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**SECTION 5.01 PURPOSE**

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Nonconformities are uses, buildings, structures, and lots that do not conform to one or more of the requirements of this Ordinance, or any subsequent amendment, which were lawfully established prior to the effective date of this Ordinance, or any subsequent amendment. The purpose of this Article is to specify the terms and conditions under which a nonconformity is permitted to continue to exist. To that end nonconforming uses, buildings, and structures shall be placed into two classifications, a Class A nonconformity and a Class B nonconformity. The purpose of this Article is to eliminate Class B nonconformities over a period of time, while permitting Class A nonconformities to be used, repaired, replaced, and enlarged under less stringent regulations.

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**SECTION 5.02 NONCONFORMING USE PERMITTED; COMPLETION ALLOWED**

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- A. If the use of a building or structure or the use of the land was lawful at the time of enactment of this Ordinance, or any subsequent amendment, then that use may be continued although the use does not conform to the provisions of this Ordinance, or any subsequent amendment, under the terms and conditions of this Article.
- B. To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of a building or structure on which substantial construction has been lawfully begun prior to the effective date of this Ordinance, or any subsequent amendment.

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**SECTION 5.03 CLASSIFICATION OF NONCONFORMITIES**

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- A. All nonconforming uses, buildings, and structures shall be designated either a Class A nonconformity or a Class B nonconformity. A nonconforming use, building, or structure shall be automatically deemed a Class B nonconformity, unless specifically designated a Class A nonconformity under subsection B. If a Class B nonconformity is damaged or destroyed, the property owner may seek a Class A designation under subsection B after such damage or destruction. The Class B nonconformity shall then be judged for the Class A designation on the nonconformity as it existed prior to the damage or destruction.
- B. A property owner who desires that his or her property be designated a Class A nonconformity shall file an application with the Zoning Administrator requesting the designation. The application shall include the names and addresses of all people and legal entities with an interest in the property, the legal description of the property, the facts that establish the standards for approving a Class A designation have been met, and the fee as provided in **Section 10.04** of this Ordinance. After the Zoning Administrator receives a completed application, he or she shall forward the application to the Planning Commission for consideration. The Planning Commission shall then hold at least one (1) public hearing on the application. The notice of the public hearing shall be the same as for a variance before the Zoning Board of Appeals. The Planning Commission's decision whether to grant the Class A designation shall be based on written findings of fact made pursuant to the standards contained in subsection C. The Planning Commission may attach reasonable conditions to the Class A designation to assure compatibility of the nonconforming use, building, or structure with surrounding property uses. The property owner shall receive no vested interest or rights in the Class

A designation, since that designation may be revoked by the Planning Commission under subsection D.

- C. The Planning Commission shall grant a Class A designation for a nonconforming use, building, or structure if it finds that all of the following standards are met:
1. The nonconforming use, building, or structure was lawful at the time of its inception.
  2. The continuation of the nonconforming use, building, or structure will not significantly and adversely affect surrounding properties and will not significantly depress property values in the immediate area.
  3. If the nonconforming structure is a sign, the nonconformity is due to dimensional regulations other than the limitation on the area of the sign surface or the limitation on the height of the sign.
  4. The nonconforming use, building, or structure does not significantly and adversely impact on steep slopes as regulated in **Section 3.19** of this Ordinance, is not located within the waterfront greenbelt required by **Section 3.18** of this Ordinance, and is not located within a wetland regulated by the State of Michigan or as regulated in this Ordinance.
  5. The nonconforming use, building, or structure is of economic benefit to the Village.
- D. Upon the filing of a request by the Zoning Administrator or by the Planning Commission's own action, a Class A designation shall be revoked by the Planning Commission following the same procedures required for the initial designation upon a finding that as a result of any change of conditions or circumstances the standards for the Class A designation under subsection C no longer qualify the nonconforming use, building, or structure for the Class A designation.

#### **SECTION 5.04 CLASS A NONCONFORMITY REGULATIONS**

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The following regulations shall apply to all Class A nonconforming uses, buildings, and structures:

- A. Normal maintenance and incidental repairs, including repair or replacement of nonbearing walls, fixtures, wiring, or plumbing may be performed on any nonconforming building or structure or on any building containing a nonconforming use.
- B. A nonconforming building or structure or a building that contains a nonconforming use which is unsafe or unlawful due to a lack of repairs or maintenance, as determined by the Zoning Administrator or County Building Official, may be restored to a safe condition.
- C. If a nonconforming building or structure (including a nonconforming sign) or a building that contains a nonconforming use is damaged or destroyed by any means or is removed by the property owner, then such nonconforming building or structure may be restored, rebuilt, or repaired to no greater than its original configuration and on its original foundation or footprint.
- D. A nonconforming building or structure or a building that contains a nonconforming use may be enlarged or altered in any way, provided such enlargement or alteration does not increase the degree or extent of any nonconformity for both the horizontal and vertical planes.

