



CHEBOYGAN COUNTY PLANNING COMMISSION

870 SOUTH MAIN ST. ■ PO BOX 70 ■ CHEBOYGAN, MI 49721
PHONE: (231) 627-8489 ■ FAX: (231) 627-3646

**CHEBOYGAN COUNTY PLANNING COMMISSION MEETING & PUBLIC HEARING
WEDNESDAY, DECEMBER 18, 2019 AT 7:00 PM
ROOM 135 - COMMISSIONERS ROOM
CHEBOYGAN COUNTY BUILDING, 870 S. MAIN ST., CHEBOYGAN, MI 49721**

AGENDA - *Revised*

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF AGENDA

APPROVAL OF MINUTES

SCHEDULED PUBLIC HEARING

1. Cheboygan County Planning Commission - PLEASE TAKE NOTE that the Cheboygan County Planning Commission will hold a public hearing on proposed amendments to the Cheboygan County Zoning Ordinance No. 200 on Wednesday, December 18, 2019 at 7:00 p.m. in the Commissioners Room, Room 135, Cheboygan County Building, 870 S. Main St., Cheboygan, MI 49721. The proposed amendment to the Cheboygan County Zoning Ordinance No. 200 would amend Section 2.2. (Definitions) to amend the current definitions for private storage and workshop buildings, and add a new land use Definition, Limited Commercial Enterprise. In addition, an amendment to Section 17.21. that regards requirements and development standards for Home Occupations and Limited Commercial Enterprise uses, and Section 17.23 regarding requirements and development standards for private storage buildings and uses.

A copy of the entire text of the proposed zoning ordinance amendment may be obtained at the office of the Cheboygan County Planning & Zoning Department, P.O. Box 70, 870 South Main St., Rm. 103, Cheboygan, MI 49721 during regular business hours. The public is invited to attend and present its comments on the proposed zoning ordinance amendments. Written comments may be submitted at the public hearing or may be sent to the Cheboygan County Planning & Zoning Department at the above address before the public hearing.

UNFINISHED BUSINESS

NEW BUSINESS

1. Tim Maylone, CEO and Managing Member, Cherry Capital Connection, LLC, regarding fiber-optic services development in Cheboygan County for enhanced high-speed wireless connectivity.
2. Draft Zoning Ordinance Amendment #155 relative to Nonconforming Buildings or Structures, Properties and Uses.



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STAFF REPORT WITH UPDATE ON MASTER PLAN REVISION

PLANNING COMMISSION COMMENTS

PUBLIC COMMENTS

ADJOURNMENT



CHEBOYGAN COUNTY PLANNING COMMISSION

870 SOUTH MAIN ST., ROOM 103 ■ PO BOX 70 ■ CHEBOYGAN, MI 49721
PHONE: (231)627-8489 ■ TDD: (800)649-3777

CHEBOYGAN COUNTY PLANNING COMMISSION MEETING & PUBLIC HEARING WEDNESDAY, NOVEMBER 20, 2019 AT 7:00 P.M. ROOM 135 – COMMISSIONER’S ROOM - CHEBOYGAN COUNTY BUILDING

- PRESENT:** Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana
ABSENT: Johnson
STAFF: Mike Turisk, Jen Merk
GUESTS: Eric Boyd, John F. Brown, Carl Muscott, Russell Crawford, Cheryl Crawford, Cal Gouine, John Moore, Charles Maziasz, Amy Rodriguez

The meeting was called to order by Chairperson Croft at 7:00pm.

PLEDGE OF ALLEGIANCE

Chairperson Croft led the Pledge of Allegiance.

APPROVAL OF AGENDA

The meeting agenda was presented. **Motion** by Mr. Kavanaugh, seconded by Mr. Borowicz, to approve the agenda as presented. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0Nays, 1 Absent (Johnson)

APPROVAL OF MINUTES

The October 2, 2019 Planning Commission minutes were presented. **Motion** by Mr. Borowicz, seconded by Ms. Lyon, to approve the meeting minutes as presented. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0Nays, 1 Absent (Johnson)

The October 16, 2019 Planning Commission minutes were presented. **Motion** by Mr. Borowicz, seconded by Mr. Bartlett, to approve the meeting minutes as presented. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0Nays, 1 Absent (Johnson)

PUBLIC HEARING AND ACTION ON REQUESTS

TeleCAD Wireless Site Design, Inc. on behalf of Verizon Wireless and Chuck and Carol Underwood - A special use permit request for a wireless communication facility, per Section 17.13 of the Zoning Ordinance. The proposed wireless communication facility’s address is 4802 Carlson Rd. The property address is 4981 Riggsville Rd., located in Inverness Twp., Section 20, Parcel # 091-020-300-002-00 and zoned Agriculture and Forestry Management (M-AF). A special use permit was approved in October 2017; however, per Section 18.12., an approved special use permit shall expire one year following approval by the Planning Commission unless substantial construction has begun pursuant to the permit prior to the expiration, or the property owner applies to the Planning Commission for an extension prior to the expiration of the special use permit.

Ms. Merk reviewed the background information contained in the staff report.

Ms. Rodriguez stated that she represents Telecad Wireless. Ms. Rodriguez stated that she originally obtained the special use permit, building permit and driveway permit and then the project was put on hold. Ms. Rodriguez stated that if she received Planning Commission approval tonight, she will update the construction drawings and resubmit the applications for the building permit and driveway permit. Mr. Borowicz asked if there were any substantial changes. Ms. Rodriguez stated that the only change is to the driveway and is due to the line of sight issue identified by the Road Commission.

Mr. Freese noted that the applicant has requested five waivers. Mr. Freese referred to the waiver request for item e and noted that the ditches are shown on the site plan. Mr. Freese referred to the waiver request for item j and noted that there are no sidewalks proposed so this is not applicable. Mr. Freese referred to the waiver request for item n and noted that this is

covered in the narrative. Mr. Freese referred to the waiver request for item p and noted that there are no trash receptacles proposed so this is not applicable. Mr. Freese referred to the waiver request for item r and noted that there are no storage facilities for hazardous materials proposed so this is not applicable. Mr. Freese stated that the applicant does not have to request any waivers.

Ms. Croft asked for public comments. There were no public comments. Public comment closed.

Board held discussion. The Planning Commission reviewed and approved the General Findings, Findings Of Fact Under Section 17.13.1, Findings Of Fact Under Section 17.13.2, Finding of Fact Under Section 18.7 and Specific Findings of Fact Under Section 20.10. **Motion** by Mr. Kavanaugh, seconded by Mr. Borowicz, to approve the special use permit based on the General Findings, Findings Of Fact Under Section 17.13.1, Findings Of Fact Under Section 17.13.2, Finding of Fact Under Section 18.7 and Specific Findings of Fact Under Section 20.10 subject to:

1. Meet FCC/FAA standards
2. Meet Road Commission standards
3. Meet Department of Building Safety standards

Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0Nays, 1 Absent (Johnson)

UNFINISHED BUSINESS

Continued discussion regarding proposed Zoning Ordinance Amendment #154 relative to Home Occupations, Limited Commercial Enterprises and Private Storage Buildings.

Mr. Turisk explained that proposed Zoning Ordinance Amendment #154 will expand small business opportunities by allowing for an expansion of Home Occupation businesses specifically allowing them in standalone private storage buildings/workshops. Mr. Turisk stated that the Planning Commission previously discussed a definition for Limited Commercial Enterprise that makes a distinction between home occupations and the expanded home occupation small business type uses in standalone private storage buildings, agricultural buildings and private storage/workshop buildings. Mr. Turisk stated that the proposed changes to the amendment are highlighted in yellow. Mr. Turisk noted that the changes highlighted in green are the latest additions per legal counsel's recent direction. Mr. Turisk noted that legal counsel suggested identifying in the amendment the structures (Agricultural/Private Storage/Workshop Building, Private Storage Building and Private Storage/Workshop Building) where Limited Commercial Enterprises will be conducted. Mr. Turisk stated that the amendment had to be renumbered due to these changes. Mr. Turisk noted that the application shall include "Additional information as may be determined necessary." was added to the amendment. Mr. Turisk stated this was added to quell any concerns about Limited Commercial Enterprise uses going beyond what is considered small scale non-residential use. Mr. Turisk stated that there were concerns regarding whether a contractor's yard would be allowed under this amendment and this is not the case. Mr. Turisk stated that currently offices related to contractors or contractor's yards are allowed as a Home Occupation. Mr. Turisk stated that a contractor's yard would not be allowed as a Home Occupation or a Limited Commercial Enterprise use. Mr. Turisk stated that an office related to this use would likely be approved. Mr. Turisk noted that permitted uses for Home Occupations and Limited Commercial Enterprise were included together in section 17.21.2. Mr. Turisk stated that staff did leave the language in the proposed amendment regarding restricting the types of bathroom fixtures. Mr. Turisk stated that this proposed amendment will fulfill an identified goal in the 2014 Master Plan.

