

ARTICLE EIGHTEEN (18)

NONCONFORMING USES, BUILDINGS, AND STRUCTURES

Sec. 18.01 **Purpose:**

It is the purpose of this article to permit the continuance of a lawful use of any building or land existing at the effective date of this Ordinance, although such use of land or structure may not conform with the provisions of this Ordinance. It is recognized, however, that those nonconformities, which adversely affect orderly development and the value of nearby property, are not permitted to continue without restriction.

The zoning regulations established by this Ordinance are designed to guide the future use of land in Moran Township by encouraging appropriate groupings of compatible and related uses, provide appropriate bufferyards between dissimilar uses and thus to promote and protect the public health, safety, and general welfare. The continued existence of nonconformities is frequently inconsistent with the purposes for which such regulations are established, and thus their gradual elimination is generally desirable. The regulations of this Article permit such nonconformities to continue without specific limitation of time but are generally intended to restrict further investments that would make them more permanent.

This article distinguishes between major nonconforming uses or structures and minor nonconformities. Different regulations are established for each of these categories. The degree of restriction over each category is a function of the degree to which that category of nonconformity is a nuisance or incompatible with the purposes and regulations of this Ordinance.

Sec. 18.02 **Major Nonconforming Use:**

- a. A major nonconforming use consists of uses such as junkyards, landfills, or industrial uses situated in a zoning district, which does not allow for such uses.
- b. A major nonconforming use shall not be changed to any use other than a use permitted in the zoning district in which it is located.
- c. Major nonconforming uses shall not be re-established in their nonconforming condition in any zoning district after damage or destruction, if the estimated expense of reconstruction exceeds fifty (50) percent of the appraised replacement cost of the use or structure.

Sec. 18.03 **Minor Nonconforming Use:**

- a. A minor nonconforming use is any nonconforming use that is not a major nonconforming use.

Sec. 18.04 **Minor Nonconforming Uses of Land:**

Where, at the effective date of adoption or amendment of this Ordinance, a lawful use of land exists that is 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. No such nonconforming use shall be enlarged or increased, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.
- b. 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. Nonconforming uses shall not be changed to another nonconforming use, except after approval of the Board of Zoning Appeals. Before granting such approval, the Board shall determine that such change in use will have a less deleterious effect on neighboring properties than the existing nonconforming use.
- e. No nonconforming use shall be extended to displace a permitted (conforming use).

Sec. 18.05 **Minor Nonconforming Buildings and Structures:**

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. Nonconforming structures shall not be altered or expanded without the prior approval of the Board of Zoning Appeals, except that the following structural alterations may be permitted without prior approval of the Board of Zoning Appeals:
 - 1. Structural alterations or extensions adding to the bulk of a structure which is nonconforming only by reason of lot size or lot width shall be permitted without prior approval of the Board of Zoning Appeals provided that such structure alteration or extension shall not increase the extent of nonconformity and shall satisfy all other site development regulations which are applicable.
 - 2. Structural alterations that do not add to the bulk of the structure or increase the intensity of use of the structure shall not require prior approval of the Board of Zoning Appeals.
- b. Nonconforming buildings or structures may be structurally altered so as to prolong the life of the building or structure.

- c. Nonconforming buildings or structures may be re-established on the same lot in their nonconforming condition after damage or destruction of the nonconforming structure, if such building or structure is nonconforming due only to its having an insufficient setback or due to its being located on a site having a size, width or both, less than prescribed in the applicable Sections of this Ordinance.

Sec. 18.06 Minor Nonconforming Uses of Structures and Land:

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 allowed in the district under the terms of this Ordinance, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a. 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. 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 land outside such building.
- c. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided the Board of Zoning Appeals, by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accord with the purpose and intent of this Ordinance.
- d. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded or changed to a permitted use, shall thereafter conform to the regulations for the district in which such structure is located and shall not revert back to a nonconforming use.

Sec. 18.07 Repairs and Maintenance:

Repairs and maintenance may be performed on any building devoted in whole or in part to a nonconforming use; including ordinary repairs or repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding fifty (50) percent of the assessed value (twenty-five percent of true cash value) of the building during any period of twelve (12) consecutive months. However, 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 Article 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.

Sec. 18.08 **Prior Construction Approval:**

Nothing in this article shall prohibit the completion of construction and use of a nonconforming building for which a building permit has been issued prior to the effective date of this Ordinance, provided that construction is commenced within ninety (90) days after the date of issuance of the permit, that construction is carried on diligently and without interruption for a continuous period in excess of thirty (30) days; and that the entire building shall have been completed according to the plans filed with the permit application within two (2) years after the issuance of the building permit.

To avoid undue hardship, nothing in this article shall be deemed to require a change in the plans, construction or designated use of any building on which construction was lawfully begun prior to the effective date of adoption or amendment of this article, and upon which actual construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved.

Sec. 18.09 **Change of Tenancy or Ownership:**

There may be a change of tenancy, ownership or management of any existing nonconforming uses of land, structures, and premises provided there is no change in the nature or character of such nonconforming uses.

Sec. 18.10 **Discontinuance of Nonconforming Uses:**

Any building, structure, or land that has been used for nonconforming purposes (either minor or major) and the owner does not intend for the nonconforming use to continue, shall comply with the provisions of this Zoning Ordinance.

The owner’s intent to no longer continue use of the nonconforming uses shall be established by a preponderance of the following points of evidence:

- a. Utilities have been disconnected.
- b. If there were signs, the signs have been removed or have fallen into disrepair.
- c. Fixtures within and outside the building have been removed.
- d. The property has fallen into disrepair or is considered “blighted.”
- e. U.S. Mail delivery has been terminated or mail is forwarded to another address.
- f. The classification of the property for tax purposes has been changed to reflect another use.
- g. Other similar changes to the nonconforming building or use.

Action to determine if a nonconforming use was intended to be discontinued by the owner may be delayed if any of the following is ongoing:

- a. Property held in Probate.
- b. Insurance settlement in dispute.
- c. Criminal investigation.

Sec. 18.11 Elimination of Nonconforming Use or Structure:

The Township Board may acquire by purchase, condemnation or other means, private property or an interest in private property for the removal of any nonconforming use or structure. The cost or expense or a portion thereof may be paid from general funds or assessed to a special district in accordance with applicable statutory provisions.

Sec. 18.12 Substandard Lots:

Any lot that was of record as of the effective date of this Ordinance may be used for any permitted principal use even though the lot area and/or the width is less than required by the district. In instances where the setback requirements would make the lot unbuildable, the side and rear setback requirements may be reduced by 50%.

Sec. 18.13 Use Variances

As enabled in the Michigan Zoning Enabling Act, PA 110 of 2006, section 604 (9) the Zoning Board of Appeals in Moran Township has the authority to grant variances from uses of land. This authority is due to the Zoning Board of Appeals granting use variances prior to February 15, 2006. Approval for a Use Variance requires a vote of 2/3 of the members of the Zoning Board of Appeals. Use Variances shall be subject to the same approval criteria as 24.05 of this Zoning Ordinance.