

ARTICLE 22

NONCONFORMITIES

Section 22.01 Intent and Purpose.

It is recognized that there exists within the districts established by this Ordinance lots, structures, sites and uses which were lawful prior to the effective date of adoption or amendment of this Ordinance, but that would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. Such uses are declared to be incompatible with permitted uses in the districts involved. It is the intent of this Ordinance to permit such nonconformities to continue until they are removed.

This Article is hereby established to:

1. Regulate the use and development of nonconforming lots, completion, alteration or reconstruction of nonconforming structures, re-development or improvement of nonconforming sites, and maintenance, extension or substitution of nonconforming uses.
2. Specify the limited conditions and circumstances under which nonconformities shall be permitted to continue.
3. Establish standards for determining whether a use is nonconforming, and whether a nonconforming use has ceased to occupy a particular zoning lot.
4. Recognize that certain nonconformities may not have a significant adverse impact upon nearby properties, or the public health, safety and welfare. Accordingly, this Article establishes a “preferred class” of nonconforming uses, which distinguishes between nonconforming uses that are not desirable and should be eliminated as rapidly as possible, and those that may be designated to be perpetuated and improved in a manner that protects adjacent properties and the character of the neighborhood.

Section 22.02 Nonconforming Structures.

Nonconforming structures shall be allowed to continue after the effective date of this Ordinance or amendments thereto, subject to the following conditions:

A. Expansion Restricted.

A nonconforming structure may be altered in a manner that does not increase or intensify its nonconformity. Alterations to a nonconforming structure that increase or intensify a nonconformity shall be prohibited.

B. Normal Repairs and Maintenance.

This Article shall not prevent work required for compliance with the provisions of the state construction code enforced by the City. Normal repair, maintenance or replacement of interior non-bearing walls, fixtures, wiring, plumbing or heating and cooling systems in nonconforming structures may be permitted in accordance with applicable code requirements, provided that such

improvements do not result in an enlargement of a nonconforming structure, and provided that the cost of such improvements does not exceed the state equalized value of the structure at the time such work is proposed.

C. Buildings under Construction.

Nothing in this Article shall require a change in the plans, construction or designated use of any building or structure for which construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and diligently carried on until completion.

D. Damaged or Unsafe Structures.

Nonconforming structures that are damaged or destroyed by any means to an extent that the repair cost exceeds the state equalized value of the property shall not be restored, repaired or rebuilt except in conformance with the standards of this Ordinance. Nonconforming structures that are declared to be physically unsafe by the Building Official shall not thereafter be restored, repaired or rebuilt.

E. Exemption for Certain Residential Dwellings.

Nonconforming single-family and two-family (duplex) dwellings and customary accessory structures are exempt from this Section, provided that application for a building permit shall be made within 365 days from the date of damage or destruction.

F. Nonconforming Signs.

See Section 13.10 (Nonconforming Signs).

Section 22.03 Nonconforming Lots.

Existing lots of record that are not in compliance with the dimensional requirements of this Ordinance shall only be used, developed, or improved in accordance with the following:

A. Lot Division and Combination.

A lot of record shall not be divided in a manner that would increase its nonconformity, cause an existing structure or site improvement to become nonconforming, or create one or more nonconforming lots. Where feasible, nonconforming lots of record shall be combined to create lots that comply with the dimensional requirements of this Ordinance.

B. Use of Nonconforming Lots.

Use of a nonconforming lot of record shall be subject to the regulations of this Ordinance for the district where it is located, and the following:

1. **Single-Family Residential Districts.** A single-family dwelling and customary accessory structures may be erected on a lot of record in a Single-Family Residential District that is nonconforming with respect to minimum lot area or lot width requirements. Such structures shall conform with all other dimensional standards for the district.

2. **Contiguous lots.** Two (2) or more contiguous, nonconforming lots of record with continuous frontage under single ownership shall be considered an undivided parcel for purposes of this Ordinance. No portion of said parcel that does not meet lot width and area requirements of this Ordinance shall be used or occupied, nor shall any division be made which leaves remaining any lot with width or area below Ordinance requirements.

Section 22.04 Nonconforming Sites.

The purpose of this Section is to encourage improvements to existing sites in the City that were developed before the site design standards of this Ordinance were established or amended. This Section establishes standards for prioritizing improvements to existing sites that are intended to gradually bring the site into compliance with current Ordinance standards. Nonconforming sites may be improved or modified without a complete upgrade of all site elements, subject to the following conditions:

1. A nonconforming site shall not be improved or modified in a manner that increases its nonconformity.
2. The proposed site improvements shall resolve public safety deficiencies, including building and fire code violations, emergency access and pedestrian/vehicle conflicts.
3. The proposed site improvements shall include exterior lighting, landscaping, screening and building improvements that are in reasonable proportion to the scale and construction cost of proposed building improvements, expansions or other improvements, as determined by the Planning Commission.
4. The proposed site improvements shall include the installation, restoration or expansion of sidewalks within and through the site, where appropriate.
5. A reasonable timeline for completion of site improvements to a nonconforming site may be approved as part of any plan approval. Failure to complete improvements in accordance with an approved timeline shall be deemed a violation of this Ordinance.