Mr. Freese referred to section 17.21.1 and stated that this section states that a zoning permit is not necessary unless all of the items listed apply. Mr. Freese stated that this is a change from requiring a zoning permit if any one or more of the items apply. Mr. Turisk stated that legal counsel felt that this section was misleading and that it said that Home Occupations are limited to those items listed. Mr. Freese stated that he does not read it this way at all. Mr. Freese stated that the way it is proposed to read is that Home Occupations and Limited Commercial Enterprise uses shall not require a zoning permit unless all of the conditions listed apply. Mr. Turisk stated that this may not have been fully considered by legal counsel. Mr. Borowicz referred to section 17.21.1B and read "No Home Occupation or Limited Commercial Development shall be conducted until a zoning application has been approved...". Mr. Borowicz questioned if a zoning permit is or is not required. Mr. Freese stated that work is needed on section 17.21.1A and 17.21.1B.

Mr. Freese referred to the definition of private storage/workshop building and questioned why Home Occupation was deleted from this definition. Mr. Turisk stated that we are allowing the Limited Commercial Enterprise use in standalone private storage buildings and Home Occupation is not an appropriate term. Mr. Freese noted that private storage/workshop building is not part of the Limited Commercial Enterprise definition. Mr. Turisk stated that Home Occupation can be added back in this definition.

Discussion was held regarding section 17.21.1A and section 17.21.1B. Mr. Borowicz suggested replacing the work “all” with “any” in section 17.21.1. Mr. Borowicz suggested “No Home Occupation or Limited Commercial Enterprise requiring a permit shall be conducted....” for the first sentence of section 17.21.1B.

Mr. Turisk referred to section 17.21.3G and stated that this section limits Limited Commercial Enterprise uses to one on the same lot of record or one or more contiguous lots of record. Mr. Turisk stated that the intent is to preclude multiple Limited Commercial Enterprises on the same lot. Discussion was held.

Mr. Kavanaugh stated that most of the Planning Commission agreed on limiting the toilet facilities. Mr. Kavanaugh stated that he would like to see the language regarding bathtub and shower facilities being prohibited from section 17.23.1h included in the each of the definitions.

Mr. Freese and Mr. Kavanaugh agreed that this amendment is ready after these minor changes. Discussion was held regarding retail activities in Home Occupations and Limited Commercial Enterprises. Mr. Turisk noted that it is staff's discretion to determine if there are ancillary sales. Mr. Freese stated that this should be included in the amendment. Mr. Kavanaugh stated that legal counsel can come up with language to cover the minor retail sale.

Motion by Mr. Freese, seconded by Mr. Kavanaugh, to schedule a public hearing on Amendment #154 for December 18, 2019. Motion carried. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0Nays, 1 Absent (Johnson)

NEW BUSINESS

Mr. Turisk stated that staff distributed a calendar for Planning Commission meetings in 2020. Discussion was held regarding the first Planning Commission meeting in 2020 being scheduled for January 1, 2020. Mr. Freese proposed changing the meeting date to January 8, 2020. **Motion** by Mr. Freese, seconded by Mr. Kavanaugh, to move the January 1, 2020 meeting to January 8, 2020. Motion carried. Motion carried. 8 Ayes (Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Delana), 0Nays, 1 Absent (Johnson)

STAFF REPORT WITH UPDATE ON MASTER PLAN REVISION

Mr. Turisk stated that the Planning Commission has received copies of the adopted Cheboygan County Recreation Plan. Mr. Turisk stated that the Planning Commission will be updating the Recreation Plan during the first quarter of 2020. Mr. Turisk stated that copies were distributed to allow the Planning Commission members time to review the Cheboygan County Recreation Plan. Mr. Turisk stated that completed plans are due to the Department of Natural Resources on February 1st of the year that you apply for grant funding. Discussion was held.

Mr. Turisk stated that the Planning Commission talked about the Master Plan revision in January. Mr. Turisk asked the Planning Commission if now is a good time to begin the Master Plan revision. Mr. Freese stated that there were two pages of Master Plan goals and he believes the Planning Commission should review this list of goals to identify which are important. Mr. Turisk stated that the Planning Commission discussed PUD's, Home Occupations and tiny homes at the January meeting. Mr. Turisk stated that the Planning Commission decided to consider tiny homes as part of the PUD and will be discussed when the PUD amendment is discussed. Mr. Turisk stated that Home Occupations are currently being addressed. Mr. Turisk stated that Article 22 of the Zoning Ordinance regarding non-conforming uses and structures is in desperate need of revision. Mr. Turisk stated that legal counsel has reviewed Article 22 and agreed that it needs to be revised. Mr. Turisk asked if Article 22 is something that the Planning Commission would like to discuss. Mr. Turisk stated that we are looking to get a budget appropriation for 2020 to at least revise the format of the Zoning Ordinance. Mr. Turisk stated that this would speak in part to the matrix that Mr. Freese created. Mr. Turisk stated that this would be most appropriate to undertake in 2021 when we take on a comprehensive revision to the Zoning Ordinance. Mr. Freese explained that the matrix was created with the goal of satisfying legal counsel's direction on the PUD amendment. Mr. Freese stated that the definitions and uses listed in the Zoning Ordinance must be consolidated. Mr. Freese explained that there are multiple uses listed for all the same use. Mr. Freese stated that there are definitions within the text of the Zoning Ordinance. Mr. Freese stated there are uses authorized in sections of the Zoning Ordinance in which you would not think to look for them. Mr. Freese stated that parts of Article 22 are illegal and can't be enforced. Mr. Freese stated Article 22 needs to be revised and this is something that the Zoning Board of Appeals runs in almost every meeting. Mr. Freese stated that the Zoning Board of Appeals is not following Article 22. Mr. Freese stated there is no other way around it if the problem keeps coming to the Zoning Board of Appeals. Mr. Freese stated if the problem keeps coming to the Zoning Board of Appeals, they solve the problem. Discussion was held regarding revising Article 22.

Mr. Turisk stated that staff is starting review of previous site plan reviews and special use permits. Mr. Turisk stated that the

special use permits and site plan reviews are being reviewed for compliance with the approved conditions. Mr. Turisk stated that the next enforcement report in January will provide information on how this process is working in terms of time and difficulty.

PLANNING COMMISSION COMMENTS

Mr. Freese provided an update on the Charlevoix County Planner’s Forum that he attended on October 30th 2019. Discussion was held.

PUBLIC COMMENTS

Mr. Muscott stated that Emmet County Planning Commission is considering a rezoning of 25 parcels from business resort to residential. Mr. Muscott stated that Emmet County Planning Commission is proposing reducing the minimum floor area for a dwelling from 720sf to 560sf. Mr. Muscott stated that they are also considering reducing the minimum lot width requirement to 60ft. Mr. Muscott stated that a second hearing has been scheduled for amendment #154 and questioned why the Planning Commission would make the same mistake again. Mr. Muscott stated his concerns regarding the wording of the amendment. Mr. Muscott stated that he has not found any planning documents that reference the term Limited Commercial Enterprise. Mr. Muscott stated that the term Limited Commercial Enterprise is ambiguous and vague. Discussion was held. Mr. Muscott stated his concerns regarding the fact that these types of businesses located in residential areas are now competing with commercial and industrial properties. Mr. Muscott stated that Limited Commercial Enterprise uses can be established on any parcel in the Agriculture and Forestry Management zoning district and noted that no one will want to purchase a commercial parcel and build a commercial building.

ADJOURN

Motion by Kavanaugh to adjourn. Motion carried. Meeting was adjourned at 8:43pm.

Charles Freese
Planning Commission Secretary



CHEBOYGAN COUNTY PLANNING AND ZONING DEPARTMENT

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PHONE: (231) 627-8489 ■ FAX: (231) 627-3646
www.cheboygancounty.net/planning/

MEMORANDUM

Date: December 11, 2019

To: Planning Commissioners

From: Michael Turisk, Planning Director 

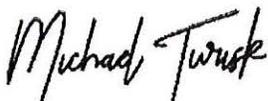
Re: Final Draft of Zoning Ordinance Amendment #154 – Home Occupations, Limited Commercial Enterprise Uses, Storage, and Workshop Buildings

Planning Commissioners,

Attached to this memo is the *final draft of* Ordinance Amendment #154 for your review prior to your consideration at our scheduled public hearing on Wednesday, December 18. It includes several noteworthy or substantive edits per our discussion and your direction at the November 20 regular meeting. Staff has included a copy with **highlighted** and ~~strikethrough~~ text to help in identifying the specific edits since our last discussion.

Note that legal counsel has reviewed and approved this final draft.

Please feel free to reach out should you have questions.



Enclosures:

Final Draft of Ordinance Amendment #154
“Mark-up” of Ordinance Amendment #154

CHEBOYGAN COUNTY ZONING ORDINANCE
AMENDMENT #154

AN ORDINANCE TO AMEND CHEBOYGAN COUNTY ZONING ORDINANCE NO. 200 RELATIVE
TO HOME OCCUPATIONS, LIMITED COMMERCIAL ENTERPRISE USES, STORAGE, AND
WORKSHOP BUILDINGS

Section 1. Amendment of Section 2.2.

