

Article 80: Nonconformities

8001 Purpose

Within the Areas established by this Ordinance or by amendments thereto, there exist **Buildings** and **Structures** and **Uses** of **Parcels**, **Buildings**, and **Structures** which were lawful before this Ordinance was adopted or amended and which would be prohibited, regulated or restricted under this Ordinance. These **Uses** are referred to as nonconformities and may continue until they are discontinued, damaged or removed but are not encouraged to survive. These nonconformities are declared by this Ordinance to be incompatible with the **Buildings** and **Structures** and **Uses** of **Parcels**, **Buildings**, and **Structures** permitted by this Ordinance in certain Areas. It is further the intent of this Ordinance that such nonconformities **shall** not be enlarged, expanded or extended except as provided herein nor to be used as grounds for adding other **Buildings** and **Structures** and **Uses** of **Parcels**, **Buildings** and **Structures** prohibited elsewhere in the same Area.

8002 Regulations

No such **Nonconforming Use** of land **shall** be moved in whole or in part to any other portion of such land, or to a different **Parcel**, not **Occupied** on the effective date of adoption or amendment of this Ordinance, except as provided in **Section 8003**.

8003 Extensions

A **Nonconforming Structure** and **Use** may not be added to, extended, reconstructed, structurally **Altered** or expanded during its life; and a nonconforming **Parcel** may not be used or built upon; except for any one or combination of the following and subject to the following restrictions:

- A. **Use** not allowed: If the nonconformity is a **Use** which is not otherwise allowed in the zoning Area, then the **Use** and the **Structures** upon which the **Use** is associated **shall** not be expanded more than ten (10) percent in size, hours of operation, or in volume of traffic generated.
- B. **Parcel** too small and **Occupied**: If the nonconformity is that the **Parcel** is too small and already has existing **Uses** and **Structures**; then the **Structures shall** not be expanded more than spatially possible while such expansion **shall** comply with all applicable height, setback, and maximum **Impervious Surface Coverage** regulations in this Ordinance, whichever is less. Any expansion of the **Structure shall** comply with all other provisions of this Ordinance.
- C. Structure does not comply with setbacks. If the nonconformity is that the structure does not comply with the setbacks, expansions shall be in a direction that does not further reduce the minimum setback or increase the maximum setback distance. Nothing here is intended to prevent the acquisition of adjacent land to bring the **Parcel** into compliance, or to lessen the nonconformity if the **Use** is permitted in the respective zoning Area.
- D. **Parcel** too small and vacant: If the nonconformity is that the **Parcel** is too small, and the **Parcel** is vacant, then a **Use** or **Structure shall** not be permitted unless:
 1. The **Structures** comply with all applicable height, setback, and maximum Impervious Surface Coverage regulations in this Ordinance (unless a separate **Variance** to those regulations has been granted by the Board of Appeals) along with all other provisions of this Ordinance; and
 2. The nonconforming Parcel was not created by division, which does not comply with both the zoning ordinance in effect at the time of the division and this Ordinance.

8004 Repairs and Maintenance

Nothing in this Ordinance **shall** prevent the repair, reinforcement, improvement or rehabilitation of **Nonconforming Buildings, Structures**, or part thereof existing at the effective date of this Ordinance, rendered necessary by wear and tear, deterioration or depreciation; nor prevent compliance with the provisions of the P.A. 230 of 1972, as amended, (being the Stille-Derossett-Hale Single State Construction Code Act, M.C.L. 125.1501 et. seq.), relative to the maintenance of **Buildings** or **Structures**; provided, there **shall** be no change of **Use** which would expand the nonconformity of such **Building** at the time such work is commenced; and provided, further, there **shall** be no change of **Use** of said **Building** or part thereof.

8005 Building Damage

- A. No Building damaged by fire, act of God or other causes to the extent that the damage is total (i.e. the insurance coverage, if it existed, would pay the full amount insured) **shall** be repaired or rebuilt, except:
1. in conformity with the non-**Use** provisions of this Ordinance; and in conformity with the permitted and/or special **Use** provisions of this Ordinance; or
 2. reconstruction, repair or restoration of the original **Use** size, shape and footprint **shall** be completed within one (1) year following the damage and resumption of **Use** takes place within ninety (90) days of completion. A one (1) year extension may be granted by the Zoning Administrator if he/she finds one of the following conditions to exist:
 - a. The delay was not avoidable due to weather;
 - b. The delay was a result of a criminal investigation;
 - c. The delay was a result of a dispute between the owner and an insurance company concerning what is covered by insurance, or
 - d. The Property is held in probate.