Section 22.05 Nonconforming Uses.

All nonconforming uses that have been designated as “preferred class” by City action shall not be subject to the requirements of this Section, but rather shall be subject to the provisions of Section 22.06 (Preferred Class Designations). Nonconforming uses not designated as “preferred class” shall be allowed to continue after the effective date of this Ordinance or amendments thereto, subject to the following:

A. Compliance with Other Applicable Standards.

Nonconforming uses shall be maintained in compliance with all applicable federal, state, and local laws, ordinances, regulations and codes, other than the specific use regulations for the zoning district where the use is located.

1. The owner, operator or person having beneficial use of land or structures occupied by a nonconforming use shall be responsible for demonstrating compliance with this requirement.

2. Failure to do so, or failure to bring the use into compliance with current laws, ordinances, regulations and codes within 180 days of their effective date, shall constitute grounds for the City to seek court approval to terminate or remove the use at the owner's expense.

B. Expansion Prohibited.

Nonconforming uses shall not be enlarged, increased in intensity, extended to occupy a greater area of land or floor area, or moved in whole or in part to any other portion of the lot or structure.

C. Cessation.

A nonconforming use that ceases for a period of more than 365 days or is superseded by a conforming use shall not be resumed. If a structure associated with a nonconforming use is removed, or damaged by any means to an extent that the repair cost exceeds the state equalized value of the property, the nonconformity shall be deemed removed. All subsequent uses shall conform to the use provisions of this Ordinance.

Section 22.06 Preferred Class Designations.

It is the intent of this Section to establish a "preferred class" designation that the Planning Commission may approve for certain nonconforming uses, subject to the following:

A. Procedure.

The procedure for considering all preferred class nonconforming designations shall be as follows:

1. **Application.** Applications for consideration of a preferred class designation for a nonconforming use may be initiated by the City, or the owner, operator or person having beneficial use of the lot occupied by the nonconforming use. The application shall include a detailed description of the use, and the reasons for the request.
2. **Public hearing.** A public hearing shall be held for all requests for a preferred class nonconforming designation in accordance with the procedures set forth in Section 1.12 (Public Hearing Procedures).

B. Conditions for Approval of a Preferred Class Designation.

Subsequent to a public hearing, the Planning Commission may grant a preferred class designation upon finding that all of the following conditions exist:

1. **Use standards.**
 - a. The nonconformity does not significantly depress the value of nearby properties.
 - b. The use does not adversely impact the public health, safety, and welfare.
 - c. The use does not adversely impact the purpose of the district where it is located.
 - d. No useful purpose would be served by the strict application of requirements for such a nonconformity under this Ordinance.

2. **Signage.** If the application was initiated by the owner or person having beneficial use of the lot occupied by the nonconforming use, the Planning Commission may require that signage associated with the use be brought into compliance with Article 13 (Signs).
3. **Plan for site improvements.** If the application was initiated by the owner or person having beneficial use of the lot occupied by the nonconforming use, the Planning Commission may require that a site plan be submitted for review that addresses the site improvement priorities listed in Section 22.04 (Nonconforming Sites).
4. **Other conditions.** The Planning Commission may attach conditions to the approval to assure that the use does not become contrary to the purpose of this Article and Ordinance, or the public health, safety and welfare.

C. Effect of Approval of a Preferred Class Designation.

Preferred class nonconformities shall be permitted to be perpetuated and expanded in accordance with an approved site plan, subject to the provisions of this Section and any conditions of approval. Preferred class nonconforming structures shall be permitted to be perpetuated, expanded, improved or rebuilt if damaged or destroyed in accordance with an approved site plan, subject to the provisions of this Section and any conditions of approval.

D. Effect of Denial of a Preferred Class Designation.

An application for a preferred class designation that has been denied by the Planning Commission may not be appealed to the Board of Zoning Appeals, but may be resubmitted for Planning Commission consideration after a minimum of 365 days have elapsed from the date of denial.

E. Cessation of Preferred Class Nonconforming Uses.

The preferred class designation shall be deemed removed when the primary structure occupied by a preferred class nonconforming use is permanently removed, or when a preferred class nonconforming use is replaced by a conforming use. All subsequent uses shall conform to the use provisions of this Ordinance.

F. Rescinding Approval of a Preferred Class Designation.

Failure of the owner, operator or person having beneficial use of a lot occupied by a preferred class nonconforming use to maintain the use or improve the site in accordance with the provisions of this Section, an approved site plan or any conditions of approval shall be grounds for the Planning Commission to rescind the preferred class designation. Such action shall be subject to the following.

1. **Public hearing.** Such action may be taken only after a public hearing has been held in accordance with the procedures set forth in Section 1.12 (Public Hearing Procedures), at which time the owner, operator or person having beneficial use occupied by a preferred class nonconforming use shall be given an opportunity to present evidence in opposition to rescission.
2. **Determination.** Subsequent to the hearing, the decision of the Commission with regard to the rescission shall be made, and written notification provided to said owner, operator or person having beneficial use occupied by a preferred class nonconforming use.

