

## **ARTICLE 16 NONCONFORMITIES**

### **Section 16.01 Purpose.**

The regulations of this Ordinance are designed to protect the public health, safety, and general welfare by regulating the future use of land through appropriate groupings of compatible and related uses. Certain existing structures, lots of record, sites, and uses were lawful before this Ordinance was adopted, but have become nonconformities under the terms of this Ordinance and its amendments. It is the intent of this Ordinance to permit such nonconformities to remain until they are discontinued or removed, but not to encourage their survival. Where discontinuance or removal is not feasible, it is the intent of this Article to provide for the gradual upgrading of such nonconformities to conforming status.

The regulations of this Article are intended to permit such nonconformities to continue without specific limitation of time, while restricting extensive further investments that may make them more permanent. This Article is further established to:

1. Regulate the use and development of nonconforming lots, the completion, alteration and reconstruction of nonconforming structures, the redevelopment and improvement of nonconforming sites, and the maintenance, extension and 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 lot or parcel.

### **Section 16.02 Scope.**

Nonconformities are declared by this Ordinance to be incompatible with the structures and uses permitted in the various zoning districts. Except as otherwise provided in this Article, any nonconforming lot, use, site 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. Nonconformities shall not be enlarged, expanded, or extended, except in accordance with this Article, and shall not be used as grounds for adding structures and uses prohibited elsewhere in the same district.

#### **A. Classification of Nonconformities.**

Nonconformities shall be classified in one of the following categories:

1. Nonconforming single-family detached dwellings (Section 16.05);

2. Nonconforming lots of record; (Section 16.06);
3. Nonconforming uses; (Section 16.07);
4. Nonconforming structures; (Section 16.08) [amended 8/16/2010, Ord. 174-04];
5. Nonconforming sites; (Section 16.09); and
6. Nonconforming extractive operations (Section 16.10).

**B. Establishment of Nonconformities.**

To be considered a nonconformity under this Ordinance, the lot, use, site or structure must have been in compliance with the zoning requirements which were lawful when it was established, but must be, except for the provisions of this Article, prohibited, regulated, or restricted by the enactment of this Ordinance or subsequent amendments thereto. Nonconformities shall be established by one (1) of the following methods:

1. The nonconformity must have been a legal nonconformity under the former zoning ordinance and continue to be designated as nonconforming under the provisions of this Ordinance or subsequent amendments thereto;
2. The nonconformity must have been a legal conformity under the former zoning ordinance and made nonconforming by the provisions of this Ordinance or subsequent amendments thereto; or
3. The nonconformity must have been created by a lawful public taking or actions pursuant to a court order having the same effect as a violation of this Ordinance.

Lots, structures, or uses which do not meet one of the above criteria and which are prohibited, regulated, or restricted by this Ordinance are unlawful, shall not be permitted to continue, and shall not be entitled to any of the relief provided in this Article.

**Section 16.03 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. The Zoning Inspector shall be responsible for determining whether a use is conforming, nonconforming or unlawful in the zoning district where it is located. When there is a question or dispute about the status of a particular use, such determinations shall be made by the Zoning Board of Appeals, subject to the following:

**A. Standards for Determining that a Use is Nonconforming.**

When there is a question or dispute about the status of a particular use, the Zoning Board of Appeals shall determine that a use is nonconforming upon finding that the following three (3) statements are true:

1. **The use does not conform to 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 the State of Michigan, Washtenaw County or other sources accepted by the Zoning Board of Appeals.
  - 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.**

When there is a question or dispute about the status of a particular use, the Zoning Board of Appeals 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 State of Michigan, Washtenaw County or other sources as accepted by the Zoning Board of Appeals 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 16.04 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 16.05 Nonconforming Single-Family Detached Dwellings.**

Nonconforming single-family detached dwellings and customary accessory structures shall be exempt from the provisions of this Article that would otherwise apply to existing, lawfully established single-family detached residential uses located in non-residential zoning districts; or to existing, lawfully established single-family detached dwellings or customary accessory structures that do not conform to the applicable dimensional standards of this Ordinance. Such dwellings and accessory structures may be used, repaired, expanded, altered, or replaced if destroyed, subject to the following:

1. **Dwelling as a nonconforming use.** An existing, lawfully established single-family dwelling and customary accessory structures located in a non-residential zoning district may be repaired, altered, or replaced if destroyed, provided that:
  - a. Such work shall conform to all applicable standards of this Ordinance as if the property and use were located in the single-family residential zoning district (R-1, R-2, R-3, or R-4) most similar in terms of the minimum lot width and area requirements to the size of the subject lot.