Section 2.2. of the Cheboygan County Ordinance 200 is hereby amended to amend the following Definitions, which shall read in their entirety as follows:

AGRICULTURAL/PRIVATE STORAGE/WORKSHOP BUILDING

A building that is used for both agricultural and private non-commercial storage, home workshop purposes, Home Occupation or Limited Commercial Enterprise purposes with no provisions for overnight living or sleeping areas. A toilet facility and/or washbasin/vanity are permitted in an Agricultural/Private Storage/Workshop building; however, bathtub and shower facilities are prohibited.

PRIVATE STORAGE BUILDING

A building or structure that is used for private non-commercial storage of materials, Home Occupation or approved Limited Commercial Enterprise purposes that is owned by the property owner and used only by the property owner and does not have permanent facilities for living, sleeping and/or cooking. A toilet facility and/or washbasin/vanity are permitted in a Private Storage Building; however, bathtub and shower facilities are prohibited.

PRIVATE STORAGE/WORKSHOP BUILDING

A building that is used for private, non-commercial storage or home workshop purposes, Home Occupation or Limited Commercial Enterprise purposes with no provisions for overnight living or sleeping areas. A toilet facility and/or washbasin/vanity are permitted in a Private Storage/Workshop Building; however, bathtub and shower facilities are prohibited.

Section 2. Amendment of Section 2.2.

Section 2.2. of the Cheboygan County Ordinance 200 is hereby amended to add the following Definition in its appropriate alphabetical location, which shall read in its entirety as follows:

LIMITED COMMERCIAL ENTERPRISE

Except as provided herein, any commercial business operation conducted within an Agricultural/Private Storage/Workshop Building, Private Storage Building or Private Storage/Workshop Building that does not conflict with nor operate out of character with surrounding land uses, and which complies with all of the applicable standards and restrictions for Home Occupations as specified in Section 17.21 of the Zoning Ordinance, but shall not include any industrial uses.

Section 3. Amendment of Section 17.21.

Section 17.21. of the Cheboygan County Zoning Ordinance No. 200 is hereby amended to read in its entirety as follows:

SECTION 17.21. HOME OCCUPATIONS AND LIMITED COMMERCIAL ENTERPRISE USES (Rev. ___/___/20, Amendment #154)

Cheboygan County recognizes the desire and/or need of some citizens to use their residence, specified accessory building or Private Storage Building for small business activities in order to reduce trip generation and to provide another economic development tool, but it also recognizes the need to protect the surrounding areas from adverse impacts generated by these business activities.

17.21.1 ADMINISTRATION

A. Home Occupations and Limited Commercial Enterprise uses require a zoning permit when the Home Occupation or Limited Commercial Enterprise use includes any of the following. Any Home Occupation or Limited Commercial Enterprise use that does not include any of the following may be established without a zoning permit:

- 1.) One additional on site, non-resident employee.
- 2.) Any commercial signage.
- 3.) Results in additional parking for or in additional traffic from customers.
- 4.) Any commercial deliveries or pick ups of materials or supplies used in the Home Occupation or Limited Commercial Enterprise use.

B. No Home Occupation or Limited Commercial Enterprise use that requires a zoning permit shall be conducted until a zoning permit has been issued by the Zoning Administrator. The application for the zoning permit shall include the following:

- 1.) The type of business and business activities.
- 2.) The number of employees.
- 3.) The vehicles used in the Home Occupation.
- 4.) The number of expected customer visits per day.
- 5.) The number of expected deliveries/drop offs.
- 6.) Additional information as may be determined necessary.

17.21.2 PERMITTED USES FOR HOME OCCUPATIONS AND LIMITED COMMERCIAL ENTERPRISE USES

It is recognized that this list may not be totally inclusive. The Zoning Administrator shall determine whether a request is similar to a following listed use as to approve or deny:

- A. Home offices, including architects, counselors, clergy, doctors, dentists, engineers, attorneys, contractors, and accountants
- B. Home studios, including artists, sculptors, musicians, photographers, and authors
- C. Personal services, including barbershops and beauty parlors
- D. Instructional services, including music, dance, art, and craft classes
- E. Repair services, including small appliances, small engines, and computers/electronics
- F. Workrooms, including weaving and woodworking
- G. Day care homes

17.21.3 STANDARDS

Any Home Occupation or Limited Commercial Enterprise use that requires a zoning permit shall comply with all of the following applicable standards:

- A. Home Occupations shall be conducted within the principal residential structure or specified, permitted accessory building. Limited Commercial Enterprise uses shall be conducted within a specified, permitted building, including within an Agricultural/Private Storage/Workshop Building, Private Storage Building or Private Storage/Workshop Building.
- B. Customer visits and delivery vehicles are limited to the hours of 8am to 7pm.
- C. Delivery vehicles are limited to passenger vehicles, mail carriers, and express carriers.
- D. Nonresident employees on the premises are limited to one (1) at any one time.
- E. Home Occupations and Limited Commercial Enterprises uses shall not create traffic, visible displays, vibrations, heat, noise, odors, dust, glare, or other similar nuisances not normally found in the surrounding area.
- F. Home Occupations and Limited Commercial Enterprise uses shall not generate waste or sewage in volume or type that is not normally associated with residential use.
- G. Limited Commercial Enterprise uses are restricted to one (1) business use or activity on the same lot of record or on one (1) or more contiguous lots of record under the same ownership, as recorded with the office of the register of deeds.
- H. The occasional sale of commercial items that are incidental to the Home Occupation or Limited Commercial Enterprise use shall be permitted.

17.21.4. CONDITIONAL APPROVALS

The Zoning Administrator may impose reasonable conditions with the approval of an application for a Home Occupation or Limited Commercial Enterprise use, pursuant to Section 17.21.3 of this Ordinance.

Section 4. Amendment of Section 17.23.

Section 17.23. of the Cheboygan County Zoning Ordinance No. 200 is hereby amended to read in its entirety as follows:

SECTION 17.23 PRIVATE STORAGE BUILDINGS AND USES (Rev. __/__/20, Amendment #154)

Cheboygan County recognizes the desire and/or need of some citizens to have a parcel that is used primarily for indoor storage of items that are typically used in a home or to store equipment used for maintenance of a single-family home or enjoyment by the residents of a single-family home. Private storage is a primary use, not subordinate to another use on the same property. Placement of a private storage building on the property should support the future placement of a residence. Limited Commercial Enterprise uses are permitted, pursuant to Section 17.21 of this Ordinance.

17.23.1 STANDARDS

The following standards apply to private storage buildings and uses in the Residential (D-RS), Rural Character/Country Living (D-RC) and Lake and Stream Protection (P-LS) zoning districts. Private storage buildings that are allowed in other zoning districts do not have to abide by this section, but must follow all other applicable standards, and those for approved Limited Commercial Enterprise uses.

- a. The structure shall not serve as a residence or dwelling of any kind.
- b. Only goods and material storage and/or an approved Limited Commercial Enterprise use are permitted in the private storage structure. The structure is not to be used for human habitation at any time.
- c. If within thirty (30) feet of a side property line, all such private storage buildings and Limited Commercial Enterprise uses must be screened from view of the side property lines with a solid evergreen hedge with a minimum height of six (6) feet or privacy fence with a minimum height of six (6) feet.

- d. No more than two (2) private storage buildings are allowed per acre of contiguous property under the same ownership as recorded with the office of the register of deeds with a maximum of four (4) storage buildings allowed for all properties under the same ownership.
- e. The total floor area of the foot print(s) of all private storage buildings on the same lot of record or on one or more contiguous lots of record under the same ownership, as recorded with the office of the register of deeds, shall comply with the following applicable requirements:
 - 1. If the area of the lot of record or the area of the contiguous property on which the private storage buildings are located is two (2) acres or less, then the total floor area shall be no more than 1,600 square feet.
 - 2. If the area of the lot of record or the area of the contiguous property on which the private storage buildings are located is more than two (2) acres but is three (3) acres or less, then the total floor area shall be no more than 3,200 square feet.
 - 3. If the area of the lot of record or the area of the contiguous property on which the private storage buildings are located is more than three (3) acres, then the total floor area shall be no more than 6,000 square feet.
- f. In the P-LS district, all private storage buildings and Limited Commercial Enterprise uses must meet a minimum setback from the water's edge of 50 feet and must meet all other applicable setbacks for the zoning district in which located.
- g. The structure may not be used to house or support animals of any type.
- h. A toilet facility and/or washbasin/vanity are permitted in the private storage structure; however, bathtub and shower facilities are prohibited.
- i. Except for an approved Limited Commercial Enterprise use, the structure shall not be used for any commercial and/or business uses, including the storage of materials, vehicles or other items used for commercial or business purposes.

Section 5. Severability.

If any section, clause, or provision of this Ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the validity of the remainder of the Ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 6. Effective Date.

This Ordinance shall become effective eight (8) days after being published in a newspaper of general circulation within the County.

