

CHAPTER 18

NONCONFORMING USES

SECTION 18.01 PURPOSE AND DESCRIPTION

With the districts established by this Ordinance and any subsequent amendments thereto, there exist lots, structures, and uses of land and structures which were lawful before this Ordinance was adopted but which would be prohibited or restricted under the terms of this Ordinance.

- (a) It is the intent of this Ordinance to permit these nonconformities to continue until they are removed, but not to encourage their continuance.
- (b) Nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any structure on which actual construction was lawfully begun prior to the effective date of this Ordinance, provided that actual construction has been diligently performed. Further, any building permit issued prior to the effective date of this Ordinance shall entitle the bearer of such permit to construct such building in accordance with the requirements of the permit as long as such permit remains valid.

SECTION 18.02 REPAIRS AND MAINTENANCES

Such repairs and maintenance as are required to keep a nonconforming use or building in a safe and sound condition may be made. A nonconforming structure which is damaged by any natural catastrophe or by acts of maliciousness may be restored to its original condition. Permitted restoration shall be commenced within six months from the date of such damage and diligently pursued to completion.

SECTION 18.03 ENLARGEMENT OF NONCONFORMING BUILDINGS

In all zoning districts, buildings which are non-conforming by reason of setback, height, parking, building square footage or other dimensional requirements may be altered or enlarged beyond the size which existed at the time of the adoption of this Chapter (7-10-2001) provided the alteration or enlargement complies with all setback, height, parking, and other applicable regulations of the zoning district in which it is located and does not increase the extent of the non-conformity. The extension of a non-conforming building in such a manner that the extension itself does not conform to the setback, height or other applicable standards of this Chapter shall be deemed an increase in the extent of the non-conformity of the original building and is not permitted.

SECTION 18.04 ENLARGEMENT OF NONCONFORMING USES

- (a) All nonconforming uses located within a building may be enlarged beyond the size which existed at the time of the adoption of this Chapter (7-10-2001) provided that the following requirements are met:

- (1) That the gross square footage of the enlargement of the building or of any new buildings does not exceed 50 percent of the gross square footage of the building which existed prior to the adoption of this Chapter.
 - (2) That the enlargement of the existing building or use or construction of a new building complies with all setback, parking, landscaping, lighting, height and other applicable regulations of the zoning district in which it is located including all site plan review requirements.
 - (3) Such enlargement shall be on the parcel occupied by the non-conforming use at the time of adoption of the Ordinance from which this Chapter is derived.
 - (4) A use which is non-conforming because such use now requires a Special Land Use Permit as of the date of adoption of this Ordinance may expand in accordance with the provisions of this Section without obtaining a Special Land Use Permit from the Planning Commission. An expansion of such use beyond what is permitted by this Section shall only be permitted by Special Land Use.
- (b) Non-conforming uses which are not located within a building including but not limited to open air businesses, sand and gravel mines, campgrounds, golf courses, contractor equipment yards and salvage yards, shall not be increased in size so that the use occupies more land area than the area occupied by the use prior to the adoption of this Chapter. (7-10-2001)

SECTION 18.05 MOVING

Should any nonconforming structure be moved for any reason, it shall thereafter conform to regulations of the district in which it is located after being moved.

SECTION 18.06 NONCONFORMING USE DISCONTINUED

No structure or premises where a nonconforming use has discontinued, ceased operation, or become abandoned for a continuous period of 12 months or more, or has changed to a conforming use shall again be devoted to a use not in conformity with the regulations of the district within which located.

SECTION 18.07 CHANGE IN NONCONFORMING USE

Any nonconforming use may be changed to another nonconforming use provided that the Board of Appeals, by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use.

SECTION 18.08 CHANGES IN TENANCY OR OWNERSHIP

There may be a change in tenancy, ownership, or management of a nonconforming use, provided that there is no change in the nature or character of said nonconforming use.

CHAPTER 19

ZONING BOARD OF APPEALS

SECTION 19.01 CREATION, MEMBERSHIP, TERM OF OFFICE

There is hereby created and/or continued a Township Zoning Board of Appeals of five members. The first member of such Board shall be a member of the Township Planning Commission; one member shall be a member of the Township Board, and the remaining members shall be selected and appointed by the Township Board from the electors of the Township residing in the unincorporated areas of the Township, provided that an elected officer of the Township shall not serve as chairman of the Zoning Board of Appeals nor, except as otherwise provided, shall an employee or contractor of the Township Board serve as a member of the Zoning Board of Appeals.

