

Chapter 5 – Non-Conforming Uses

SECTION 5.01 THREE CLASSES OF NON-CONFORMING USES

- A. Non-conforming uses (*D2-13*) are those uses of land or buildings that were legal at the time they were established, but as a result of the adoption of this ordinance or amendments to this ordinance, no longer conform to the uses permitted in the zoning district it is located in. There are hereby established 3 types of non-conforming uses: Class A, Class B, and Class C.
1. Class A non-conforming uses include existing residences located on land parcels formerly zoned residential property now zoned as commercial property that have never housed a commercial use.
 2. Class B non-conforming uses are those uses not included in Class A above which have been so designated by the Planning Commission, after application for such designation by the owner of the property. Where Class B non-conforming uses are identified, it is the intent of this ordinance to provide for their continuance so long as they fulfill the requirements in this section.
 3. Class C non-conforming uses are all non-conforming uses not designated as Class A or Class B. It is the intent of this ordinance not to encourage the survival of Class C non-conforming uses. Class C non-conforming uses may not be expanded upon, and structures housing non-conforming uses may not be enlarged.
- B. Procedures for Obtaining a Class A Designation

A class A designation for a non-conforming use under this section shall be subject to the following regulations:

1. Class A designation is hereby granted to all qualifying residences located on a Commercial Zone Parcel of land upon submitting a properly completed Class A non-conforming use application signed by the owner(s) to the Tuscola Township Clerk with payment of the applicable application fee.
2. This Ordinance shall not prohibit the repair, improvement or modernization of a structure (*D2-18*) housing a Class A non-conforming use provided the dimensions of the structure are not changed.
3. Any Class A non-conforming use damaged by fire, explosion, flood, Act of God or a public enemy or other means may be restored, rebuilt, or repaired provided the dimensions of the structure are not changed.
4. A Class B designation as described below shall be required when the dimensions of the structure are to be changed.

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5. When a structure with a class A designation is converted to a commercial use the Class A designation is cancelled. The new use and all future uses must comply with the requirements of this ordinance for Commercial Zone properties.

C. Procedures for Obtaining Class B Designation

Any application for a Class B designation of a non-conforming use (D2-13) under this section shall be submitted and processed under the following procedures:

1. A completed Class B non-conforming use designation application form shall be filed with the Planning Commission Chairperson by the property owner, identifying the property the Class B designation is being requested for and how the request conforms to the standards for approval of a Class B designation outlined in this chapter.
2. The Planning Commission may require additional information it considers necessary to reaching a decision.
3. The Planning Commission Chairperson will schedule a public hearing on a regular meeting date after allowing time for public notice requirements as specified in Section 3.01 of this ordinance.

D. Standards for Approval of Class B Designation

Before approving an application for Class B designation of a non-conforming use, the Planning Commission shall review each application to ensure that the following standards are met:

1. The continuance of their use would not be contrary to the public health, safety or welfare, or the spirit of this Ordinance.
2. The use or structure does not, and is not likely to, significantly decrease the value of nearby properties.
3. The use was lawful at the time of its inception and that no useful purpose would be served by strict application of the provisions or requirements of this Ordinance with which the use or structure does not conform.

E. Approval of Class B Designation

The Planning Commission shall approve Class B designation for non-conforming uses that comply with the standards and procedures of this section. The decision of the Planning Commission shall be in writing and shall set forth the findings and reasoning on which it is based. The Planning Commission shall attach conditions, where necessary, to assure that the use or structure (D2-18) does not become contrary to the public health, safety or welfare, or the

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spirit and purpose of this Ordinance. In addition, no vested interest shall arise out of a Class B designation, which may be revoked based on requirements in paragraph E.

F. Revocation of Class B Designation

A Class B designation may be revoked following the same procedure required for designation upon a finding that as a result of any violation of the conditions established by the Planning Commission, or due to changes in the use that cause it to no longer meet the requirements for approval of Class B designation.

G. Regulations Pertaining to Class B Non-conforming Uses (D2-14)

1. This Ordinance shall not prohibit the repair, improvement or modernization of a structure housing a Class B non-conforming use.
2. Any Class B non-conforming use damaged by fire, explosion, flood, Act of God or a public enemy or other means may be restored, rebuilt, or repaired.
3. Any Class B non-conforming use may be re-established in its present location if the use is abandoned as defined in Section 5.02 of this chapter, provided the operator continues to comply with any conditions placed on the Class B designation.
4. Structural changes, including enlargement or extension of a Class B non-conforming use may be permitted by the Planning Commission, either as a condition of Class B designation, or by subsequent application to the Commission by the owner of the Class B non-conforming use. The Planning Commission must document that the enlargement or extension will not be incompatible with surrounding land uses or inconsistent with the public health, safety or welfare or the spirit of the ordinance, or violate the setback requirements of the district it is located in.
5. A Class B non-conforming use may be substituted for another non-conforming use when the Planning Commission determines that the change would not increase the nonconformity of the structure or use.

H. Regulations Pertaining to Class C non-conforming Uses

1. This ordinance shall not prohibit the repair of a structure housing a Class C non-conforming use necessary to keep it structurally safe and sound. Any other improvements (D2-9) including remodeling or modernization shall not be approved when such improvement is greater than 25% of the value of the structure as determined by calculating twice the building's assessed value.
2. Any Class C non-conforming use (D2-13) damaged by fire, explosion, flood, Act of God or a public enemy or by other means must be rebuilt so as to comply with this

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ordinance if the cost of repairs or reconstruction are greater than 50% of the value of the structure (D2-19) as determined by calculating twice the building's assessed value.

3. Any Class C non-conforming use abandoned as defined in Section 5.02 of this chapter, may not be reestablished.
4. Structural changes to a building (D2-2) housing a Class C non-conforming use shall not be permitted unless the Zoning Board of Appeals (D2-22) approves a variance (D2-19).
5. A Class C non-conforming use may be substituted for another non-conforming use when the Planning Commission determines that the change would not increase the structure or use nonconformity. If a non-conforming use is changed to a conforming use, the non-conforming use may not be reestablished.

SECTION 5.02 ABANDONMENT OF NON-CONFORMING USES

Whenever a non-conforming use has been discontinued for 14 consecutive months, such discontinuance shall be considered conclusive evidence of an intention to abandonment and the use shall not be reestablished unless authorized as a Class B non-conforming use.

SECTION 5.03 NON-CONFORMING LOTS OF RECORD

Legal non-conforming lots of record may be used to construct a single-family residence (D2-18) and related accessory structures as long as the setback requirements of this ordinance are met. The use of legal non-conforming lots for other purposes may only be approved through the granting of a dimensional variance by the Zoning Board of Appeals.

SECTION 5.04 NON-CONFORMING STRUCTURES

Legal non-conforming structures housing conforming uses may be expanded or extended by right, as long as such expansion or extension does not increase the non-conformity of the structure. If destroyed or damaged more than 50% by fire, explosion, flood, Act of God or a public enemy or by other means, it must be rebuilt so as to comply with this ordinance.