

5.0 NONCONFORMING USES AND BUILDINGS

5.1 INTENT

It is the intent of this Section to permit the continuation of any lawful use of building or land existing as of the effective date of this Ordinance. Nonconformance with the provisions of this Ordinance is not in the best interest of the Township and should be discontinued as circumstances permit. Any nonconforming building, structure or use shall not be enlarged or expanded and may be changed, repaired, or reconstructed only as prescribed by this Section.

5.2 HISTORIC PROPERTIES

Any nonconforming property in Tittabawassee Township which is listed on the State or National Register of Historic Places is specifically excluded from any requirement of this Section which would damage the historic character of the property. When any such property is the subject of any administrative decision, the input of the Michigan State Historic Preservation Officer shall be requested in writing not less than thirty (30) days before any regulatory action may take effect.

5.3 LEGALITY OF NONCONFORMITIES

Nonconformities will be classified as "legal" or "illegal" based on the following guidelines. Regulation of nonconformities will vary based on their legality:

ILLEGAL nonconformities are those that have been developed in conflict with zoning regulations.

LEGAL nonconformities are those that meet each applicable criterion listed below. Note that temporary signs are not considered legal nonconforming structures.

- A. The nonconformity existed legally before the effective date of this Ordinance.
- B. The nonconformity complied with the District Regulations of the previous zoning ordinance, or existed legally through a special use permit or variance.
- C. Nonconforming Setback or Lot Size only: The nonconformity resulted from land acquisition by a government agency, such as for a road right-of-way.
- D. Nonconforming Buildings or Structures only: The building or structure does not extend into a public right-of-way, or over a neighboring property line.

5.4 LOSS OF LEGAL NONCONFORMING STATUS

If a nonconforming use of land or structure ceases for any reason for a period of six (6) months or more, any reuse of the land or structure must conform to all requirements of this Ordinance.

5.5 EXPANSION OF NONCONFORMITY PROHIBITED

No structure may be enlarged or structurally altered in such a way as to increase its nonconformity. A reduction of the degree of nonconformance in one respect is not permitted to offset an increase in the degree of nonconformance in another respect. For example, square footage may not be "traded" from one portion of a building to another. Nor may one nonconforming use be replaced by another unless the degree of nonconformance is reduced in some way.

5.6 RECONSTRUCTION AND RESTORATION

Any lawful nonconforming use damaged by fire, explosion or act of God, or by other causes may be restored, rebuilt or repaired provided that the reconstruction or restoration work does not increase the footprint of the existing structure.

All such restoration must be started within a period of one year of the time of such damage and diligently pursued to completion. The Board of Appeals may extend the period of time for restoration of any such building or structure when a bona fide emergency renders it impossible to make the restoration of the building or structure within the required time period. No fee shall be charged for an appeal to the Board of Appeals under the provisions of this section. Any basements, large holes, etc. remaining on the site after removal of the structure shall be filled in and leveled within ninety (90) days of removal of the structure.

Residential structures in the commercial district are exempt from these requirements. Residential structures undergoing reconstruction or restoration for purposes of providing handicapped facilities are exempt from these requirements. (Amended 6/25/08)

5.7 REPAIR

Nothing in this Ordinance shall prohibit the repair, improvement, or modernizing of a lawful nonconforming building to correct deterioration, obsolescence, depreciation, or wear, provided that such repair does not exceed an aggregate cost thereby increasing the assessed value by more than thirty (30%) percent as determined by the assessing officer unless the subject building is changed by such repair to a conforming use. No repair may enlarge or structurally alter the structure in such a way as to increase the nonconformity. Residential structures undergoing repair for purposes of providing handicapped facilities are exempt from these requirements. (Amended 6/25/08)

5.8 CHANGING USES

The use of a lawful nonconforming building or structure may be changed only to another use that is less nonconforming. This use may or may not be a permitted use in that district. The determination of relative nonconformance of a proposed use with respect to the previous lawful nonconforming use shall be at the discretion of the Board of Appeals. The proposed use shall be subject to all the requirements applying to that use in the district, including parking, signage and all other aspects of the site. Where the use of a lawful nonconforming building or structure is changed to a less lawful nonconforming use, it may not be changed back to the previous lawful nonconforming use or to another more lawful nonconforming use.

5.9 PLANS ALREADY FILED

In any case where plans and specifications for a building or structure, which would conform with the zoning regulations prior to the date of this ordinance or any amendment thereof have been filed, and where a building permit for such building or structure has been issued and construction work started at the effective date of this ordinance or amendment, such work may proceed, provided it is completed within one year.