- b. The use, dwelling, and accessory structures shall be maintained in conformance with all other applicable federal, state, and local laws, ordinances, regulations and rules.
2. **Dwelling as a nonconforming structure.** Where an existing, lawfully established single-family dwelling or customary accessory structure is nonconforming structure with respect to the dimensional requirements of this Ordinance, the following standards shall apply:
- a. Structural changes and alterations to a nonconforming single-family dwelling or customary accessory structure that decrease or do not affect the degree of nonconformity shall be permitted. Such structures may be expanded, provided that:
    - (1) The addition shall conform to the dimensional standards and other requirements of the zoning district in which it is located.
    - (2) The expanded structure shall not exceed the ground floor coverage and floor area ratio limits of the district in which it are located.
  - b. All repairs and maintenance shall conform to the State Construction Code and all other applicable code requirements. A damaged structure shall be adequately secured, and shall be protected against further damage from the elements.
  - c. A nonconforming single-family dwelling and customary accessory structures may be reconstructed or replaced if destroyed, provided that:
    - (1) Any replacement structure shall conform to the dimensional standards of the zoning district where it is located, except where, in the determination of the Zoning Inspector, existing site conditions would prevent reasonable conformance. In such cases, the dwelling or customary accessory structure may be reconstructed on the existing location.
    - (2) Application for a building permit for reconstruction or replacement of a destroyed structure shall be made within 365 calendar days of the date of such damage, and all work shall be completed within the building permit approval period. Where pending insurance claims require an extension of time, the Zoning Inspector may grant one (1) extension of up to 365 calendar days, provided that the property owner submits a certification from the insurance company attesting to the delay.
    - (3) A nonconforming structure that is moved within a lot or to another lot shall thereafter conform to the regulations of the district in which it is located.

- d. If a nonconforming dwelling or customary accessory structure becomes physically unsafe or unlawful due to a lack of repairs or unsecured exposure to the elements, or is declared to be unsafe or unlawful by reason of physical condition under the State Construction Code or applicable fire or property maintenance codes, it shall not thereafter be restored, repaired or rebuilt except in conformity with all Ordinance requirements [amended 8/16/2010, Ord. 174-04].

## **Section 16.06 Nonconforming Lots of Record.**

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. Use of a Single Nonconforming Lot of Record.**

A principal building or single-family detached dwelling and customary accessory structure(s) may be erected, occupied, and used on a single, nonconforming lot of record, provided that the lot is not in continuous frontage with other lots in the same ownership and is in accordance with other requirements applying in the zoning district.

This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and all requirements other than those applying to area, or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.

### **B. Combination of Nonconforming Lots.**

If two (2) or more lots or combinations of lots and portions of lots are in single ownership as of the date of this Ordinance or at any time thereafter and are in continuous frontage, and if all or part of the lots do not meet the requirements established under this Ordinance for lot width and area, the lands involved shall be combined and considered a single, undivided parcel for purposes of this Ordinance.

1. No portion of the resulting parcel shall be used, sold, or divided in such a manner as to diminish compliance with lot width and area requirements established by this Ordinance.
2. Where the nonconforming lot(s) were created by public taking action or as a result of a court order, combination of the lots shall not be required.
3. Where possible, nonconforming lots of record shall be combined to create lots that comply with the requirements of this Ordinance.

### **C. Division of Nonconforming Lots.**

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.

## **Section 16.07 Nonconforming Uses.**

Single-family detached dwellings that are a nonconforming use in the zoning district shall be subject to the standards of Section 16.05 (Nonconforming Single-Family Detached Dwellings). All other nonconforming uses 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 Township to seek court approval to terminate or remove the use at the owner's expense.

### **B. Alteration.**

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; other than that occupied at the time the nonconforming status was established.