CHEBOYGAN COUNTY

By:
John B. Wallace
Its: Chairperson

By:
Karen L. Brewster
Its: Clerk

CHEBOYGAN COUNTY ZONING ORDINANCE
AMENDMENT #154

AN ORDINANCE TO AMEND CHEBOYGAN COUNTY ZONING ORDINANCE NO. 200 RELATIVE
TO HOME OCCUPATIONS, LIMITED COMMERCIAL ENTERPRISE USES, PRIVATE-
STORAGE, AND WORKSHOP BUILDINGS

Section 1. Amendment of Section 2.2.

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A building that is used for both agricultural and private non-commercial storage, home workshop purposes, Home Occupation or Limited Commercial Enterprise purposes with no provisions for overnight living or sleeping areas. A toilet facility and/or washbasin/vanity are permitted in an Agricultural/Private Storage/Workshop building; however, bathtub and shower facilities are prohibited.

PRIVATE STORAGE BUILDING

A building or structure that is used for private non-commercial storage of materials, Home Occupation or approved Limited Commercial Enterprise purposes that is owned by the property owner and used only by the property owner and does not have permanent facilities for living, sleeping and/or cooking. A toilet facility and/or washbasin/vanity are permitted in a Private Storage Building; however, bathtub and shower facilities are prohibited.

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A building that is used for private, non-commercial storage or home workshop purposes, Home Occupation or Limited Commercial Enterprise purposes with no provisions for overnight living or sleeping areas. A toilet facility and/or washbasin/vanity are permitted in a Private Storage/Workshop Building; however, bathtub and shower facilities are prohibited.

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Section 3. Amendment of Section 17.21.

Section 17.21. of the Cheboygan County Zoning Ordinance No. 200 is hereby amended to read in its entirety as follows:

SECTION 17.21. HOME OCCUPATIONS AND LIMITED COMMERCIAL ENTERPRISE USES (Rev. ___/___/20, Amendment #154)

Cheboygan County recognizes the desire and/or need of some citizens to use their residence, specified accessory building or Private Storage Building for small business activities in order to reduce trip generation and to provide another economic development tool, but it also recognizes the need to protect the surrounding areas from adverse impacts generated by these business activities.

17.21.1 ADMINISTRATION

A. Home Occupations and Limited Commercial Enterprise uses shall not require a zoning permit when the Home Occupation or Limited Commercial Enterprise use includes any of the following. Any Home Occupation or Limited Commercial Enterprise use that does not include any of the following may be established without a zoning permit:

- 1.) One additional on site, non-resident employee.
- 2.) Any commercial signage.
- 3.) Results in additional parking for or in additional traffic from customers.
- 4.) Any commercial deliveries or pick ups of materials or supplies used in the Home Occupation or Limited Commercial Enterprise use.

B. No Home Occupation or Limited Commercial Enterprise use that requires a zoning permit shall be conducted until a zoning application permit has been approved issued by the Zoning Administrator. The application for the zoning permit shall include the following:

- 1.) The type of business and business activities.
- 2.) The number of employees.
- 3.) The vehicles used in the Home Occupation.
- 4.) The number of expected customer visits per day.
- 5.) The number of expected deliveries/drop offs.
- 6.) Additional information as may be determined necessary.

17.21.2 PERMITTED USES FOR HOME OCCUPATIONS AND LIMITED COMMERCIAL ENTERPRISE USES

It is recognized that this list may not be totally inclusive. The Zoning Administrator shall determine whether a request is similar to a following listed use as to approve or deny:

- A. Home offices, including architects, counselors, clergy, doctors, dentists, engineers, attorneys, contractors, and accountants
- B. Home studios, including artists, sculptors, musicians, photographers, and authors
- C. Personal services, including barbershops and beauty parlors
- D. Instructional services, including music, dance, art, and craft classes
- E. Repair services, including small appliances, small engines, and computers/electronics
- F. Workrooms, including weaving and woodworking
- G. Day care homes

17.21.3 STANDARDS

Any Home Occupation or Limited Commercial Enterprise use that requires a zoning permit shall comply with all of the following applicable standards:

- A. Home Occupations shall be conducted within the principal residential structure or specified, permitted accessory building. Limited Commercial Enterprise uses shall be conducted within a specified, permitted building, including within an Agricultural/Private Storage/Workshop Building, Private Storage Building or Private Storage/Workshop Building.
- B. Customer visits and delivery vehicles are limited to the hours of 8am to 7pm.
- C. Delivery vehicles are limited to passenger vehicles, mail carriers, and express carriers.
- D. Nonresident employees on the premises are limited to one (1) at any one time.
- E. Home Occupations and Limited Commercial Enterprises uses shall not create traffic, visible displays, vibrations, heat, noise, odors, dust, glare, or other similar nuisances not normally found in the surrounding area.
- F. Home Occupations and Limited Commercial Enterprise uses shall not generate waste or sewage in volume or type that is not normally associated with residential use.
- G. Limited Commercial Enterprise uses are restricted to one (1) per ~~Agricultural/Private Storage/Workshop Building, Private Storage Building or Private Storage/Workshop Building~~ business use or activity on the same lot of record or on one (1) or more contiguous lots of record under the same ownership, as recorded with the office of the register of deeds.
- H. The occasional sale of commercial items that are incidental to the Home Occupation or Limited Commercial Enterprise use shall be permitted.

17.21.4. CONDITIONAL APPROVALS

The Zoning Administrator may impose reasonable conditions with the approval of an application for a Home Occupation or Limited Commercial Enterprise use, pursuant to Section 17.21.3 of this Ordinance.

Section 4. Amendment of Section 17.23.

Section 17.23. of the Cheboygan County Zoning Ordinance No. 200 is hereby amended to read in its entirety as follows:

SECTION 17.23 PRIVATE STORAGE BUILDINGS AND USES (Rev. __/__/20, Amendment #154)

Cheboygan County recognizes the desire and/or need of some citizens to have a parcel that is used primarily for indoor storage of items that are typically used in a home or to store equipment used for maintenance of a single-family home or enjoyment by the residents of a single-family home. Private storage is a primary use, not subordinate to another use on the same property. Placement of a private storage building on the property should support the future placement of a residence. Limited Commercial Enterprise uses are permitted, pursuant to Section 17.21 of this Ordinance.

17.23.1 STANDARDS

The following standards apply to private storage buildings and uses in the Residential (D-RS), Rural Character/Country Living (D-RC) and Lake and Stream Protection (P-LS) zoning districts. Private storage buildings that are allowed in other zoning districts do not have to abide by this section, but must follow all other applicable standards, and those for approved Limited Commercial Enterprise uses.

- a. The structure shall not serve as a residence or dwelling of any kind.
- b. Only goods and material storage and/or an approved Limited Commercial Enterprise use are permitted in the private storage structure. The structure is not to be used for human habitation at any time.
- c. If within thirty (30) feet of a side property line, all such private storage buildings and Limited Commercial Enterprise uses must be screened from view of the side property lines with a solid

evergreen hedge with a minimum height of six (6) feet or privacy fence with a minimum height of six (6) feet.

- d. No more than two (2) private storage buildings are allowed per acre of contiguous property under the same ownership as recorded with the office of the register of deeds with a maximum of four (4) storage buildings allowed for all properties under the same ownership.
- e. The total floor area of the foot print(s) of all private storage buildings on the same lot of record or on one or more contiguous lots of record under the same ownership, as recorded with the office of the register of deeds, shall comply with the following applicable requirements:
 1. If the area of the lot of record or the area of the contiguous property on which the private storage buildings are located is two (2) acres or less, then the total floor area shall be no more than 1,600 square feet.
 2. If the area of the lot of record or the area of the contiguous property on which the private storage buildings are located is more than two (2) acres but is three (3) acres or less, then the total floor area shall be no more than 3,200 square feet.
 3. If the area of the lot of record or the area of the contiguous property on which the private storage buildings are located is more than three (3) acres, then the total floor area shall be no more than 6,000 square feet.
- f. In the P-LS district, all private storage buildings and Limited Commercial Enterprise uses must meet a minimum setback from the water's edge of 50 feet and must meet all other applicable setbacks for the zoning district in which located.
- g. The structure may not be used to house or support animals of any type.
- h. A toilet facility and/or washbasin/vanity are permitted in the private storage structure; however, bathtub and shower facilities are prohibited.
- i. Except for an approved Limited Commercial Enterprise use, the structure shall not be used for any commercial and/or business uses, including the storage of materials, vehicles or other items used for commercial or business purposes.

Section 5. Severability.

If any section, clause, or provision of this Ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the validity of the remainder of the Ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 6. Effective Date.

This Ordinance shall become effective eight (8) days after being published in a newspaper of general circulation within the County.

CHEBOYGAN COUNTY

By:
John B. Wallace
Its: Chairperson

By:
Karen L. Brewster
Its: Clerk



CHEBOYGAN COUNTY

PLANNING AND ZONING DEPARTMENT

CHEBOYGAN COUNTY BUILDING ■ 870 S. MAIN STREET, PO BOX 70 ■ CHEBOYGAN, MI 49721
PHONE: (231) 627-8489 ■ FAX: (231) 627-3646
www.cheboygancounty.net/planning/

MEMORANDUM

Date: December 12, 2019

To: Planning Commissioners

From: Michael Turisk, Planning Director 

Re: First draft of proposed Zoning Ordinance Amendment #155 – Non-conforming Buildings or Structures, Properties and Uses

Planning Commissioners,

Attached is the first draft of proposed Zoning Ordinance Amendment #155 that regards Article 22 (*Non-conforming Uses, Structures*).