5.10 DISTRICT CHANGES

Whenever changes occur in the boundaries of Zoning Districts, the provisions of this Section shall apply to any uses or parcels that become nonconforming as a result of the boundary changes.

5.11 REGULATION OF NONCONFORMITIES

INTERPRETATION. Should any question arise concerning the interpretation of any provision of the REGULATION OF NONCONFORMITIES TABLE (Table 5-1) or if a situation is encountered which was not anticipated by the Table, the question shall be submitted to the Zoning Board of Appeals for their interpretation which shall be final.

5.12 NONCONFORMING LOTS

In any district where residential dwellings are permitted, a single family dwelling and the accessory buildings may be erected on any single legal lot of record at the effective date of adoption or amendment of this Ordinance. Yard dimensions shall conform to the regulations for the district in which the lot is located. No existing conforming lots may be changed to nonconforming lots. (Amended 6/25/08)

5.13 INVENTORY OF NONCONFORMITIES

The Township Zoning Administrator is hereby required to establish and maintain an Inventory of Legal Nonconformities known to exist in Tittabawassee Township. This inventory should not list illegal nonconformities. Illegal nonconformities are violations of the ordinance and should be kept in the active files of the Code Enforcement Officer. In theory, the inventory of legal nonconformities should only expand if a Board of Appeals action allowing the nonconformity is issued. All listed properties shall also be identified on a large scale map of the Township which shall be available for public inspection.

Each listing in the Inventory of Nonconformities shall include the following information.

- A. Date each parcel listed on inventory.
- B. Parcel identification number.
- C. Property address.
- D. Current owner(s).
- E. Property description.
- F. Parcel dimensions.
- G. Sketch with dimensions and setbacks of buildings, structures, and parking areas on the parcel.
- H. Current zoning district.
Current use of property.

5.14 ELIMINATION OF NONCONFORMING USES BY ACQUISITION

In accordance with Act 184 of the Public Acts of 1943, Township Zoning Act, as amended, the Township Board may from time to time, acquire properties on which nonconforming uses

or structures are located, by condemnation or otherwise, and may remove such uses or develop the property for a public use. The net cost of such acquisition may be made a special assessment against a benefit district, or may be paid from other sources of revenue legally available to the Township.

TABLE 5.1

TITTABAWASSEE TOWNSHIP ZONING ORDINANCE

TABLE OF NONCONFORMING SITUATIONS AND ACTIONS

Instructions: Locate the situation in top line and nonconformity type in column.

TYPE	IF DISCONTINUED FOR 6 MONTHS	IF DAMAGED MORE THAN S.E.V.	IF DAMAGED LESS THAN S.E.V.	CHANGE IN USE (INCLUDING NEW BUILDINGS)	REMODELING, MAINTENANCE, CODE WORK
ILLEGAL NONCONFORMING PARCEL	N.A.	N.A.	N.A.	Not permitted unless use is conforming.	Property must be kept in safe condition
ILLEGAL NONCONFORMING USE OF LAND	May not be resumed.	N.A.	N.A.	Not permitted unless use becomes conforming.	Property must be kept in safe condition.
ILLEGAL NONCONFORMING USE OF BUILDING OR STRUCTURE	May not be resumed.	Use must stop and may not be resumed.	May repair, but must reduce degree of nonconformance.	Not permitted unless use becomes conforming.	Permitted so long as use is not expanded.
ILLEGAL NONCONFORMING DIMENSIONS OR SETBACK OF BUILDING OR STRUCTURE	N.A.	Building must be rebuilt to fully comply with applicable district regulations.	May repair, but must reduce degree of nonconformance.	New use and new building must adhere to ALL District Regulations.	Permitted, but may not create any greater degree of nonconformance.
LEGAL NONCONFORMING PARCEL	N.A.	N.A.	N.A.	Permitted, but requires a variance.	Property must be kept in safe condition.
LEGAL NONCONFORMING USE OF LAND	May not be resumed.	N.A.	N.A.	Permitted, but must reduce degree of nonconformance.	Property must be kept in safe condition.
LEGAL NONCONFORMING USE OF BUILDING OR STRUCTURE	May not be resumed.	May rebuild if all plans meet All OTHER district regulations.	May repair to pre-damage status.	Permitted, but must reduce degree of nonconformance.	Permitted so long as use is not expanded.
LEGAL NONCONFORMING DIMENSIONS OR SETBACK OF BUILDING OR STRUCTURE	N.A.	May rebuild, but must reduce degree of nonconformance.	May repair to pre-damage status.	Permitted, but requires a variance.	Permitted, but may not create any greater degree of nonconformance.