1. No such land occupied by a nonconforming use shall be subdivided nor any structure added, except for purposes and in a manner conforming to zoning district regulations. Subdivision that does not increase the degree of nonconformity shall be permitted.
2. Expansions, additions, or alterations that would have the effect of intensifying the impact, appearance, or character of a nonconforming use shall be subject to Section 16.07D (Expansion or Substitution).
3. Substitution of a nonconforming use for another nonconforming use on the same site shall be subject to Section 16.07D (Expansion or Substitution).

### **C. Cessation.**

Cessation of use includes, but is not limited to, vacancy of the building or structure in which the nonconforming use was conducted, or discontinuance of the activities consistent with or required for the operation of such nonconforming use, irrespective of whether an intention to cease or abandon the nonconforming use may exist.

1. A nonconforming use that ceases for a period of more than 365 calendar days or is superseded by a conforming use shall not be resumed.
2. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the legal nonconforming status of the land.
3. If a structure associated with a nonconforming use becomes physically unsafe or unlawful due to a lack of repairs or unsecured exposure to the elements, or is declared to be unsafe or unlawful by reason of physical condition under the State Construction Code or applicable fire or property maintenance codes, it shall not thereafter be restored, repaired or rebuilt except in conformity with all Ordinance requirements. All subsequent uses shall conform to all Ordinance requirements.
4. 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 all Ordinance requirements.
5. If a structure associated with a nonconforming use is damaged by any means to an extent that the repair cost is less than or equal to the state equalized value of the property, such structure may be replaced at its location existing prior to such damage.
  - a. Structural reconstruction or replacement shall begin on the site within 365 calendar days of the date of damage, and shall be completed within the building permit approval period.
  - b. Failure to complete such work within the stated time period shall eliminate the legal nonconforming status of the land. All subsequent uses shall conform to all Ordinance requirements.
  - c. Where pending insurance claims require an extension of time, the Zoning Inspector may grant one (1) extension of up to 365 calendar days, provided that the property owner submits a certification from the insurance company attesting to the delay.

**D. Expansion or Substitution.**

A nonconforming use may be may expanded, or a nonconforming use may be substituted for another nonconforming use, subject to Planning Commission approval in accordance with the following:

1. **Filing of application.** Application for approval of a nonconforming use substitution or expansion shall be made by filing a complete and accurate application form, required information, and required review fee and escrow deposit with the Township Clerk. The Clerk shall transmit a copy of the application materials to designated Township officials and consultants and the Planning Commission.

2. **Eligibility.** The application shall be submitted by the operator of the use or owner of an interest in the land or structure(s) for which nonconforming use substitution or expansion approval is sought, or by the owner's designated agent. Applications that are found by the Township Planner or Planning Commission to be incomplete or inaccurate shall be returned to the applicant without further consideration.
3. **Information required.** An application for approval of a nonconforming use substitution or expansion shall contain the following information:
  - a. The applicant's name, address, and telephone number.
  - b. The names, addresses, and telephone numbers of all record owners and proof of ownership.
  - c. The applicant's interest in the property, and if the applicant is not the fee simple owner, the signed authorization of the owner(s) for the application.
  - d. Legal description, address, and tax parcel number of the property.
  - e. A scaled and accurate survey drawing, correlated with the legal description and showing all existing structures, drives, and other improvements.
  - f. A detailed description of the existing use and proposed expansion or substitution. The Planning Commission may require documentation that the existing use is legally nonconforming per the standards of Section 16.03 (Nonconforming Use Determinations).
  - g. Where required by the Planning Commission or by Section 10.02 (Site Plan Approval Required), detailed site plans shall be submitted for review per Article 10.0 (Site Plan Review).
4. **Required fees and escrow deposits.** The Township Board shall establish, by resolution or ordinance, fees and escrow deposits for review of nonconforming use substitution or expansion applications. Required fees and escrow deposits shall be paid to the Township Treasurer at the time of the filing of the application and no part of a required fee shall be returnable to the applicant. No action shall be taken on any application for which required fees have not been paid in full.
5. **Technical review.** Prior to Planning Commission consideration, the application materials shall be distributed to designated Township officials and consultants for review and comment.
6. **Planning Commission review and public hearing.** Upon receipt of a complete and accurate application for approval of a nonconforming use substitution or expansion from the Clerk, the Planning Commission shall undertake a study of the application. A public hearing shall be held on the

application and notice shall be given in accordance with Section 1.14 (Public Hearing Procedures).