Recall recent discussion with staff, and particularly presentation by (and discussion with) our legal counsel at our regular meeting on October 2 regarding regulating non-conformances in Cheboygan County and our mutual recommendation to amend Article 22 largely given its arguable lack of clarity and flexibility, as written. Therefore, on Wednesday under New Business, we will begin formal discussion in an effort to achieve this end.

Note the following relevant and current Zoning Ordinance Definitions and Article 22 text:

ARTICLE 2. - DEFINITIONS

NONCONFORMING BUILDING OR STRUCTURE

A building or structure or portion thereof lawfully existing at the effective date of this ordinance, or amendments thereto, and which does not conform to the provisions of the ordinance in the zoning district in which it is located.

NONCONFORMING LOT OF RECORD (Rev. 04/26/08, Amendment #73)

A lot of record which lawfully existed on the effective date of this Ordinance or lawfully exists on the effective date of any amendment to this Ordinance that is applicable to the lot of record and which fails to conform to the dimensional regulations of the zoning district in which it is located.

NONCONFORMING USE

An activity existing at the time of the enactment of this ordinance, on a lot or lots of record, which is not in conformance with the use regulations for the zoning district in which it is located according to the ordinance.

ARTICLE 22. - NON-CONFORMING USES, STRUCTURES

SECTION 22.1. Lawful non-conforming uses or structures in existence or under construction at the time of passage of this ordinance may be continued but shall not be extended, added to or altered unless such extension, addition or alteration is in conformity with the provisions of this ordinance.

SECTION 22.2. If the cost of repair or replacement of a non-conforming use or structure which has been destroyed by reason of windstorm, fire, explosion or any act of God or the public enemy exceeds 50% of the total replacement cost of the use or structure, such use or structure shall not be continued or rebuilt except in conformity with the provisions of this ordinance.

SECTION 22.3. If the non-conforming use of any land or structure shall terminate for a continuous period of time exceeding one year, such use shall not be re-established and any future use of the land and structure shall be in conformity with this ordinance.

SECTION 22.4. If a non-conforming use is changed to a permitted or more restrictive use in the district in which it is located, it shall not revert or be changed back to a non-conforming less restrictive use.

SECTION 22.5. Notwithstanding the foregoing, a home located in a zone which does not permit the same may still be altered, expanded and/or rebuilt.

SECTION 22.6. Nothing in this ordinance shall prevent the strengthening of a lawful, non-conforming building or structure, or point thereof, which has been declared unsafe by the Zoning Administrator, building official or public health inspector, nor the requirement to adhere to the lawful orders of such individuals.

SECTION 22.7. No lot or lots, nor yard, court, parking space or any other space shall be so divided, altered or reduced as to provide less than the minimum allowable area and dimensions set forth in this ordinance. If such areas are already less than the minimum allowable area or dimensions set forth in this ordinance, they shall not be divided, altered or reduced further.

SECTION 22.8. (Rev. 04/26/08, Amendment #73)

Any nonconforming lot of record may be used for any purpose authorized within the zoning district in which it is located. Any structure or building constructed on the nonconforming lot of record shall meet all applicable setback and other dimensional regulations of the zoning district, unless a variance is obtained from the Zoning Board of Appeals pursuant to the procedures and standards of this Ordinance.

Enclosure(s):

1. V. Gail Eastley, V. Gail and Therlaque A. David. "Distinguishing Between Detrimental and Benign Nonconformities." *Zoning Practice*. Issue Number 11 (2009).
2. First draft of proposed Zoning Ordinance Amendment #155

CHEBOYGAN COUNTY ZONING ORDINANCE
AMENDMENT #155

AN ORDINANCE TO AMEND CHEBOYGAN COUNTY ZONING ORDINANCE NO. 200 RELATIVE
TO NONCONFORMING BUILDINGS OR STRUCTURES, PROPERTIES AND USES

Section 1. Amendment of Article 22

Article 22 of the Cheboygan County Zoning Ordinance No. 200 is hereby amended to read in its entirety as follows:

ARTICLE 22. – NONCONFORMITIES

SECTION 22.1 INTENT AND PURPOSE

Nonconformities are buildings or structures, lots, and land uses 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. Such nonconformities are generally incompatible with the current or intended use of land in the district in which located. Accordingly, the purpose of this article is to establish regulations that govern the completion, restoration, reconstruction, extension, and/or substitution of nonconformities, discontinuance and conditions under which nonconformities shall be permitted to continue. Therefore, nonconforming buildings and structures, lots, and uses shall be provided two classifications -- Class A Nonconformities and Class B Nonconformities, with the ultimate intent to eliminate Class B nonconformities over time, while permitting Class A nonconformities to be used, repaired, replaced, and enlarged under less stringent regulations.

Section 22.2 NONCONFORMING LAND USE PERMITTED; COMPLETION ALLOWED

- 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.

SECTION 22.3 CLASSIFICATION OF NONCONFORMITIES

Classifications of Nonconforming Uses and Buildings or Structures. Pursuant to Section 208 of the Michigan Zoning Enabling Act (Public Act 110 of 2006, as amended), Cheboygan County establishes different classifications of nonconforming uses, buildings or structures as defined and provided for in this article.

- A. All nonconforming land uses, buildings or 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 considered for Class A designation based on how the nonconformity existed prior to the damage or destruction.

- B. A property owner who desires that his or her nonconforming land use, building or structure 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 establishing that the standards for approval of a Class A designation have been met (the burden of proof for establishing a change in classification rests with the property owner), and the applicable application fee. After the Zoning Administrator receives a completed application, the application shall be forwarded 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 application to be considered by 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 land uses. The property owner shall receive no vested interest or rights in the designation, since that designation may be revoked by the Planning Commission.
- C. The Planning Commission shall grant a Class A designation for a nonconforming land use, building or structure if it finds that all of the following standards are met:
1. The nonconforming land use, building or structure was lawful at the time of its inception;
 2. The nonconforming land use, building or structure does not materially increase or perpetuate the nuisance aspects of the use upon adjacent properties (e.g., noise; glare; traffic congestion; overcrowding);
 3. The nonconforming land use, building or structure shall essentially retain the character and environment of adjacent premises, and not reduce the value or otherwise limit the lawful use of adjacent premises;
 4. The nonconforming land use, building or structure is not located within the waterfront setback, as applicable, and is not located within a wetland regulated by the State of Michigan; and
 5. The nonconforming land use, building or structure is determined to be of economic benefit to Cheboygan County.
- D. Upon filing 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 or structure for Class A designation.

SECTION 22.4 CLASS A NONCONFORMITY REGULATIONS

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, windows, fixtures, wiring, or plumbing, may be performed on any nonconforming building or structure or on any structure containing a nonconforming use.
- B. A nonconforming building or structure or a building or structure that contains a nonconforming use which is unsafe or unlawful due to a lack of repairs or maintenance, as determined by the County Building Official, may be restored to a safe, habitable condition.

- C. If a nonconforming building or structure (including a nonconforming sign) or a building or structure 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 or structure 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 applicable requirements of this Ordinance. However, a nonconforming use may be extended throughout any part of a structure, 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 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 degree of nonconformity.

SECTION 22.5 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, windows, fixtures, wiring, or plumbing, may be performed on any nonconforming building or structure or on any building or structure containing a nonconforming use.
- B. A nonconforming building or structure or a building or structure that contains a nonconforming use which is unsafe or unlawful due to a lack of repairs or maintenance, as determined by the County Building Official, may be restored to a safe, habitable condition.
- C. If a nonconforming building or structure (other than a nonconforming sign) or a building or structure that contains a nonconforming use is damaged or destroyed by any means or any portion of the structure is removed by the owner to the extent that the cost of necessary repairs or reconstruction will exceed fifty percent (50%) 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 or structure 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 or structure 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 applicable provisions of this Ordinance without exceeding the 150% limitation as 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 applicable 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 or structure that contains a nonconforming use shall not be enlarged or altered, unless in complete conformity with the applicable 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 or structure 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 applicable 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 that the new nonconforming use or structure qualifies for a Class A designation and that the new nonconforming use, building or structure will not increase the extent or degree of nonconformity.

SECTION 22.6 CHANGE OF NONCONFORMITY

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 22.7 NONCONFORMING LOT OF RECORD

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

- A. Except as provided in Subsection B, below, any lot that 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 applicable 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 2. Severability.

If any section, clause, or provision of this Ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the validity of the remainder of the Ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 3. Effective Date.

This Ordinance shall become effective eight (8) days after being published in a newspaper of general circulation within the County.