The term of each member shall be for three years, except that of the members first appointed, two shall serve for two years and the remaining members for three years. A successor shall be appointed not more than one month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of the term.

SECTION 19.02 RULES OF PROCEDURE

The Zoning Board of Appeals may adopt those rules of procedure it deems necessary to assist it in the performance of its duties.

SECTION 19.03 POWERS AND DUTIES

The Zoning Board of Appeals shall act upon all questions as they arise in the administration of this ordinance, unless otherwise specified herein, including the interpretation of zoning maps. It shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of this Ordinance. It shall also hear and decide all matters referred to it or upon which it is required to pass under the terms of this ordinance. An appeal may be taken by any person aggrieved, or may be taken by any officer, department, board, or bureau of the Township, county, or state. The grounds for every such determination of the Zoning Board of Appeals shall be stated as a public record.

- (a) **VARIANCE.** Subject to the provisions of this ordinance, the Board shall have jurisdiction to decide applications for variances:
 - (1) Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this ordinance, the Zoning Board of Appeals, in passing upon appeals, may vary or modify any of its rules or provisions so that the spirit of this ordinance is observed, public safety is secured, and substantial justice done.

(b) **DIMENSIONAL VARIANCES.** If an applicant seeks a variance from the provisions or requirements of this ordinance because of dimensional characteristics of the lot or parcel of property, or because of exceptional topographic or other conditions of the land, buildings or structures, the applicant must demonstrate, and the Board must make findings based upon competent, material and substantial evidence on the whole record that all of the following exist:

- (1) That the enforcement of the literal requirements of this ordinance would involve practical difficulties.
- (2) That special conditions or circumstances exist which are peculiar to the land, structures or buildings involved and which are not applicable to other lands, structures or buildings in the same zoning district.
- (3) That literal interpretation of the provisions of this ordinance would deprive the applicant of property rights commonly enjoyed by other properties in the same zoning district.
- (4) That the special conditions or circumstances do not result from the actions of the applicant.
- (5) That the authorizing of such variance will not be of substantial detriment to the neighboring properties and will not be contrary to the spirit and purpose of this ordinance.

No nonconforming use of nearby lands, structures, or buildings shall in itself be considered grounds for the issuance of a variance.

(c) **USE VARIANCES.** If an applicant seeks a variance from the provisions or requirements of this ordinance in order to conduct or establish a use not permitted by that zoning district, the applicant must demonstrate, and the Board must make findings based upon competent, material and substantial evidence on the whole record that all of the following exist:

- (1) That the enforcement of the literal requirements of this ordinance would cause unnecessary hardship.
- (2) That special conditions or circumstances exist which are peculiar to the land, structures or buildings involved and which are not applicable to other lands, structures or buildings in the same zoning district.
- (3) That the property could not reasonably be used for the purposes permitted in that zone district.
- (4) That the special conditions or circumstances do not result from the actions of the applicant.

- (5) That the authorizing of such variance will not be of substantial detriment to the neighboring properties and will not be contrary to the spirit and purpose of this ordinance.

No nonconforming use of nearby lands, structures, or buildings shall in itself be considered grounds for the issuance of a variance. A vote of 2/3 of the members of the Zoning Board of Appeals is required to approve a use variance.

SECTION 19.04 REMOVAL

A member of the Zoning Board of Appeals may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing.

SECTION 19.05 MEETINGS, RECORD

Meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson and at such other times as the Board in rules of procedure may specify. The Chairperson, or if not present, the acting Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the Zoning Board of Appeals shall be open to the public. The Board shall maintain a record of its proceedings which shall be filed in the office of the Township Clerk and shall be a public record.

SECTION 19.06 PROCEDURE

- (a) The presence of three (3) members shall constitute a quorum. The Board shall not conduct business unless a quorum is present. The concurring vote of a majority of the members shall be necessary to reverse any order, requirement, decision, or determination of any administrative official or to decide on any matter upon which it is required to pass under this ordinance or to effect any variation in said ordinance. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify him or herself from a vote in which there is a conflict of interest shall constitute malfeasance in office.
- (b) Appeals shall be filed with the Township Clerk specifying the grounds thereof. Appeals shall be taken within such time as prescribed by general rule of the Zoning Board of Appeals. If the appeal is based upon a determination of the Zoning Administrator, the appeal shall be transmitted to the Board along with the papers constituting the record upon which the action is being appealed.
- (c) Each appeal or application for variance shall be accompanied by a filing fee to be determined by Ordinance of the Township Board. When a matter is referred by the Planning Commission as required by this Part to the Board of Appeals for consideration, no fee shall be charged.