7. **Criteria for approval.** Subsequent to the public hearing, the Planning Commission shall review the application to the standards and findings required herein and the information provided at the public hearing. The Planning Commission may approve a nonconforming use substitution or expansion upon finding that the existing use and proposed expansion or substitution satisfy all of the following criteria for approval:
  - a. **Use standards.** The existing use and proposed expansion or substitution conform to the following:
    - (1) The nonconformity does not significantly depress the value of nearby properties.
    - (2) The use does not adversely impact the public health, safety, and welfare.
    - (3) The use does not adversely impact the purpose of the district where it is located.
    - (4) No useful purpose would be served by the strict application of Ordinance requirements that apply to the nonconformity.
    - (5) In the case of a use substitution, the proposed nonconforming use is more appropriate than the existing nonconforming use in the zoning district in which it is located.
  - b. **Signage.** The Planning Commission may require that signage associated with the use be brought into compliance with Article 9.0 (Signs).
  - c. **Building improvements.** The Planning Commission may approve an expansion of a nonconforming use that includes new construction, or expansion or structural alteration of the existing building(s) occupied by the use where such work conforms to applicable Ordinance requirements.
  - d. **Site improvements.** If the site is nonconforming with respect to applicable site design standards of this Ordinance, the proposed expansion and associated site improvements shall also conform to the requirements of Section 16.09 (Nonconforming Sites).
  - e. **Other conditions.** The Commission may attach conditions of approval to assure that the use does not become contrary to the purposes of this Article or Ordinance, or the public health, safety or welfare.

## **Section 16.08 Nonconforming Structures.**

Single-family detached dwellings that are a nonconforming structure in the zoning district shall be subject to the standards of Section 16.05 (Nonconforming Single-Family Detached Dwellings). All other nonconforming structures shall be allowed to continue after the effective date of this Ordinance or amendments thereto, subject to the following conditions [amended 8/16/2010, Ord. 174-04]:

### **A. Alterations.**

Structural changes and alterations to a nonconforming structure that decrease or do not affect the degree of nonconformity shall be permitted. Expansions or additions to a nonconforming structure, or alterations to a nonconforming structure that would increase or intensify a nonconformity, shall be subject to Section 16.08F (Expansion).

### **B. Relocation.**

A nonconforming structure that is moved within a site or to another site shall thereafter conform to the regulations of the district in which it is located.

### **C. Normal Repairs and Maintenance.**

Normal repair, maintenance or replacement of interior non-bearing walls, fixtures, wiring, plumbing, heating, or cooling systems in nonconforming structures may be permitted in accordance with applicable code requirements. Such improvements shall not result in any enlargement of a nonconforming structure; including any increase in floor area, volume, number of dwelling units, dimensions, height, or number of stories. If a nonconforming structure becomes physically unsafe or unlawful due to a lack of repairs and maintenance, or is declared by the Building Inspector to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

### **D. Buildings under Construction.**

Nothing in this Article shall require a change in the plans, construction or designated use of any structure for which construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance, provided that such work shall be completed within 365 calendar days of the effective date.

### **E. Damaged or Unsafe Structures.**

A nonconforming structure or a portion thereof, if destroyed or damaged by any means to the extent such that the expense of such reconstruction would exceed the state equalized value of the property, shall not be reconstructed except in conformity with the regulations of the zoning district in which it is located.

1. Nothing in this Ordinance shall prevent the reconstruction, repair, or restoration and the continued use of any nonconforming structure damaged by any means, provided that the expense of such reconstruction shall not exceed the state equalized value of the property.

- a. Application for a building permit for such reconstruction shall be made within 365 calendar days of the date of such damage, and all work shall be completed within the building permit approval period.
  - b. The lot and damaged structure shall be adequately secured from unauthorized access to the Zoning Inspector's satisfaction. The damaged structure shall be protected against further damage from the elements.
  - c. Where pending insurance claims require an extension of time, the Zoning Inspector may grant one (1) extension of up to 365 calendar days, provided that the property owner submits a certification from the insurance company attesting to the delay.
2. If a nonconforming structure becomes physically unsafe or unlawful due to a lack of repairs or unsecured exposure to the elements, or is declared to be unsafe or unlawful by reason of physical condition under the State Construction Code or applicable fire or property maintenance codes, it shall not thereafter be restored, repaired or rebuilt except in conformity with all Ordinance requirements.