8006 Completion

Nothing in this Ordinance **shall** require any change in the construction or intended **Use** of a **Building** or **Structure**, the construction of which **shall** have been diligently prosecuted prior to the passage of this Ordinance or any amendment thereto, and the construction of which **shall** have been completed within twelve (12) months after said date of adoption.

8007 Nonconforming-Use

- A. If a property owner has an intent to abandon a nonconforming use or structure and in fact abandons this nonconforming use or structure for a period of one (1) year or more, then any subsequent use of the property or structure 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:
1. Whether utilities, such as water, gas, and electricity to the property have been disconnected.
 2. Whether the property, buildings, and grounds have fallen into disrepair.
 3. Whether signs or other indications of the existence of the nonconforming use have been removed.
 4. Whether equipment or fixtures necessary for the operation of the nonconforming use have been removed.
 5. Whether U.S. mail deliveries have been terminated or forwarded to another address.
 6. Whether the classification of the property for tax purposes has been changed to reflect another **Use**.

7. Other information or actions that evidence an intention on the part of the property owner to abandon the nonconforming use or structure.
- B. Action to find a **Nonconforming Use** was intended to be discontinued by the owner may be delayed if any of the following is ongoing:
1. Property held in Probate;
 2. Insurance settlement in dispute; or
 3. Criminal investigation.

8008 Change of Tenancy or Ownership

There may be change of tenancy, **Ownership** or management of an existing **Nonconforming Use, Building or Structure**, provided there is no change in the nature or character of such **Nonconforming Use, Building or Structure**.

8009 Nonconforming Special Uses

- A. There are **Uses** which were permitted by right under the Suttons Bay **Village** Zoning Ordinance in effect immediately prior to this Ordinance which are not permitted **Uses** under this Ordinance. Of those **Uses**, there are some, which are listed as potential special **Uses** in this Ordinance. Those existing **Uses** which were permitted **Uses**, and are listed as special **Uses** in this Ordinance, **shall** not be considered **Nonconforming Uses**.
- B. Those **Uses**, or parts of **Uses**, which existed as a permitted **Use** immediately prior to this Ordinance, and are listed as special **Uses** in this Ordinance **shall** be considered to be an approved existing special **Use** with the configuration shown on a site plan drawn to reflect how the **Use** exists at the time of adoption of this Ordinance. Parts of **Uses** which are nonconforming immediately prior to the adoption of this Ordinance **shall** continue to be nonconforming under this Ordinance. A permit in existence pursuant to this sub-**Section shall** be known as an Pre-existing Special **Use** Permit.
- C. An owner of a Pre-existing Special **Use** Permit may, at no charge to the owner, obtain from the **Commission** a certification of a site plan reflecting how the **Use** existed at the time of adoption of this Ordinance with identification of nonconforming parts, if any. In the case of a dispute over facts on what existed at the time of adoption of this Ordinance, aerial photographs flown in March, 2006 by the **Village** or other aerial photographs, flown to the same or greater standards for mapping as the county's photos, taken after the County photos but before the adoption of this Ordinance, **shall** be given the greatest weight as evidence to establish a certified site plan. For purposes of this **Section**, the above mentioned photo(s) may be accepted as the site plan for the Pre-existing Special **Use** Permit.
- D. When a special **Use** owner applies to amend the unwritten Special **Use** Permit for expansion or change, a written Special **Use** Permit **shall** be prepared for the entire **Use** and **Parcel**. In review of the Special **Use** Permit amendment application for expansion or change, the **Commission shall** only review and act on the expansion or change portion of the Special **Use** Permit. If the application for amendment of the Special **Use** Permit is approved, approved with conditions, denied or denied in part, the action **shall** not change or alter those parts of the special **Use** that are shown on the Pre-existing Special **Use** Permit.

8010 Nonconforming Uses

The **Administrator shall** survey the **Village** and file with the **Commission** a written statement of the nature and extent of the **Nonconforming Uses** after adoption of this Ordinance, or any amendments thereto. The determination of when a **Nonconforming Use** may be replaced, extended, substituted or substandard **Parcels** used **shall** be determined in the first instance by the **Administrator**. Any determination concerning nonconformities may be appealed to the **Appeals Board**.

