

Article 7.20 Nonconformities

7.20.01 Intent

It is the intent of this ordinance to permit legal nonconforming lots, structures, or uses to continue until they are removed but not to encourage their survival.

For definitions and illustrations of Nonconforming Lots, Structures, and Uses see *Article 7.24 Definitions*.

7.20.02 Class A and Class B Nonconforming Uses or Structures

Although it is the intent of this ordinance to discourage the continuation of nonconforming uses and structures, it is recognized that allowing the continuation of certain nonconformities may be appropriate. To address these circumstances, the zoning ordinance establishes procedures for the Planning Commission to designate specific nonconforming uses or structures as "Class A". Such uses or structures will have less stringent standards for expansion or resumption.

(a) Class A Nonconforming Uses or Structures

(1) Effect of Class A Designation

- a. Class A nonconforming uses may be reestablished if the structure housing it is damaged or destroyed.
- b. Class A nonconforming uses may be reestablished when otherwise meeting the criteria in *Section 7.20.07 Standards for Determining Abandonment*. The Class A nonconforming use may not be reestablished if it is replaced with a conforming use.
- c. Class A nonconforming uses, structures housing nonconforming uses and nonconforming structures may be expanded or improved, after review and approval by the Planning Commission.
- d. Class A nonconforming structures may be rebuilt if the structure is damaged or destroyed.
- e. Rights granted nonconforming uses and structures listed above are contingent on compliance with any standards imposed by the Planning Commission as part of the Class A designation, including compliance with any approved site plan.

(2) Class A Designation Process

- a. An applicant for Class A designation shall submit a request in writing to the Planning Department.
- b. Notice of a public hearing shall be provided as outlined in *Section 7.21.07* of this Ordinance.
- c. The Planning Commission shall hold a public hearing on the Class A designation.

- d. The Planning Commission shall approve, approve with conditions or deny the request for Class A designation.
 - e. The Planning Commission may impose conditions on an approval. The condition may include compliance with a site plan of the site.
- (3) **Standards for Approval of Class A Designation.** In order to approve a use for Class A designation the use or structure must have been lawful at its inception. In addition, the following criteria shall be used by the Planning Commission in evaluating a use to determine if continuation of the use or structure would be appropriate:
- a. Continuance of the use or structure does not significantly depress property values of nearby properties.
 - b. Continuance of the use or structure would not be contrary to the public health, safety or welfare or the spirit of the ordinance.
 - c. No useful purpose would be served by strict application of the provisions of this ordinance with which the use or structure does not conform.
 - d. The property cannot be reasonable used as currently zoned.
- (4) **Revocation of Class A Designation**
- a. Revocation of a Class A designation may be initiated by the Planning Department or the Planning Commission.
 - b. Revocation of Class A designation shall comply with the procedures outlined in *Section 7.21.02 (a)(2)* of this ordinance.
 - c. Class A designation may only be revoked if the nonconforming use or structure violated a condition of approval.
- (b) **Class B Nonconforming Uses or Structures.** All nonconforming uses or structures, not designated Class A, shall be Class B, nonconforming uses or structures. Class B nonconforming uses and structures shall comply with all the provisions of this ordinance relative to nonconforming uses and structures set forth hereinafter.

7.20.03 Nonconforming Lots

- (a) **Single-Family Dwellings.** In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance. 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 other requirements not involving area or width or both, of the lot shall conform to the regulations for the district in which such lot is located. Yard requirement variances may be obtained through approval of the Zoning Board of Appeals.
- (b) **Changes in Nonconforming Lots.** A nonconforming lot may not be modified in a way that increases its nonconformity.

- (c) **Contiguous Nonconforming Lots.** Where two or more nonconforming lots of record are adjacent and under the same ownership as of the date of this ordinance they shall be considered one parcel and may not be divided except in compliance with this ordinance.
- (d) **Determining Lots of Record.** The City Assessor shall have the power to make "Lot of Record" determinations in accordance with the following:
- (1) Upon application of any person claiming to be the owner of the legal or equitable title to a parcel of land which was the subject to a deed or land contract, not recorded in the Office of the Register of Deeds on the effective date of this ordinance, the City Assessor is authorized to determine whether an owner is entitled to have the parcel treated as a "Lot of Record" in accordance with *Section 7.20.03(a)* of this ordinance.
 - (2) The City Assessor shall allow the parcel to be treated as a "Lot of Record" when he/she finds by a preponderance of the evidence that the instrument purporting to transfer title to the parcel of said owner was executed prior to the effective date of this ordinance. In making his/her determination, the Assessor is authorized to consider all matters it deems relevant, including but not limited to, the tax roll of the city, the relationship of the parties to the purported transfer, the degree of formality of the purported document of transfer, and the testimony of the applicant and his witnesses.
 - (3) Such a determination shall have only the effect of equating such an owner with the owner of a lot of record and shall not relieve such owner from complying with the other conditions set forth in this ordinance.