G. Existing Residential Dwellings in Non-Residential Districts.

Single-family and two-family (duplex) dwellings that are so existing and used in non-residential zoning districts before the effective date of adoption or amendment of this Ordinance, are hereby designated as preferred class nonconforming uses. Such dwellings and accessory structures may be used, repaired, expanded, altered or replaced if destroyed, subject to the following conditions:

1. Use, repair, expansion, alteration, or replacement of the dwelling or accessory structures shall conform with all applicable lot, yard and setbacks requirements of this Ordinance, as follows:
 - a. Single-family dwellings and accessory structures shall conform to the requirements of the R-3 District.
 - b. Two-family (duplex) dwellings and accessory structures shall conform to the requirements of the R-T District.
2. The use, dwelling and accessory structures shall be maintained in conformance with all other applicable federal, state, and local laws, ordinances, regulations and codes.

Section 22.07 Nonconforming Use Determinations.

This Section is intended to provide reasonable standards for determining whether a use is nonconforming, and whether a nonconforming use has been removed, discontinued or otherwise ceased to occupy the land or structure in question. When there is a question or dispute about the status of a particular use, such determinations shall be made in writing by the City Planner, with specific findings identified and a copy placed in the property file. Such determinations shall be subject to the following:

A. Standards for Determining that a Use is Nonconforming.

The City Planner shall determine that a use is nonconforming upon finding that the following three (3) statements are true:

1. **The use does not conform with the purpose and use regulations of the district where it is located.**
2. **The use is in compliance with all other applicable federal, state, and local laws, ordinances, regulations and codes.**
3. **Evidence from a minimum of three (3) of the following sources demonstrates that the use was lawfully established prior to the effective date of adoption or amendment of this Ordinance:**
 - a. Local, county or state government files or records, including but not limited to permits, inspection reports, dated photographs or notarized statements of government officials, agents, representatives or employees.
 - b. Dated telephone directories, or similar dated records that provide information about the occupants or uses located on a street by address or lot number.

- c. Utility records, including but not limited to providers of water, sewer, electric, natural gas or telecommunications service.
- d. Dated advertising or other information published in a newspaper or magazine including but not limited to advertisements, articles, features or photographs that address the use of the land in question.
- e. Dated aerial photos from Macomb or St. Clair counties, the Southeastern Michigan Council of Governments (SEMCOG) or other sources accepted by the City Planner.
- f. Other relevant information, including but not limited to date-stamped photographs, diary or log entries, affidavits or notarized statements.

B. Standards for Determining that a Nonconforming Use has Ceased.

The City Planner shall determine that a nonconforming use has been removed, discontinued or otherwise ceased to occupy the land or structure in question upon finding that a minimum of three (3) of the following six (6) statements are true:

- 1. **Local, county or state government files or records show that the nonconforming use has ceased.** Such evidence may include, but shall not be limited to permits, inspection reports, dated photographs or notarized statements of government officials, agents, representatives or employees.
- 2. **Dated telephone directories, or similar dated records that provide information about the occupants or uses located on a street by address or lot number, show that the nonconforming use has ceased.** Such evidence may include, but shall not be limited to entries that show the address associated with the use as vacant or occupied by another use, or show the telephone number associated with the use as disconnected or in use at another location.
- 3. **Utility records, including, but not limited to providers of water, sewer, electric, natural gas or telecommunications service, show that the nonconforming use has ceased.** Such evidence may include, but shall not be limited to records indicating that the address of the use is vacant or occupied by another use, the utility service associated with the use has been disconnected or the business, organization or individual associated with the use has moved to another location.
- 4. **Dated advertising or other information published in a newspaper or magazine show that the nonconforming use has ceased.** Such evidence may include, but shall not be limited to advertisements, articles, features or photographs that address the use of the land in question.
- 5. **Dated aerial photos from Macomb or St. Clair counties, the Southeastern Michigan Council of Governments (SEMCOG) or other sources as accepted by the City Planner show that the nonconforming use has ceased.**
- 6. **Other relevant information shows that the nonconforming use has ceased.** Such evidence may include, but shall not be limited to date-stamped photographs, diary or log entries, affidavits or notarized statements.

Section 22.08 Unlawful Uses.

Any use that is not a conforming use in the district where it is located, or determined to be a nonconforming use, shall be considered an unlawful use established in violation of this Ordinance.

Section 22.09 Change of Tenancy or Ownership.

There may be a change of tenancy, ownership or management of any existing nonconforming lot, structure, site or use.

Section 22.10 Cessation of a Nonconforming Use by City Action.

The elimination of nonconforming structures and uses shall be considered to be for a public purpose and for a public use. The City Council shall have the authority to institute and prosecute proceedings for the condemnation of nonconforming uses and structures under the power of eminent domain, in accordance with the Charter of the City of Richmond. The City Council may, at its discretion, acquire private property by purchase, condemnation or otherwise for the purpose of removing a nonconforming use or structure, provided that the cost of acquiring such private property be paid from general funds or assessed to a special district established for that purpose.