**F. Expansion.**

A nonconforming structure may be enlarged or expanded, subject to the following:

1. **Expansion of nonconforming farm buildings.** Nonconforming buildings used in farming or active agricultural operations may be expanded if approved by the Zoning Inspector, subject to the following requirements:
  - a. Farming shall be a permitted use in the district in which the use is located and the intended use of the structure shall be a permitted use in the district in which the structure is located; and
  - b. The expansion shall meet all requirements of the zoning district in which it is located. The existing structure(s) and the expansion shall not exceed the ground floor coverage or floor area ratio limits of the district in which they are located.
2. **Expansion of other nonconforming structures.** Other nonconforming structures may be enlarged or expanded, subject to Planning Commission approval in accordance with the following:
  - a. **Filing of application.** Application for approval to enlarge or expand a nonconforming structure shall be made by filing a complete and accurate application form, required information, and required review fee and escrow deposit with the Township Clerk. The Clerk shall transmit a copy of the application materials to designated Township officials and consultants and the Planning Commission.
  - b. **Eligibility.** The application shall be submitted by the operator of the use or owner of an interest in the land or structure(s) for which approval to

enlarge or expand a nonconforming structure is sought, or by the owner's designated agent. Applications that are found by the Township Planner or Planning Commission to be incomplete or inaccurate shall be returned to the applicant without further consideration.

c. **Information required.** Applications for approval to enlarge or expand a nonconforming structure shall contain the following information:

- (1) The applicant's name, address, and telephone number.
- (2) The names, addresses, and telephone numbers of all record owners and proof of ownership.
- (3) The applicant's interest in the property, and if the applicant is not the fee simple owner, the signed authorization of the owner(s) for the application.
- (4) Legal description, address, and tax parcel number of the property.
- (5) A scaled and accurate survey drawing, correlated with the legal description and showing all existing structures, drives, and other improvements.
- (6) Where required by the Planning Commission or by Section 10.02 (Site Plan Approval Required), detailed site plans and building elevations shall be submitted for review per Article 10.0 (Site Plan Review).

d. **Required fees and escrow deposits.** The Township Board shall establish, by resolution or ordinance, fees and escrow deposits for review of applications for approval to enlarge or expand a nonconforming structure. Required fees and escrow deposits shall be paid to the Township Treasurer at the time of the filing of the application and no part of a required fee shall be returnable to the applicant. No action shall be taken on any application for which required fees have not been paid in full.

3. **Technical review.** Prior to Planning Commission consideration, the application materials shall be distributed to designated Township officials and consultants for review and comment.

4. **Planning Commission review and public hearing.** Upon receipt of a complete and accurate application for approval to enlarge or expand a nonconforming structure from the Clerk, the Planning Commission shall undertake a study of the application. A public hearing shall be held on the application and notice shall be given in accordance with Section 1.14 (Public Hearing Procedures).

5. **Criteria for approval.** Subsequent to the public hearing, the Planning Commission shall review the application to the standards and findings required herein and the information provided at the public hearing. The Planning Commission may approve an enlargement or expansion of a nonconforming structure upon finding that the existing structure and proposed enlargement or expansion satisfy all of the following criteria for approval:
  - a. The nonconformity results from noncompliance with zoning district regulations for minimum lot area, minimum lot width, required yards, off-street parking and loading requirements, or transition or landscape strip requirements. In no case shall a structure that is nonconforming because of lot coverage, floor area ratio, lot area per dwelling unit, or height requirements be permitted to expand without removing the nonconformity.
  - b. The existing and proposed uses of such buildings and structures shall be permitted in the district in which they are located.
  - c. The proposed enlargement or expansion shall conform to all requirements of the zoning district in which it is located.
  - d. The Planning Commission shall make the following findings of fact before approving such a request:
    - (1) Retention of the nonconforming structure is reasonably necessary for the proposed improvement or that requiring removal of such structure would cause undue hardship;
    - (2) The proposed enlarged or otherwise improved nonconforming structure would not adversely affect the public health, safety, and welfare; and
    - (3) The proposed improvement is reasonably necessary for continuation of the use on the lot.
6. **Other conditions.** The Planning Commission may attach conditions to the approval to assure that the proposed enlargement or expansion of the nonconforming structure does not become contrary to the purpose of this Article and Ordinance; or to the public health, safety, and welfare.