- (d) Following receipt of a written request concerning a request for a variance, the Zoning Board of Appeals shall fix a reasonable time for the hearing of the request and cause notices to be served as follows.
- (1) A notice of the hearing shall be published in a newspaper of general circulation in the local unit of government.
 - (2) Notice shall also be sent by mail or personal delivery to the owners of property for which approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction.
 - (3) The notice shall be given not less than 15 days before the date the application will be considered for approval.
 - (4) If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection.
 - (5) The notice shall do all of the following:
 - (i) Describe the nature of the request;
 - (ii) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.
 - (iii) State when and where the request will be considered; and
 - (iv) Indicate when and where written comments will be received concerning the request.
- (e) Upon receipt of a written request seeking an interpretation of the Zoning Ordinance or an appeal of an administrative decision, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the Township and shall be sent to the person requesting the interpretation not less than 15 days before the public hearing. In addition, if the request for an interpretation or appeal of an administrative decision involves a specific parcel, written notices stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.

- (f) Upon the day for hearing any application or appeal, the Board may adjourn the hearing in order to permit the obtaining of additional information or to cause such further notices as it deems proper to be served upon such other property owners as it decides may be interested in said application or appeal. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the time of resumption of said hearing.
- (g) At the hearing, any party may be heard in person or by agent or attorney.
- (h) The Board may reverse or affirm, wholly or partly, or may modify the order requirement, decision, or determination as in its opinion ought to be made in the premises and to that end shall have all the powers of the officer from whom the appeal was taken and may issue or direct the issuance of a permit.

SECTION 19.07 IMPOSITION OF CONDITIONS

The Board of Appeals may impose conditions with an affirmative decision. Conditions may include those necessary to ensure that public services and facilities will be capable of accommodating increased service and facility loads caused by the proposed land use or activity; to protect the natural environment and conserve natural resources and energy; to ensure compatibility with adjacent uses of land; and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

- (a) Be designed to protect natural resources, the health, safety, and welfare and the social and economic well-being of those who will use the land use or activity under consideration, residents and land owners immediately adjacent to the proposed land use or activity, and the community as a whole.
- (b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
- (c) Be necessary to meet the intent and purpose of the zoning ordinance, be related to any standards established in the ordinance for the land use or activity under consideration, and be necessary to ensure compliance with those standards.
- (d) The conditions imposed shall be recorded in the record of the approval action and shall remain unchanged except as provided by law.

SECTION 19.08 STAY OF PROCEEDINGS

An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Zoning Board of Appeals after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than

by a restraining order which may be granted by the Board of Appeals or by the Circuit Court, on application, on notices to the Zoning Administrator, and on due cause shown.

SECTION 19.09 DECISIONS OF THE BOARD

The Board of Appeals shall decide all applications and appeals within 30 days after the final hearing thereon. A copy of the decision shall be transmitted to the applicant or appellant and to the Zoning Administrator. Such decision shall be binding upon the Zoning Administrator and the terms and conditions of the same shall be incorporated in the permit to the applicant or appellant whenever a permit is authorized by the Board of Appeals.

The decision of the Zoning Board of Appeals shall be final. A party aggrieved by the decision may appeal to the circuit court as provided by law. An appeal to the circuit court shall be filed within 30 days after the Zoning Board of Appeals certifies its decision in writing or approves the minutes of its decision. An appeal may be had from the decision of any circuit court to the Court of Appeals.

Any party aggrieved by any order, determination, or decision of any officer, board, Zoning Board of Appeals, or Township Board made under MCL 125.3208, regarding non-conforming uses and structures, may appeal in the circuit court as provided in this Section. Any person required to be given notice under Section 19.06(d) shall be a proper party to any such appeal.

SECTION 19.10 TIME LIMITATIONS ON VARIANCES

Any variance granted by the Board shall not be valid after a period of 12 months from the date granted unless the owner shall have taken substantial steps, as determined by the Board, in implementing the variance granted by the Board, provided that the owner, upon application filed prior to the expiration of the variance, may obtain an extension of the variance for an additional period of 12 months upon showing that the expiration of the variance will cause an undue hardship to the owner.

