of this Article.
1. Nothing in this Article shall be deemed to prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares the structure to be unsafe and orders its restoration to a safe condition, provided that the restoration is not otherwise in violation of the various provisions of this Section prohibiting the repair or restoration of partially damaged or destroyed structures or signs.
 2. Nothing in this Article shall be deemed to prevent an extension for the exclusive purpose of providing required off-street parking or loading spaces, and involving no structural alteration or enlargement of such structure, subject to the restrictions of Article 21, Off Street Parking Requirements.

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SECTION 23.03: CONTINUITY OF NONCONFORMITIES – (Cont.)

- C. A nonconformity shall not be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is relocated.
- D. No use, structure, or sign which is accessory to a principal nonconforming use or structure shall continue after the principal use or structure has ceased or terminated, unless it shall thereafter conform to all regulations of this Ordinance.
- E. The burden of establishing that any nonconformity is a legal nonconformity as defined by this Article shall, in all cases, be upon the owner of such nonconformity and not upon the Township.

SECTION 23.04: MAJOR NONCONFORMITIES

- A. A major nonconforming use shall not be changed to any use other than a use permitted in the zoning district in which it is located.
- B. Major nonconforming uses or structures shall not be re-established in their nonconforming conditions in any zoning district after damage or destruction if the estimated expense of reconstruction exceeds fifty (50) percent of the appraised replacement cost of the structure or use.
- C. If a major nonconforming use ceases for any reason for a period of more than twelve (12) consecutive months, such discontinuance shall be considered conclusive evidence of an intention to abandon the existing nonconforming use. At the end of the three hundred sixty-five (365) day period, the nonconforming use shall not be re-established and any future use shall be in conformity with the provisions of this Ordinance.

SECTION 23.05: MINOR NONCONFORMITIES

- A. On the effective date of adoption or amendment of this Ordinance, where a lawful use of land exists that is no longer permissible under the terms of this Ordinance as enacted or amended, the use may be continued, so long as it remains otherwise lawful, subject to the following provisions:
 - 1. A nonconforming use shall not be enlarged, increased, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.
 - 2. A nonconforming use shall not 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.

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SECTION 23.05: MINOR NONCONFORMITIES – (Cont.)

3. If a nonconforming use of land ceases for any reason for a period of more than three hundred sixty-five (365) consecutive days, such discontinuance shall be considered conclusive evidence of an intention to abandon the existing nonconforming use. The time limit on discontinuance may be extended beyond the three hundred sixty-five (365) days, for a period of time not to exceed one (1) year upon proper application to the Zoning Board of Appeals within the three hundred sixty-five (365) day period and upon presentation of evidence that a practical difficulty would exist should the three hundred sixty-five (365) day limitation be strictly enforced. At the end of the three hundred sixty-five (365) day period of abandonment, the nonconforming use shall not be re-established and any future use shall be in conformity with the provisions of this Ordinance. Seasonal nonconforming uses, currently found in the Township which by their nature operate habitually for less than eleven (11) months out of a year or customarily during a limited period of the year, shall be exempted from this requirement.
4. A nonconforming use shall not be extended to displace a permitted or conforming use.

SECTION 23.06: MINOR NONCONFORMITIES - STRUCTURES

- A. Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
 1. Nonconforming structures shall not be altered or expanded without the prior approval of the Zoning Board of Appeals, with the exception of structural alterations which do not increase the bulk of the structure or the intensity of use of the structure.
 2. Nonconforming buildings or structures may be structurally altered so as to prolong the life of the building or structure.
 3. Nonconforming structures may be re-established in their nonconforming condition in any zoning district after damage or destruction of the nonconforming structure, only if approved by the Zoning Board of Appeals.

SECTION 23.07: MINOR NONCONFORMITIES – USES OF STRUCTURES AND LAND

- A. If a lawful use of a structure, or of structure and land in combination, exists at the effective date of adoption or amendment of this Ordinance, that would not be allowed in the zoning district under the terms of this Ordinance, the use may be continued so long as it remains otherwise lawful, subject to the following provisions:

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SECTION 23.07: MINOR NONCONFORMITIES-USES OF STRUCTURES AND LAND – (Cont.)