CHEBOYGAN COUNTY

By:
John B. Wallace
Its: Chairperson

By:
Karen L. Brewster
Its: Clerk

ZONING PRACTICE

NOVEMBER 2009



AMERICAN PLANNING ASSOCIATION

➔ ISSUE NUMBER 11

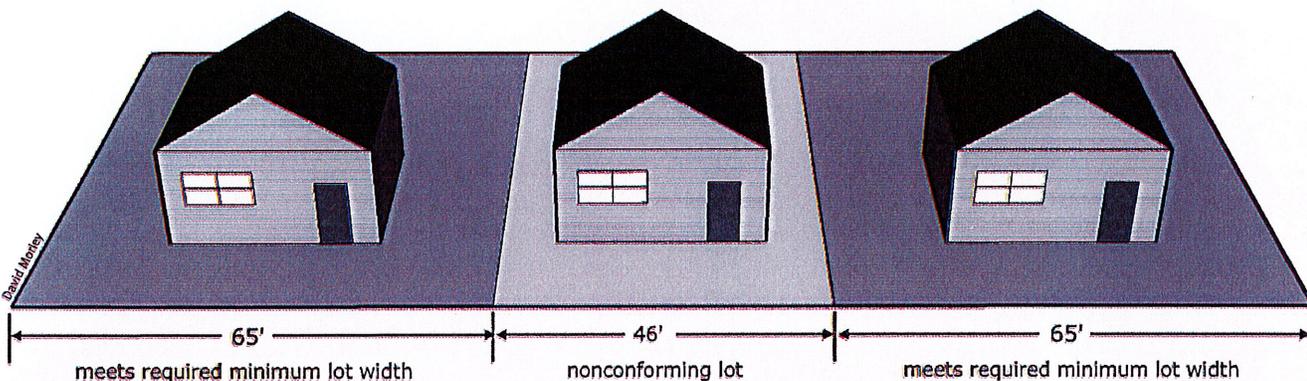
PRACTICE NONCONFORMITIES



Distinguishing Between Detrimental and Benign Nonconformities

By V. Gail Easley, FAICP, and David A. Theriaque

Local governments routinely adopt new or revised zoning regulations to establish minimum standards for the use of land and standards for development on the land.



⊕ A nonconforming lot does not comply with current dimensional standards such as minimum area, width, depth, or frontage.

With the adoption of new standards for use and development, many existing uses, structures, site design features, and lots may no longer meet the current standards.

The concept of nonconformities arises from adopting new codes for areas that already have some development, which is the case for almost every jurisdiction in the country. When land is used for activities that are no longer permissible under the zoning regulations, the local government typically allows the preexisting use to continue if it was permissible when it was first established. Likewise, when development is in place and the provisions of the zoning regulations render the lot or one or more site design features out of compliance with current standards, the local government typically “grandfathers” the development if it was in compliance when first established. Grandfathering is another word used to describe nonconformities, which means the local government is granting legal status to the use or development, but with limitations.

An existing use or development that was not in compliance when a local government enacts new regulations is not eligible for grandfathered status. Indeed, each claim of grandfathered status must meet this threshold question: Was the use or development in compliance with the existing regulations? If not, such use or development is not entitled to any protection from the new regulations. Rather, it is subject to code enforcement proceedings to bring it into compliance with the newly adopted regulations.

This issue of *Zoning Practice* addresses legal nonconformities of use and development standards, but does not address signs. There are many issues pertaining to signs, including First Amendment rights, which are too complex to include in this article. Code enforcement of unlawful uses is also a topic for another issue.

WHY DO LOCAL GOVERNMENTS GRANDFATHER USES AND STRUCTURES?

When zoning was in its infancy, planners expected that there would be few nonconformi-

ties and those that existed would naturally go away over time. Because of the nonconformities’ protected status as grandfathered uses, however, they continued to prosper due to the prohibition on other such uses in that zoning district. In essence, such nonconforming uses were provided with monopolies.

Additionally, zoning was perceived as a prospective matter that would not apply to uses which were already in existence. Moreover, in light of the uncertainty regarding whether the courts would uphold zoning regulations, any attempt to apply the new zoning regulations to existing uses and development was perceived as increasing the likelihood that a court would invalidate such regulations. Allowing nonconformities to continue also reduced the amount of public opposition to the concept of zoning regulations.

These concerns hold true today. From a public policy perspective, local governments are rightfully concerned about the public outcry that would occur if grandfathered status was not applied to existing uses and development. Imagine

ASK THE AUTHOR JOIN US ONLINE!

Go online from November 30 to December 11 to participate in our "Ask the Author" forum, an interactive feature of *Zoning Practice*. V. Gail Easley, FAICP, and David Theriaque will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the Ask the Author section. From there, just submit your questions about the article using the e-mail link. The author will reply, and *Zoning Practice* will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning Practice* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning Practice* web pages.

About the Authors

V. Gail Easley, FAICP, is an adjunct lecturer in the urban and regional planning program at the University of Florida. In her work as a local government and consulting planner, she has provided services to local, regional, and state governments for 30 years, including growth management, comprehensive planning, and the creation of award-winning land development regulations in unified codes and individual ordinances. She frequently provides training in seminars, conferences, and publications, and is the author of previous *Zoning Practice* articles.

David Theriaque is an attorney representing private-sector and governmental clients regarding land-use planning and growth management law at the state and federal levels. He has been an adjunct professor at Florida State University Department of Urban and Regional Planning and is a frequent lecturer at various conferences on planning and growth management issues. He is a charter life member of the Florida Wildlife Federation and was selected by 1000 Friends of Florida as a "Special Friend of Florida."

the uproar that would occur if all existing nonconforming uses were required to cease immediately upon the adoption of new zoning regulations.

Similarly, even though the concept of zoning is well established in the court system, the courts protect existing uses and development from immediate compliance with the adoption of new zoning regulations through various legal doctrines such as takings law, vested rights, and concepts of equity and justice.

Despite these good reasons to allow nonconformities to continue, nonconformities often undermine what a community is seeking to achieve when it establishes specific allowable uses and development standards for a zoning district. Therefore, it is important to determine the best way to eliminate, reduce, or continue nonconforming situations.

UNDERSTANDING THE JARGON

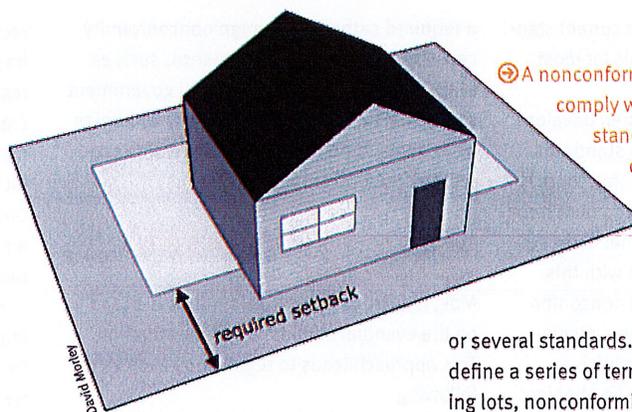
In order to be clear about the concepts, a few terms pertaining to nonconformities are explained here:

Nonconforming use. Use means the activity carried out on the land. When a use is nonconforming, it means that the existing use is not authorized for the zoning district in which it is located. However, even when the use is nonconforming, the structure housing the use is not necessarily nonconforming. In fact, there may be no structures involved at all. For example, a field in an agricultural zone might be used for parking although parking is not an authorized principle use.

A review of the Planning Advisory Service Report 521/522, *A Planners Dictionary*, reveals that many local governments include structures, lots, and site design features within the definition of nonconforming use. However, we make a clear distinction between use and site design or development standards when

- accessory structures, such as dumpsters, pools, pool enclosures, sheds, recreational facilities, or greenhouses.

When new design standards are adopted to govern the location, height, dimensions, number, or other design requirements, existing development may no longer conform to one



⊕ A nonconforming structure fails to comply with current dimensional standards such as setbacks, lot coverage, or height.

applying the term *nonconformity*. We believe it is important to distinguish between the activity (use) and the design standards that apply to buildings, structures, site features, and lots.

Nonconforming development standards.

Site development standards pertain to:

- lots, meaning the area or dimensions;
- structures, primarily the principal building(s) on a site;
- required design features, such as parking lots, loading areas, or stormwater facilities; and

or several standards. Local governments often define a series of terms, such as nonconforming lots, nonconforming parking, nonconforming dimensional requirements, and so forth. The key factor is that all such nonconformities pertain to development or design standards, as distinguished from use.

Detrimental nonconformities. Many people believe that nonconformities are inherently detrimental or cause harm in some way. However, based on our experiences and discussions with practitioners over the last several years, it seems clear that nonconformities may or may not be detrimental. Consequently, we believe that nonconformities should be separated into two categories—"detrimental" and "benign."

