

CHAPTER 4

NONCONFORMING STRUCTURES, LOTS, AND USES

Section 4.01 - PURPOSE AND INTENT

Nonconforming structures, lots, and uses which do not conform to one or more of the provisions and/or requirements of the Elk Rapids Township Zoning Ordinance or any subsequent amendments thereto, but were lawfully established prior to the time of adoption of this Zoning Ordinance or subsequent amendment thereto, may be continued, but no such structure or use shall be enlarged or extended, nor nonconforming lot created, except as provided herein.

Section 4.02 – NONCONFORMING STRUCTURES

- A. Definition - A structure lawfully existing at the time of adoption of the Zoning Ordinance, or any amendments thereto, that does not conform to the requirements of the zone district in which it is located.
- B. A nonconforming structure may be continued provided it remains otherwise lawful. A nonconforming structure shall not be enlarged or altered in any way, which increases its degree of nonconformity, unless the Zoning Board of Appeals grants a variance. Degree of nonconformity shall include increasing the extent of the nonconformity and/or expanding the area or volume of the portion of the structure that is nonconforming.
- C. If a nonconforming structure is moved it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- D. Any expansion of a nonconforming structure shall not occupy any portion of the lot which is necessary for meeting any off-street parking requirements.
- E. Any expansion of a nonconforming structure shall result in a total living space floor area of at least nine hundred sixty (960) square feet.
- F. A nonconforming structure containing a nonconforming use shall not be expanded unless the use has been changed to a conforming use and meets the other applicable requirements of this section.
- G. Termination by Destruction
 - 1. If a nonconforming building or structure is damaged or destroyed to the extent of sixty percent (60%) or greater of its assessed value by fire, flood, wind or other calamity, its reconstruction and subsequent use shall only occur after review and approval by the Zoning Board of Appeals. Approval by the Zoning Board of Appeals shall comply with the requirements set for in Section 18.06 of this Ordinance.

2. A nonconforming building damaged less than sixty percent (60%) of its Assessed value may be restored to its original foot print and volume at the time prior to such damage and its use resumed.
3. If the Zoning Board of Appeals grants the appeal for restoration, the restoration shall be completed within one (1) year from the date of approval, unless otherwise authorized by the Zoning Board of Appeals.

Section 4.03 - NONCONFORMING LOTS

- A. Definition - Any lot of record, outlot, or parcel of land lawfully existing at the effective date of this Ordinance, or amendments thereto, which does not meet the land area or dimensional requirements of the zone district in which it is located.
- B. A principal building and customary accessory buildings may be erected on a nonconforming lot provided all zoning requirements are met. If variation of a setback or other zoning restriction is required in order to erect a structure on a nonconforming lot, then such structure shall only be permitted if a variance is granted by the Zoning Board of Appeals.
- C. Contiguous nonconforming lots under the same ownership - If two or more contiguous lots or parcels, or portions of lots or parcels, are under the same ownership and do not individually meet the lot width, depth, and/or area requirements of the district in which the lot or parcel is located, then those contiguous lots, parcels, or portions thereof, as required to meet the minimum lot size requirement of the district, shall be considered one lot or parcel for the purpose of this Ordinance. No portion of such lot or parcel shall be used or divided in a manner that diminishes compliance with the lot width, depth, and /or area requirements as established by the district in which it is located.

Section 4.04 – NONCONFORMING USES

- A. Definition - A use lawfully existing within a structure or on land at the time of adoption of this Ordinance, or any amendments thereto, and which does not conform to the regulations of the zone district in which it is located.
- B. Nonconforming Signs, Section 3.06, Nonconforming Wireless Telecommunications Towers and Antennas, Section 15.09 and Sexually Oriented Businesses, Section 16.16 are subject to the specific nonconforming regulations set forth in each aforementioned section of this Ordinance.
- C. Class A Nonconforming Use
 1. Class A nonconforming uses are nonconforming uses that have been officially reviewed and approved by the Elk Rapids Township Planning Commission according to Section 4.04 F.
 2. Class A nonconforming uses that were approved prior to the adoption of this ordinance are subject to the individual conditions set forth at the time of review.

3. Class A nonconforming use approval includes meeting specific criteria listed in Section 4.04-F, along with any additional conditions or requirements deemed necessary by the Planning Commission.
4. A Class A nonconforming use shall not be considered a detriment to the Township or to the surrounding neighborhood in which it is located.
5. All applications for expansion of a Class A nonconforming use shall meet the requirements of Section 4.04 F. However, a Class A nonconforming use may be extended throughout any part of a building, which was designed for such use, and which existed at the time the use became nonconforming without additional application to the Township Planning Commission as outlined in Section 4.04 F.
6. Any structural expansion of a Class A nonconforming use shall meet the requirements of the zoning district in which it is located.
7. Any proposed changes or modifications of a Class A nonconforming use, including but not limited to, change of use, addition of buildings associated with such use, increasing the intensity of the use, or previously approved site plan associated with the nonconforming use, shall require application and approval according to Section 4.04 F.