7.20.04 Nonconforming Uses of Land

Except as provided under the provisions of *Section 7.20.02*, where, at the effective date of adoption or amendment of this ordinance, lawful use of land exists that is made no longer permissible under the terms of this ordinance as enacted or amended such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

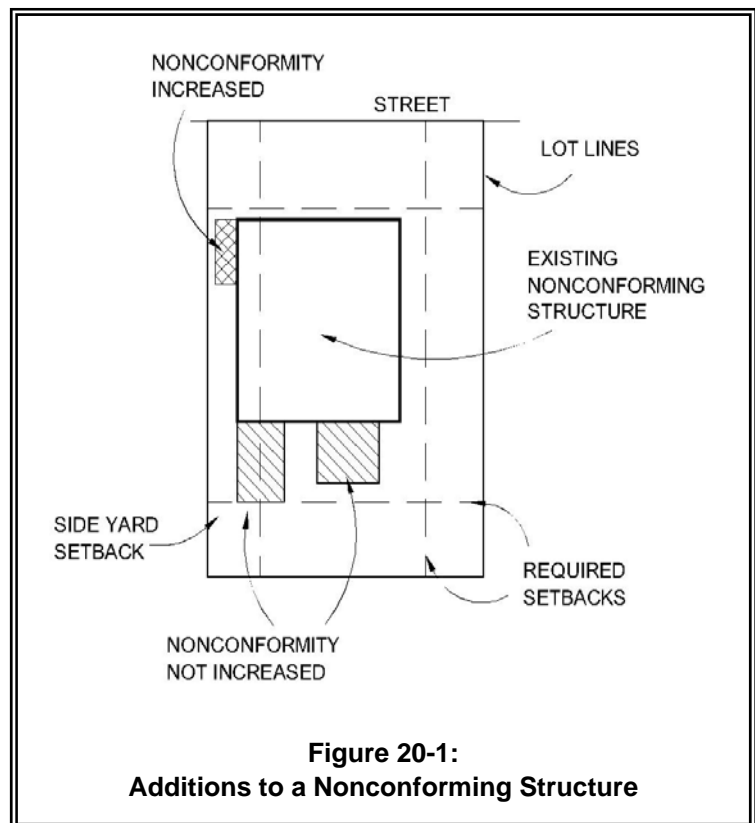
- (a) **Expansion.** No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance. Expansion includes the addition of accessory structures, including signs.
- (b) **Moving Use.** No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this ordinance.

- (c) **Abandonment.** A use that the ZBA has determined is abandoned following the standards in *Section 7.20.07* of this ordinance shall not be re-established and any new use must comply with the zoning ordinance.
- (d) **Change in Use.** A nonconforming use of land may be changed to another nonconforming use of land use that the ZBA has determined is not more nonconforming than the current use following the standards in *Section 7.20.08* of this ordinance and does not require expansion of the area of land used for the use. A nonconforming use that changes to a conforming use may not revert back to a nonconforming use.

7.20.05 Nonconforming Structures

Except as provided under the provisions of *Section 7.20.02*, where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) **Definition of Structure.** For the purpose of this section, the term “structure” shall include both permanent physical improvements such as buildings and fences, and other improvements such as driveway, parking spaces and landscaping.
- (b) **Expansion or Alteration.** No nonconforming structure may be enlarged or altered in a way which increases its nonconformity. An increase in nonconformity would be a change that increases the bulk of the structure encroaching on setbacks or exceeding maximum height or lot coverage requirements. Nonconforming structures may be enlarged or altered in a way which does not increase its nonconformity. (See Figure 20-1.)
- (c) **Moving Structure.** Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is removed.