## **Section 16.09 Nonconforming Sites.**

The purpose of this Section is to encourage improvements to existing sites in the Township 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 and pedestrian/vehicle conflicts, and improve emergency access.
3. The proposed site improvements shall include at least three (3) of the following, in accordance with applicable Ordinance standards and as accepted by the Planning Commission:
  - a. Preservation of natural resources or historical site features.
  - b. Pedestrian access improvements.
  - c. Vehicular access and circulation improvements.
  - d. Building design or exterior facade improvements.
  - e. Off-street parking or loading improvements.
  - f. Landscaping improvements.
  - g. Screening and buffering improvements.
  - h. Exterior lighting improvements.
  - i. Drainage and stormwater management improvements.
  - j. Clean up or restoration of a blighted site, removal of contaminated soil, or similar environmental improvements.
4. The scope of any additional site improvements requested by the Planning Commission shall be in reasonable proportion to the scale and construction cost of proposed building improvements, expansions, or other improvements.
5. A reasonable timeline for completion of site improvements to an existing 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 16.10 Nonconforming Extractive Operations.**

An extractive operation legally existing at the effective date of adoption or amendment of this Ordinance shall be a nonconforming use, and may continue subject to the following:

#### **A. Standards for Extension of Nonconforming Extractive Operations.**

Extraction may be extended within the lot based upon the lot boundaries of record at the time this Ordinance was adopted or amended, subject to the following:

1. Such extensions shall not cross a public road.
2. All extensions to be commenced following the effective date of adoption or amendment of this Ordinance shall first comply with all provisions of this Section and Section 5.603 (Extractive and Earth Removal Operations).
3. Any extensions of operations shall not exceed the depth of extraction of the portion existing at the effective date of adoption or amendment of this Ordinance, unless extraction to a greater depth is approved by the Township as part of site plan approval.
4. Plans for the future extension of operations and restoration of the site shall be filed with the Township Planning Commission within one (1) calendar year of the effective date of adoption or amendment of this Ordinance. Failure to file such plans within the one (1) calendar year period shall be grounds for the Township Board to refuse any extensions for the site following the one (1) calendar year period. Failure to file may also be grounds for determining intent to abandon extractive operations for the remainder of the site.

**B. Cessation of a Nonconforming Extractive Operation.**

If a nonconforming extractive operation ceases for any reason for a period of 365 calendar days, the extractive operation shall thereafter conform to all regulations of this Ordinance and the zoning district where it is located.

**C. Standards for Equipment Upgrades.**

The equipment and processes of a nonconforming extractive operation may be upgraded periodically to maintain the operation in a modern condition, and to meet contemporary pollution control standards. Such changes shall be permitted, even if they will result in an increase of production, subject to the following:

1. The changes in equipment and processes shall not have the effect of changing the nature or character of the operation into a use prohibited in the zoning district where it is located.
2. The noise, dust, odors, and other objectionable attributes of the operation shall not be increased beyond the levels existing at the effective date of adoption or amendment of this Ordinance.
3. The owner of the extractive operation shall notify the Township Zoning Inspector in writing prior to the installation of each change, and building permits for any structure shall be obtained prior to construction.

**Section 16.11 Change of Tenancy or Ownership.**

There may be a change of tenancy, ownership, or management of any existing nonconformity, provided there is no change in the nature or character of such nonconformity except in accordance with this Article.

### **Section 16.12 Cessation of Nonconformities by Township Action.**

The elimination of nonconforming structures and uses shall be considered to be for a public purpose and for a public use. The Township may acquire private property by purchase, condemnation, or other means for the removal of nonconforming uses. The cost of acquiring the private property may be paid from general funds or assessed to a special district, as provided in the Michigan Zoning Enabling Zoning Act. The Township Board may institute proceedings for condemnation of nonconforming uses and structures under the power of eminent domain in accordance with applicable Michigan statutes.