D. Class B Nonconforming Uses

1. The intent of this ordinance is to eliminate and discourage the continuance of any Class B nonconforming use. However, a Class B nonconforming use may lawfully continue only in a manner similar to when the use became nonconforming, including type, size and intensity.
2. Class B nonconforming uses shall not be enlarged so as to make use of more land area than used at the time of becoming nonconforming.
3. Class B nonconforming uses are legal nonconforming uses as defined in Section 1.03, Nonconforming Structures, Lots and Uses, Subsection 3, that have not received a Class A upgrade.
4. Class B nonconforming uses shall not be expanded in any form, including structurally or use intensity.
5. A Class B nonconforming use shall only be changed to a use that is permitted within the zone district in which the parcel is located.

- E. All nonconforming uses not designated as Class A by the Elk Rapids Township Planning Commission are Class B nonconforming uses.
- F. Procedure for obtaining Class A designation or modification of a Class A designation:
 - 1. An application shall be filed meeting the requirements of Section 17.04 in Chapter 17, Site Plan Review. The application shall also include a written description of the existing nonconforming use and the purpose for the Class A request. The Planning Commission may require additional Information which may assist in the decision making process.
 - 2.. Complete applications shall be heard in a public hearing before the Planning Commission pursuant to the procedure described in Section 19.07-B of this Ordinance. A decision or condition related to a Class A upgrade approval or denial shall not be appealable to the Zoning Board of Appeals.
 - 3. The applicant must provide a written statement to the Planning Commission, which clearly addresses each of the criteria below. The written statement shall be of substantial content illustrating how the nonconforming use meets each of the criteria. If the information provided is not satisfactory to the Planning Commission, the application may be rejected or denied by the Planning Commission. Class A nonconforming uses are those which have been designated by the Planning Commission, after application by any interested person upon findings:
 - a. That the demand placed on essential services including, but not limited to, water, sewer, utilities, and roads, created by the nonconforming use shall not place an undue burden on the present infrastructure.
 - b. That the illumination on site shall be equal to or less than that of a typical single family home.
 - c. That the use shall not create the incentive for different or supporting uses on or off site that are inconsistent with the Elk Rapids Township Master Plan.
 - d. That the use shall not be injurious to the property neighbors, or its neighborhood, or change the essential character of the neighborhood.
 - e. That the use is a legal nonconforming use as defined in Section 1.03-Nonconforming Use.
 - f. That continuance thereof shall not be contrary to the public health, safety, or welfare, or to the spirit of this Ordinance.
 - g. That no useful purpose would be served by strict application of the provisions or requirements of this Ordinance with which the use does not conform.

4. The Planning Commission may attach additional conditions when necessary to assure that the use does not become contrary to the public health, safety, or welfare or the spirit and purpose of this Ordinance, which may include, but not limited to, hours of operation, noise level considerations, or overall general appearance.
 5. A Class A nonconforming use shall not be changed to a different nonconforming use.
 6. No vested interest shall arise out of a Class A designation.
 7. Revocation of a Class A designation - Any Class A designation shall be revoked, following the same procedure required for designation, upon a finding that as a result of any change of conditions or circumstances the use no longer qualifies for Class A designation.
 8. Lands or structures on which a zoning violation exists at the time of application shall not be considered for a Class A nonconforming upgrade.
- G. Abandonment of any Nonconforming Use - If there is evidence of substantial abandonment of the nonconforming use on any parcel of land or structure and the abandonment continues for a period of one (1) year, then any further use thereof shall conform to the provisions of this Ordinance. In addition, any accessory use, building, or sign related to a nonconforming use shall also be discontinued, unless it shall thereafter conform to all regulations of the Ordinance.
- H. When a Class A or B nonconforming use is replaced by a permitted use, it shall thereafter conform to the regulations of the district in which the use is located and the nonconforming use may not be resumed.

Section 4.05 – GENERAL CONDITIONS

The following general conditions apply to all nonconforming structures, nonconforming lots, and nonconforming uses:

- A. Change of Tenancy or Ownership - The tenancy or ownership of nonconformity may be transferred or changed.
- B. Normal Maintenance and Repairs - Normal maintenance and incidental repairs, including repair or replacement of non-bearing walls, fixtures, wiring or plumbing, may be performed on any nonconforming structure or structure containing a nonconforming use. Maintenance or repairs that increase the degree of nonconformity shall not occur unless the Zoning Board of Appeals grants a variance.