- (d) **Destruction of Structure.** Should such structure be destroyed by any means to an extent of more than sixty (60) percent of its replacement costs, exclusive of the foundations, it shall be reconstructed only in conformity with the provisions of this ordinance. This provision does not apply to nonconforming single-family homes, which may be replaced even if completely destroyed, provided the new structure does not increase the nonconformity. Construction to repair or replace a nonconforming structure must commence within one (1) year of its destruction.

7.20.06 Nonconforming Uses of Structures and Land

Except as provided under the provisions of *Section 7.20.02*, if a lawful use of a structure, or of structure and land in combination, exists at the effective date of adoption or amendment of this ordinance, that would not be permitted in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) **Expansion or Alteration.** No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- (b) **Extending Use.** Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use, and which existed at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any additional land outside such building.
- (c) **Change in Use.** A nonconforming use of a structure, or structure and land in combination, may be changed to another nonconforming use of land use that the ZBA has determined is not more nonconforming than the current use following the standards in *Section 7.20.08* of this ordinance and does not require expansion of the area of land used for the use. A nonconforming use that changes to a conforming use may not revert back to a nonconforming use.
- (d) **Abandonment.** A use that the ZBA has determined is abandoned following the standards in *Section 7.20.07* of this ordinance shall not be re-established and any new use must comply with the zoning ordinance.
- (e) **Destruction of Structure.** Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure to an extent of more than sixty (60) percent of its replacement costs, exclusive of the foundations shall eliminate the nonconforming status of the land. Construction to repair or replace a structure housing a nonconforming use must commence within one (1) year of its destruction.

7.20.07 Standards for Determining Abandonment

If the Planning Department identifies a legal nonconforming use that they believe has been abandoned, they shall submit the property to the ZBA for a determination of abandonment. The ZBA shall hold a public hearing, following notice as outlined in *Section 7.21.07* of this ordinance.

The ZBA shall determine whether or not intent to abandon the nonconforming use was demonstrated based on a preponderance of the following factors:

- (a) Reports such as from the building inspection or health department indicating the property is or has not been suitable for occupation.
- (b) Disconnection of utilities.
- (c) Evidence that the use was relocated to a new site.
- (d) Evidence of a “going out of business” sale.
- (e) Signs advertising the business has been removed.
- (f) The use has been discontinued for one (1) year, except where government action such as road construction has prevented access to the premises, or where a clear intent to discontinue has not been demonstrated.
- (g) Removal of the equipment or fixtures necessary for the operation of the nonconforming use.
- (h) Request by the property owner for changes in their property tax designation inconsistent with the nonconforming use.
- (i) Other actions by the property owner or lessee that demonstrates an intent to abandon the nonconforming use.

7.20.08 Standards for Allowing the Change in a Nonconforming Use

A property owner may request approval from the ZBA to change a nonconforming use to another nonconforming use. The ZBA shall hold a public hearing following notice as outlined in *Section 7.21.07* of the zoning ordinance. The ZBA shall approve the request if it determines that the proposed use is not more nonconforming than the current use based on the following factors:

- (a) The similarity of zoning districts each use is permitted in and whether they are permitted by right or by Special Land Use (SLU).
- (b) The anticipated off-site impact of each use due to traffic, hours of operation, and generation of noise, dust or odors or general intensity of the proposed use.

7.20.09 Repairs and Maintenance

On any building devoted in whole or in part to any nonconforming use, work may be done in any period of one (1) year on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding 50% of the assessed value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this ordinance shall not be increased.

Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

7.20.10 Status of Uses Requiring Special Land Use Approval

A use established legally without Special Land Use approval which now requires SLU approval due to a text change or rezoning is a nonconforming use until it receives SLU approval. Any existing use approved as a special exception previously under this ordinance shall be deemed a conforming use.

7.20.11 Change of Tenancy or Ownership

There may be a change of tenancy, ownership or management of any existing nonconforming uses of land, of structures or of structures and land in combination.

7.20.12 Purchase or condemnation

In order to accomplish the elimination of nonconforming uses and structures which constitute a nuisance or are detrimental to the public health, safety and welfare, the City of Lapeer, pursuant to section 208, Public Act 110 of 2006, as amended, may, but is not required to, acquire by purchase, condemnation or otherwise, private property for the purpose of removal of nonconforming uses.