- E. A nonconforming use shall not be extended to any portion of the lot that was not lawfully occupied by such nonconforming use on the effective date of this Ordinance, or any subsequent amendments, creating such nonconformity, unless in complete conformity with the requirements of this Ordinance. However, 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.
- F. A Class A nonconforming use, building, or structure may be replaced by another Class A nonconforming use, building, or structure if the Planning Commission finds, following the procedures of **Section 5.03.B**, that the new nonconforming use, building, or structure qualifies for a Class A designation and that the new nonconforming use, building, or structure will not increase the extent or intensity of the nonconformity on the property.

### **SECTION 5.05 CLASS B NONCONFORMITY REGULATIONS**

The following regulations shall apply to all Class B nonconforming uses, buildings, and structures:

- A. Normal maintenance and incidental repairs, including repair or replacement of nonbearing walls, fixtures, wiring, or plumbing may be performed on any nonconforming building or structure or on any building containing a nonconforming use.
- B. A nonconforming building or structure or a building that contains a nonconforming use which is unsafe or unlawful due to a lack of repairs or maintenance, as determined by the Zoning Administrator or County Building Official, may be restored to a safe condition.
- C. If a nonconforming building or structure (other than a nonconforming sign) or a building that contains a nonconforming use is damaged or destroyed by any means or any portion of the building or structure is removed by the owner to the extent that the cost of necessary repairs or reconstruction will exceed forty percent (40%) of the replacement cost of the entire nonconforming building or structure before the damage, destruction, or removal of any portion thereof, as determined by a qualified appraiser, then such nonconforming building or structure or building that contains a nonconforming use shall only be repaired, remodeled, or reconstructed in complete conformity with the provisions of this Ordinance, unless the cost of such repair, remodeling, or reconstruction exceeds 150% of the replacement cost of the entire nonconforming building or structure before any damage, destruction, or removal as determined by a qualified appraiser. If the cost of any repair, remodeling, or reconstruction exceeds 150% of the replacement cost of the entire nonconforming building or structure as specified above, then the Zoning Administrator shall require the nonconforming building or structure or building that contains a nonconforming use to be repaired, remodeled, or reconstructed in such a manner or in such location as to maximize conformity with the provisions of this Ordinance without exceeding the 150% limitation specified above.
- D. If a nonconforming sign is damaged or destroyed by any means or is removed by the owner to the extent that the cost of necessary repairs will exceed twenty percent (20%) of the replacement cost of the sign, then such nonconforming sign shall only be repaired or reconstructed in complete conformity with the provisions of this Ordinance.
- E. Except for repairs or maintenance authorized under subsections A and B above, a nonconforming building or structure or a building that contains a nonconforming use

shall not be enlarged or altered, unless in complete conformity with the requirements of this Ordinance.

- F. A nonconforming use shall not be extended to any portion of the lot or extended throughout any part of a building in which it is located that was not lawfully occupied by such nonconforming use on the effective date of this Ordinance, or any subsequent amendments, creating such nonconformity, unless in complete conformity with the requirements of this Ordinance.
- G. A Class B nonconforming use, building, or structure may not be replaced by another Class B nonconforming use, building, or structure. However, a Class B nonconforming use, building, or structure may be replaced with a Class A nonconforming use, building, or structure if the Planning Commission finds, following the procedures of **Section 5.03.B**, that the new nonconforming use, building, or structure qualifies for a Class A designation and that the new nonconforming use, building, or structure will not increase the extent or intensity of the nonconformity on the property.

#### **SECTION 5.06 CHANGE OF NONCONFORMITY**

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If a nonconforming use, building, or structure is changed to a more conforming use, building, or structure or is replaced by a conforming use, building, or structure, the nonconforming use, building, or structure shall not revert to its original nonconforming status.

#### **SECTION 5.07 NONCONFORMING LOT OF RECORD**

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The following regulations shall apply to all nonconforming lots of record:

- A. Except as provided in subsection B below, any lot which does not meet the dimensional requirements of the district in which it is located may be used for any purpose authorized within that district. Any required variances may be requested pursuant to the procedures and standards of this Ordinance.
- B. If two (2) or more contiguous lots, 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 this Ordinance, then those contiguous lots, parcels, or portions of lots or parcels shall be considered an undivided lot or parcel for the purposes of this Ordinance, and no portion of such undivided lot or parcel shall be used or divided in a manner that diminishes compliance with the lot width, depth, and/or area requirements established by this Ordinance.

#### **SECTION 5.08 ABANDONMENT OF A NONCONFORMITY**

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If a property owner has an intent to abandon a nonconforming use, building, or structure and in fact abandons this nonconforming use, building, or structure for a period of one (1) year or more, then any subsequent use of the building, structure or property shall conform to the requirements of this Ordinance. When determining the intent of the property owner to abandon a nonconforming use or structure, the Zoning Administrator shall consider the following factors:

- A. Whether utilities, such as water, gas, and electricity to the property have been disconnected.

- B. Whether the property, buildings, and grounds have fallen into disrepair.
- C. Whether signs or other indications of the existence of the nonconforming use have been removed.
- D. Whether equipment or fixtures necessary for the operation of the nonconforming use have been removed.
- E. Other information or actions that evidence an intention on the part of the property owner to abandon the nonconforming use or structure.