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. A nonconforming use may be extended throughout any part of a building which was arranged or designed for that use, and which existed at the time of adoption or amendment of this Ordinance, but the use shall not be extended to occupy any land outside the building.
3. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded or changed to a permitted use, shall thereafter conform to the regulations for the zoning district in which the structure is located and shall not revert back to a nonconforming use.
4. Where a nonconforming use of a structure, or structure and premises in combination, is discontinued for twelve (12) consecutive months, the discontinuance shall be considered conclusive evidence of an intention to abandon the existing nonconforming use.

The time limit of discontinuance may be extended beyond the twelve (12) months for a period of time not to exceed one (1) year upon proper application to the Zoning Board of Appeals within the twelve (12) month period and upon presentation of evidence that a practical difficulty would exist should the twelve (12) month limitation be strictly enforced. At the end of this period of abandonment, the structure, or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the zoning district in which it is located. Seasonal nonconforming uses of a structure, or structures and premises, currently found in the Township, which by their nature operate habitually for less than eleven (11) months out of a year or customarily during a limited period of the year, shall be exempted from this requirement.

SECTION 23.08: NONCONFORMING LOTS OF RECORD

A *nonconforming lot of record* is any validly recorded lot which at the time it was recorded fully complied with all applicable laws and ordinances but which does not fully comply with the lot requirements of this Ordinance concerning minimum area or minimum lot dimensions. A nonconforming lot of record may be used for any principal use permitted in the zoning district in which the lot is located, provided that for any use which is to be served by an individual potable water well and sanitary septic system, the nonconforming lot shall be of a size and design to meet the minimum requirements of the Marquette County Health Department (*See also Article 20, Miscellaneous Provisions, Section 20.09, Area and Width Requirement for Lots of Record*).

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SECTION 23.09: REPAIRS AND MAINTENANCE

Repairs and maintenance may be performed on any building devoted in whole or in part to a nonconforming use; including ordinary repairs or repair or replacement of nonbearing walls, fixtures, wiring, or plumbing to an extent not exceeding fifty (50) percent of the market value of the building during any period of twelve (12) consecutive months. However, the cubic content of the building as it existed at the time of passage or amendment of this Ordinance shall not be increased. Nothing in this Article shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by order of any official charged with protecting the public health, safety, and welfare.

SECTION 23.10: PRIOR CONSTRUCTION APPROVAL

Nothing in this Article shall prohibit the completion of construction and use of a nonconforming building for which a building permit has been issued prior to the effective date of this Ordinance, provided that construction is commenced within ninety (90) days after the date of issuance of the permit, that construction is carried on diligently without interruption, as weather permits, for a continuous period; and that the entire building shall have been completed according to the plans filed with the permit application within two (2) years after the issuance of the building permit. To avoid practical difficulties, nothing in this Article shall be deemed to require a change in the plans, construction, or designated use of any building on which construction was lawfully begun prior to the effective date of adoption or amendment of this Article, and upon which actual construction has been diligently carried on. Actual construction is defined to include the placing of construction materials in permanent position and fastened in a permanent manner; except where demolition or removal of an existing building has been substantially begun preparatory to rebuilding. The demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.

SECTION 23.11: CHANGE OF TENANCY OR OWNERSHIP

There may be a change of tenancy, ownership, or management of any existing nonconforming uses of land, structures, and premises provided there is no change in the nature or character of the nonconforming uses.

SECTION 23.12: ELIMINATION OF NONCONFORMITIES USE OR STRUCTURE

The Township Board may acquire private property or an interest in private property for the removal of any nonconforming use or structure by purchase, condemnation, or other means. The cost, expense, or a portion thereof may be paid from general funds or assessed to a special district in accordance with applicable statutory provisions.