SECTION 19.11 ALTERNATE MEMBERS

As provided by law, the Township Board may appoint two alternate members to the Zoning Board of Appeals. Whenever a regular member is not available or will abstain from participating by reason of conflict of interest and is replaced by an alternate member, the regular member shall not be included for purposes of determining a quorum or majority of the members of the Board, but the alternate member shall be included. Whenever an alternate member is called to serve because a regular member will abstain by reason of conflict of interest, the alternate member shall serve only to hear and decide the matter within which the conflict of interest arises, and shall not hear or decide any other matters, unless authorized to hear such other matters upon any of the other grounds stated in this section.

CHAPTER 20

ADMINISTRATION

SECTION 20.01 ORDINANCE ADMINISTRATION

Except as otherwise provided, the provisions of this Ordinance shall be administered and enforced by a Zoning Administrator or any other employee as designated by the Township Board.

SECTION 20.02 ZONING PERMIT

- (a) It shall be unlawful for any person to commence excavation for, or construction of, any building or structure, parking area or to make structural alterations in any existing building or structure, without first obtaining a Zoning Permit from the Township Zoning Administrator as hereinafter provided except for agricultural buildings.
- (b) The application for a Zoning Permit shall designate the existing or intended use of the structure or premises, or part thereof which is proposed to be altered, erected, or extended, and the number of dwelling units, if any, to occupy it. The application shall be accompanied by two ink, blueprint or photostat copies of drawings, drawn to scale, showing the actual lines, angles and dimensions of the lot to be built upon or used, and the exact size and location on the lot of all existing and proposed structures and uses, and other information necessary to demonstrate compliance with the Ordinance. The Zoning Administrator may waive or vary portions of the foregoing requirements not necessary for determination of compliance with this Ordinance, or require the submission of additional information which is necessary to make such a determination.
- (c) One copy of the plans and specifications shall be filled in and retained by the Office of the Zoning Administrator, and another shall be delivered to the applicant when the Zoning Administrator has approved the application and issued the permit and a copy of the permit shall also be provided to the Ionia County Building Inspector.
- (d) Every permit granted under this section shall no longer be valid unless the excavation, construction, alteration, erection or extension shall have been commenced within 90 days from the date of issuance of the permit; and every permit so granted shall further no longer be valid unless all exterior aspects of the construction, alteration, erection or extension shall have been completed within 18 months from the date of issuance of the permit.

SECTION 20.03 FILING FEES

All applicants for permits, special land use, rezoning, site condominiums, variances, site plan approval, and other land use review or approval required by this Ordinance, shall pay the fee and any escrow established by resolution of the Township Board from time to time. The Zoning Administrator, Planning Commission, Zoning Board of Appeals, and Township Board shall not

consider any application for land use approval for which the required fee has not been paid, or any escrow maintained at the required level.

SECTION 20.04 AMENDMENTS

Amendments and supplements to this Part may be initiated by the Township Board upon its own motion, by the Planning Commission, or may be proposed for consideration by the owner or owners of real property with the Township; and all amendments to this ordinance, with reference to both the text thereof or the zoning of land, shall be made in accordance with the provisions of the Michigan Zoning Enabling Act, 110 PA 2006.

SECTION 20.05 VIOLATIONS AND PENALTIES

Any land use commenced or conducted, or any building or structure which is erected, moved, placed, reconstructed, razed, extended, enlarged, altered, maintained or changed in violation of any provision of this Ordinance is hereby declared to be a nuisance per se. A violation of this Ordinance is a municipal civil infraction, for which the fine shall be not less than \$100 nor more than \$2,500 for the first offense and not less than \$500 nor more than \$5,000 for subsequent offenses, in the discretion of the Court, and in addition to all other costs, damages, expenses, and other remedies provided by law. For purposes of this section, “subsequent offense” means a violation of the provisions of this Ordinance committed by the same person within 12 months of a previous violation of the same provision of this Ordinance for which said person admitted responsibility or was adjudicated to be responsible; provided, however, that offenses committed on subsequent days within a period of one week following the issuance of a citation for a first offense shall all be considered separate first offenses. Each day during which any violation continues shall be deemed a separate offense.

SECTION 20.06 EFFECTIVE DATE

This Ordinance shall become effective seven days after publication.

Passed and approved by the Township Board of Orange Township, Ionia County, Michigan, on March 13, 2001.

Merry McNally, Township Clerk

PUBLICATION DATE: 3-27-2001

EFFECTIVE DATE: 4-4-2001, then after referendum, passed on 7-10-2001