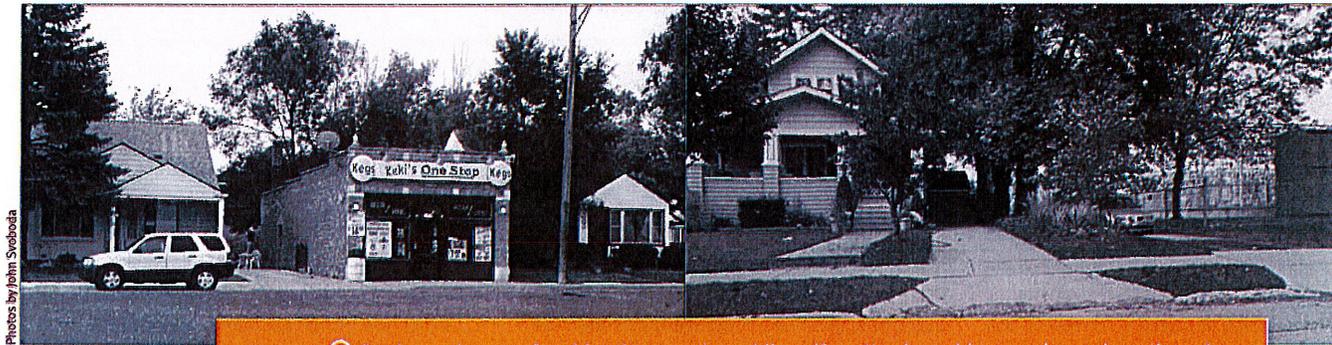
Detrimental nonconformities are those that have a negative impact on the health and safety of the public. Examples include uses involving hazardous materials, such as gasoline stations in single-family neighborhoods; uses that produce significant noise, such as body shops or paint shops; uses that have been deemed incompatible, such as adult entertainment establishments near schools; or uses that have large trip generation characteristics, such as drive-through restaurants.

Detrimental nonconformities clearly have the potential for harm and should be subject to limitations leading to their eventual removal or

not a single concept to be routinely cited as the basis of regulation. Rather, health and safety are the basis of protection from injury, illness, danger, and other harm. Public welfare is concerned with nuisance, economic interests, convenience, and community character. While benign nonconformities may have some negative impact, the local government has determined that the negative impact is small and does not threaten the public health and safety. For example, the amount of deviation from a dimensional requirement may be so small as to be unnoticeable, such as an encroachment of only a few inches into

compliance with all remaining development standards. Such exceptions are not consistent with the idea that the nonconformity should be eliminated eventually.

- *Prohibiting or limiting a change of use* except when the new use is considered conforming or less nonconforming, often based on development standards to support the use. In this latter situation, a good example is parking. When the use requires the same or fewer parking spaces, the impact from the change of use is not increased.
- *Requiring the combination of adjacent nonconforming lots.* When a lot has less area than



➔ Detrimental nonconformities threaten the public welfare. Nearby residents no longer have the quiet enjoyment of their homes due to noise, lights, odor, or increased traffic.

modification into compliance with current standards. This concept forms the basis for most regulation of nonconformities.

Benign nonconformities. When development fails to meet current design standards but the nonconformity is not harmful, there is little or no need to limit the development from expansion, redevelopment, or other activities. Local governments often struggle with this issue because, in most cases, all nonconformities are treated alike. The authors recommend that local governments establish a second category of nonconformities—benign nonconformities—with different standards that do not necessarily lead to eventual removal of the nonconforming situation. A nonconformity is considered benign when it does not have a negative impact on the health and safety of the public but may have a negative impact on the public welfare. Examples may include a lack of landscaping, too few parking spaces, or minimal deviations from dimensional standards.

The separation of nonconformities into detrimental and benign is based on the idea that “public health, safety, and welfare” is

a required setback. A benign nonconformity can also arise from inconvenience, such as too few parking spaces. The local government should categorize a nonconformity as benign when there is no need to eliminate it to protect the public from harm.

CURRENT APPROACHES TO REGULATING NONCONFORMITIES

Most regulation of nonconformities is based on the eventual elimination of the situation. This approach leads to regulations such as the following:

- *Prohibiting or limiting the expansion of a building* when the building itself is nonconforming or when the building, even though meeting the development standards, houses a nonconforming use. The idea is that, while routine maintenance is permissible, such a limitation will prevent continued investment into a situation that should not exist. However, many local governments allow a building’s expansion if it does not increase the degree of nonconformity. An example is a building with a nonconforming front setback where an expansion is proposed to the rear of the building in

required for development, and the same owner has two or more contiguous lots, a typical regulation requires the lots to be combined to create one conforming lot. On the other hand, many regulations allow the development of a lot that is nonconforming as to area, provided that all other standards for development are met. This latter situation is a good example of the concept of a benign nonconformity.

- *Providing that a discontinued nonconforming use cannot resume.* Local governments set a time limit on the ability of an owner to resume a nonconforming use. Typical regulations allow six months or one year of cessation; at the end of this time only a conforming use is permissible. During the latest economic downturn, however, many nonconforming uses went out of business. To avoid empty properties and encourage another similar—even if nonconforming—business to move in, some local governments have looked for ways to extend that time limit. One way is to consider the use “continuing” if the property is actively offered for sale or rent.
- *Providing that a nonconforming building that is vacant for a specified period of time is*

not reoccupied until the nonconformity is eliminated and the entire site is brought into compliance with the standards. Again, typical regulations allow six months or one year of vacancy before requiring that the building or other development features are brought up to current standards. Similar to the cessation of use situation, many local governments are extending the time limit if properties are actively offered for sale or rent.

- *Requiring that buildings and other development features that are destroyed are reconstructed only in compliance with current standards.* Most local governments allow reconstruction to the current conditions if there is a determination that the loss of the building is not due to an act of nature and that the loss is less than 50 percent of the value of the building. Therefore, a partially destroyed building can be rebuilt in its same nonconforming situation.
- *Amortizing the nonconformity.* In some instances, a local government establishes a time frame within which the nonconformity must cease. The basis for doing so is to allow the property owner an opportunity to recover his

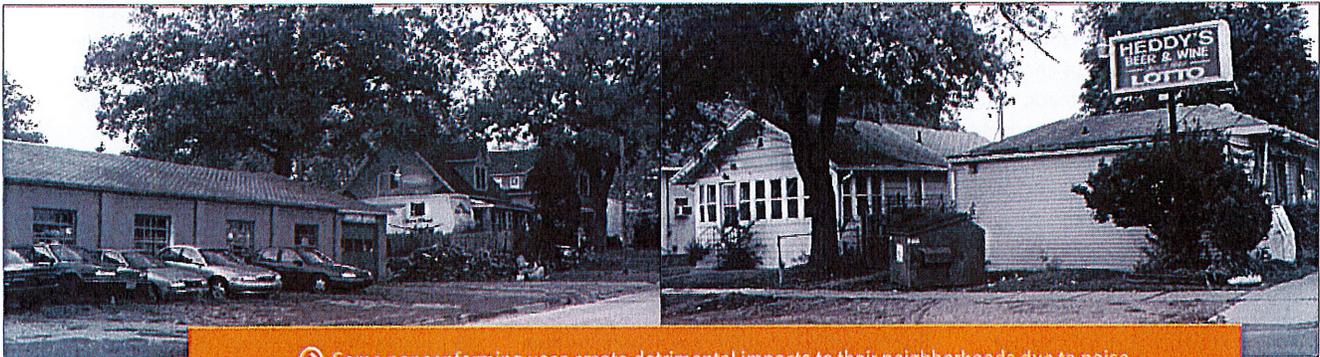
A local government may wish to avoid the creation of nonconformities through greater attention to creating mixed use districts or the use of flexible design standards and overlay districts.

unsafe by the local government, with the result that elimination or reduction of the nonconformity is not the goal. Further, as planning practice moves away from the rigid separation of uses for the sake of strict uniformity within a district, we recognize that variation is not only acceptable but also is often desirable. Compatible development does not demand sameness. Rather, the public seeks and planners provide mixed use options in modern zoning codes. Increasingly, we see the need to focus on impact, character, compatibility, and urban form—which means that a nonconformity may not be unwelcome in a neighborhood.

A local government may wish to avoid the creation of nonconformities through greater attention to creating mixed use districts or the

standards are intended to reflect urban form rather than prescriptive and uniform dimensions. This contemporary approach avoids nonconforming uses and provides diversity and variation in design rather than the sameness planners and the public seek to avoid.

Another approach that we often use is to create an overlay for a specific neighborhood. A typical example is an older subdivision, established when lots and yards were smaller. The current residential zoning district requires a larger lot area, greater lot width, and larger setbacks; all the older houses and lots become nonconforming. Under typical nonconforming standards, additions to the houses are not allowed because the purpose of the nonconforming provisions is to eliminate, not continue



Photos by Kris Morley

⊕ Some nonconforming uses create detrimental impacts to their neighborhoods due to noise, traffic, electronic interference, lights, and odors. These impacts can be compounded by structural nonconformities such as inadequate parking, setbacks, buffers, and landscaping.

economic investment before being required to cease the nonconformity. This approach has been used for many different types of uses, such as gas stations in residentially zoned areas, adult entertainment facilities, junk yards, concrete plants, commercial uses, and billboards. The length of the amortization period is based frequently upon the economic life of the nonconformity.

