

## **Chapter 4**

### **Non-Conforming Uses**

- 401. INTENT.** It is the intent of this Section to permit the continuation of any lawful use of a building or land existing as of the effective date of this ordinance. However, it is hereby declared that nonconformance with the provisions of this ordinance is contrary to the best interests of the citizens of the Township and ought to be discontinued as circumstances permit. Any nonconforming building, structure or use may be expanded, changed, repaired, or reconstructed only as prescribed by this Section.
- 402. HISTORIC PROPERTIES.** Any nonconforming property in Swan Creek Township which is listed on the State or National Register of Historic Places is specifically excluded from any requirement of this Section which would damage the historic character of the property. When any such property is the subject of any administrative decision, the input of Michigan's State Historic Preservation Officer shall be requested in writing not less than 30 days before any regulatory action may take effect.
- 403. LEGALITY OF NONCONFORMITIES.** Legal nonconformities are presumed to have existed before the adoption of zoning regulations in Swan Creek Township, and illegal nonconformities to have been developed in conflict with zoning regulations through oversight or error.

Nonconforming properties or uses will be considered to be Legal Nonconformities if they meet each applicable criterion, listed as "a" through "d", below. Note that temporary signs are not considered to be legal nonconforming structures.

- (a) The nonconformity existed before the effective date of this ordinance.
- (b) The use, parcel, building or structure in question meets one of the following standards.
  - (1) It complied with the District regulations of any previous zoning ordinance.
  - (2) The nonconformity was allowed under any previous zoning ordinance due to granting of a variance or special use permit.
  - (3) It had been recognized as a "legal nonconforming use" under the previous zoning ordinance.
  - (4) The nonconformity resulted from land acquisition by a government agency, such as for a road right of way. (Applies to Nonconforming Setback or Lot Size only)

- (5) (Applies to Nonconforming Parcels only) Area, width, and depth of parcel, and the number of off-street parking spaces provided, are at least ninety percent (90%) of minimum requirements for its zoning district.
- (c) (Applies to Nonconforming Uses only) The use has not been discontinued for any six month period.
- d. (Applies to Nonconforming Buildings or Structures only) The building or structure does not extend into a public right of way, over a neighboring property line, or exceed lot coverage limits for its zoning district by over 50 percent.

**404. INVENTORY OF NONCONFORMITIES.** The Township Zoning Administrator is hereby required to establish and maintain an Inventory of Legal Nonconformities known to exist in Swan Creek Township. Listed properties shall be arranged in the order of the Township Assessor's parcel identification numbers.

All listed properties shall also be identified on a large scale map of the Township which shall be available for public inspection.

Properties shall be added to or deleted from the Inventory as circumstances change or as Township officials become aware of previously unlisted situations.

Each listing in the Inventory of Nonconformities shall include the following information.

- (a) Parcel identification number.
- (b) Property address (if one is assigned).
- (c) Current owner(s).
- (d) Property description.
- (e) Parcel dimensions.
- (f) Current zoning district.
- (g) Current use of property.
- (h) Description of all nonconformities.

**405. REDUCTIONS OF THE DEGREE OF NONCONFORMANCE.** A reduction of the degree of nonconformance in one respect is not permitted to offset an increase in the degree of nonconformance in another respect. Thus, square footage may not be "traded" from one portion of a building to another. Nor may one nonconforming use be replaced by another unless the degree of nonconformance is reduced in some way.

- 406. PRIOR CONSTRUCTION APPROVAL.** Nothing in this section 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 all terms of the permit are fully complied with.
- 407. DISTRICT CHANGES.** Whenever changes occur in the boundaries of Zoning Districts, the provisions of this Section shall apply to any users properties that become nonconforming as a result of the boundary changes.
- 408. ELIMINATION OF NONCONFORMITIES.** It should be recognized that state laws permit the Swan Creek Township Board to acquire nonconforming properties, by condemnation if necessary, and remove any nonconforming uses or structures. The resultant property may be leased or sold for a conforming use or used by the Township. The net cost of acquisition may be assessed against a benefit district, or may be paid from general funds.
- 409. RECONSTRUCTION AND RESTORATION.** Any lawful nonconforming use that is damaged may be restored, rebuilt, or repaired PROVIDED that such restoration does not exceed fifty percent (50%) of its appraised value, exclusive of foundations, as determined by the assessing officer. Provided that said use be the same or more nearly conforming with the provisions of the district in which it is located.
- 410. REPAIR.** Nothing in this ordinance shall prohibit the repair, improvement, or modernizing of a lawful nonconforming building to correct deterioration, obsolescence, depreciation, or wear, provided that such repair does not exceed an aggregate cost thereby increasing the assessed value by more than thirty (30%) percent as determined by the assessing officer unless the subject building is changed by such repair to a conforming use.
- 411. CHANGING USES.** If no structural alterations are made, the Board of Appeals may authorize a change from one nonconforming use to another nonconforming use, PROVIDED the proposed use would be more suitable to the zoning district in which it is located than the nonconforming use which is being replaced. Whenever a nonconforming use has been changed to a more nearly conforming use or to a conforming use, such use shall not revert or be changed back to a nonconforming or less conforming use.

**412. REGULATION OF NONCONFORMITIES.**

- (a) **TABLE.** The following table prescribes actions to address various types of nonconformities in several situations. It is presumed that each of these situations will result in an application for a building or zoning permit and that sufficient information will be obtained to determine the legality of the nonconformity before any action will be taken by officials.
  
- (b) **INTERPRETATION.** Should any question arise concerning the interpretation of any provision of the *Regulation of Nonconformities Table*, or if a situation is encountered which was not anticipated by the Table, the question shall be submitted to the Zoning Board of Appeals for their interpretation which shall be final and shall set the precedent for future treatment of related situations.