REGULATING BENIGN NONCONFORMITIES

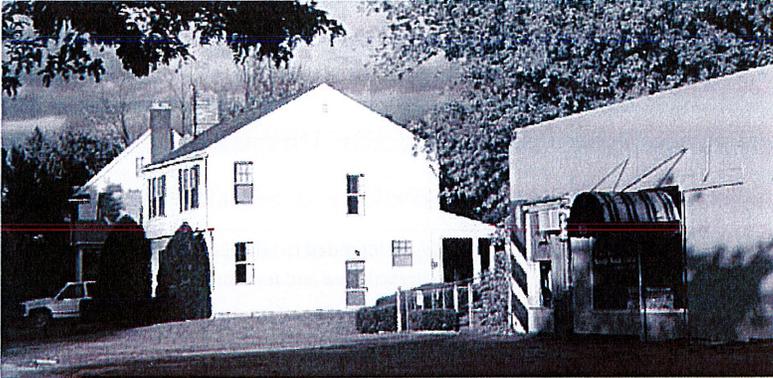
The distinguishing characteristic of the benign nonconformity is that the type and degree of nonconformity are not considered harmful or

use of flexible design standards and overlay districts. A neighborhood or other identifiable geographic unit may contain uses that would be nonconforming in a traditional zoning district, which seeks uniform uses. However, when nonconforming uses are desirable, the government should consider a mixed use district. This avoids the creation of nonconforming uses and may also achieve a vibrant, diverse neighborhood that benefits the community.

Planning practices include many examples of flexible design standards, such as context-sensitive standards, performance standards, or compatibility standards. Such stan-

and expand, the nonconforming situation. Flexible standards may not be a good fit in this situation. However, the creation of the “old neighborhood overlay,” with standards that recognize the existing situation, keeps a stable neighborhood in conformance and allows property improvements with no special procedures or requirements other than compliance with the overlay standards.

Some practitioners have argued that flexibility is the necessary ingredient in regulating nonconformities. However, we believe that a local government does not need to examine nonconformity on a case-by-case basis. Instead,



Kris Montley

➔ This massage parlor in a low-density residential neighborhood is a detrimental nonconforming use. The traffic, lights, and noise generated by this use can have a harmful effect on the surrounding neighborhood.

it can decide up front which situations are detrimental and which, even if not sought out, are at least benign in their impact on the neighborhood. Again, the distinction is that detrimental nonconformities are harmful to the public health and safety while benign nonconformities have a potential negative impact on the public welfare.

Examples of benign nonconformities include:

- De minimis (i.e., negligible) deviations from a dimensional requirement, such as encroaching a few inches into a required setback, with no resulting negative impact on neighborhood character.
- A lot that fails to meet a dimensional or area requirement, but the deviation is small enough that the shortfall does not affect the neighborhood character.
- A change in the list of permissible or conditional uses, or eliminating an existing use that is not, in fact, objectionable. It may seem that the change in listed uses is an indication that those not listed are now objectionable. However, unless every existing lot with its existing use is examined during revision to the list of permissible uses, it is often the case that uses become nonconforming not as a matter of policy, but as a matter of oversight. Often, a use considered objectionable at adoption is no longer considered objectionable in later years as times, customs, and lifestyles change.
- Nonconformities arising from a government action, such as the loss of a required front yard for road widening. While the district regulations may require the yard, most properties along the road have the same situation, so the encroachment does not negatively impact that portion of the neighborhood.

- De minimus deviations from a standard, such as required parking spaces, which do not create a negative impact on the surrounding area.

A local government must decide for itself the degree of deviation from a standard that is de minimis. It must also decide how to define the character of a neighborhood and how much change to a lot, its use, or development would have a negative impact. All such determinations are based on impact to public welfare and not public safety or health, where a stricter standard applies.

Such a determination is not unusual for a local government, as the consideration of impact on neighborhood character and deviation from required standards is routine in variance requests and consideration of conditional uses. In fact, we believe that benign nonconformities are similar to variances in that the end result authorizes a deviation from



John Svoboda

➔ Benign nonconformities are often unnoticed because the nonconformity is so similar to surrounding uses. Thus, there is no harm to the public in the continuation of the nonconforming situation.

the standards in a manner consistent with the public interest.

DISTINGUISHING BETWEEN DETRIMENTAL AND BENIGN NONCONFORMITIES IN THE REGULATIONS

Many local governments adopt regulations for nonconformities and include exceptions to those regulations, as described earlier. This approach does not establish clear bases for the exceptions, which are often added on a piecemeal basis to address a particular situation. We recommend the creation of two categories of nonconformities at the outset. Such distinctions make it clear when the nonconformity must be eliminated to protect the public health and safety and can provide a basis for amortizing the nonconformity. The second category, benign nonconformities, still requires specific consideration, but is not intended for elimination.

Regulations that are adopted after a deliberative process can clearly describe those situations which are both nonconforming and detrimental. In such cases, it should be the policy and goal of the local government to eliminate such nonconformities. A detrimental nonconformity is presumed to be harmful to the abutting properties, the surrounding neighborhood, or the community as a whole. If this is the case, regulations should clearly lead to elimination of the nonconformity for the protection of the public.

Therefore, appropriate regulations for detrimental nonconformities would do the following:

- Prohibit any expansion of the principal building, accessory buildings, or site features. Continued investment in the property is contrary to the intent to eliminate the nonconformity.

- Prohibit *any addition* of site features, unless such features actually reduce the nonconformity. An example of this would be adding parking when part of the nonconformity is that there are too few parking spaces. Another example is the addition of landscaping, either to the parking lot or the entire site, when part of the nonconformity is failure to have required landscaping.
- Prohibit *any extension* of the use to other parts of buildings or the site that were not occupied by the nonconforming use at the time the regulations changed.
- Prohibit a change of use to any use that is not permissible in the zoning district.
- Establish the shortest feasible time for vacancy before new occupancy requires compliance with the current standards.
- Establish the strictest feasible limit on reconstruction after a disaster to ensure that the reconstruction conforms to current standards.
- Establish the strictest feasible limit on reconstruction following voluntary demolition to ensure that the reconstruction conforms to current standards.

Increasingly, we see the need to focus on impact, character, compatibility, and urban form—which means that a nonconformity may not be unwelcome in a neighborhood.

In contrast, the local government may determine that a benign nonconformity is not harmful to the abutting properties or surrounding neighborhood, but is contrary to the public welfare in some way. Just as a variance is a process to authorize a deviation from development standards, recognition of a benign nonconformity authorizes a deviation from development standards and does not require elimination of the nonconformity.

We further recommend that changes to benign nonconformities should not be permissible by right, but rather must be authorized by a board of adjustment, similar to the process for authorizing a variance. The justification for granting a variance is different than the justification for changes to benign nonconformities. Therefore, a change to property categorized as a benign nonconformity should not be authorized as a variance. However, we recommend that the *process* for the two situations, variances and modifications to benign nonconformities, could be similar.

This procedure ensures an opportunity for public participation and allows for the addition of conditions to approval. For example, a property that is nonconforming due to a de minimis setback deviation and lack of adequate landscaping is eligible for expansion. However, the board can require that the landscaping be brought to current standards as a condition of approval of the building expansion. The setback nonconformity continues unchanged. The public welfare is improved and the property owner can make economic use of the property.

Thus, appropriate regulations for benign nonconformities would do the following:

- Allow expansions of the principal building, accessory buildings, or site features, provided that the expansions are conforming to current standards.
- Allow the addition of site features that conform to current standards.
- Allow extension of the use to other parts of buildings or the site.

- Allow a change of use to a permissible or conditional use in the zoning district.
- Allow vacancy of the property for any period of time, provided that the property is properly maintained to ensure safety.
- Allow reconstruction to restore existing conditions following a disaster.

The idea of categorizing nonconformities as detrimental and benign is a new way of labeling nonconformities, but it is not an altogether new idea. For example, Cape Canaveral, Florida, allows some nonconformities to be modified through a special permit. In establishing this provision, the city recognizes that some nonconformities do not have a detrimental impact on the community. San Leandro, California, has a list of exceptions to nonconformity provisions along with an overlay district for nonconforming situations. Identifying exceptions to the nonconformity provisions is a typical method of addressing benign, or nondetrimental, nonconforming situations. Lowndes County,

Georgia, also has an overlay district to avoid creation of nonconformities, although it is not labeled a nonconforming overlay, as is the case in San Leandro. Lompoc, California, classifies nonconformities into groups A and B to distinguish detrimental from nondetrimental situations.

CONCLUSIONS

This article makes the case for two categories of nonconformities—detrimental and benign—with separate regulations for each category. While the initial basis for nonconformities continues to exist, many local governments are seeking ways to retain and even encourage the continuance of nonconformities that are not harmful or unsafe. The distinction between nonconformities that are detrimental and destined for elimination and nonconformities that are benign and even desirable renders the regulations more meaningful for property owners and easier to administer by the local government.

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VOL. 26, NO. 11

Zoning Practice is a monthly publication of the American Planning Association. Subscriptions are available for \$85 (U.S.) and \$110 (foreign). W. Paul Farmer, FAICP, Executive Director; William R. Klein, AICP, Director of Research

Zoning Practice (ISSN 1548-0135) is produced at APA. Jim Schwab, AICP, and David Morley, AICP, Editors; Julie Von Bergen, Assistant Editor; Lisa Barton, Design and Production.

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