



CHEBOYGAN COUNTY PLANNING COMMISSION

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CHEBOYGAN COUNTY PLANNING COMMISSION MEETING & PUBLIC HEARING WEDNESDAY, OCTOBER 2, 2019 AT 7:00 P.M. ROOM 135 - COMMISSIONER'S ROOM - CHEBOYGAN COUNTY BUILDING

PRESENT: Bartlett, Freese, Kavanaugh, Borowicz, Croft, Ostwald, Lyon, Johnson, Delana
ABSENT: None
STAFF: Mike Turisk
GUESTS: Eric Boyd, Carl Muscott, Cal Gouine, Bob Lyon, John Moore, Marcia Rocheleau, Charles Maziasz, Steve Warfield, Bryan Graham

The Planning Commission meeting was called to order by Chairperson Croft at 7:00pm. The Zoning Board of Appeals meeting was called to order by Chairperson Freese at 7:01pm.

PLEDGE OF ALLEGIANCE

Chairperson Croft led the Pledge of Allegiance.

APPROVAL OF AGENDA

The meeting agenda was presented. **Motion** by Mr. Borowicz, seconded by Mr. Delana, to approve the agenda as presented. Motion carried unanimously.

APPROVAL OF MINUTES

The September 18, 2019 Planning Commission minutes were presented. **Motion** by Mr. Kavanaugh, seconded by Mr. Borowicz, to approve the meeting minutes as presented. Motion carried unanimously.

PUBLIC HEARING AND ACTION ON REQUESTS

No comments.

UNFINISHED BUSINESS

Report and Continued Discussion on Cheboygan County Zoning Enforcement.

Mr. Turisk stated at a previous Planning Commission meeting that there was a discussion regarding the estimated time it would take to oversee compliance with approved conditions for six year's worth of authorizations by the Planning Commission. Mr. Turisk noted that the total number of applications is 150 of which there are 91 that have expired, 40 that have been finalized and 19 that have been issued. Mr. Turisk referred to the spreadsheet included in the packet and stated that on the last page is the total number of hours that has been estimated for final inspections and administrative time to contact the different agencies to verify compliance. Mr. Turisk stated that the estimated time equated to 100 days or just over 3 months of staff's time. Mr. Turisk noted that his estimated time allocated for zoning enforcement related matters is 2 hours per week. Mr. Turisk stated that this has not been tracked in the past. Mr. Turisk stated that the 2 hours per week is based on recent zoning related activities and does not include any recent court time. Mr. Turisk stated that the estimated time of 3 months shows that there is a lot of work to be done and would constitute working an 8 hour day for 3 months straight and only working on zoning enforcement. Mr. Turisk stated that we are going to try to recruit a paid intern for next building season. Mr. Turisk stated that the protocol moving forward is to have enforcement oversight as approvals are granted to stay current rather than let years of approvals build up and find ourselves in the same situation.

Mr. Delana stated that spreadsheet only addresses the time necessary to address 6 year's worth of Planning Commission approvals and it does not address enforcement time for follow up on complaints. Mr. Kavanaugh stated that this report does not show estimated time spent on new complaints and Mr. Turisk's time spent on enforcement and on court time. Mr. Turisk stated that it has been demonstrated that this will take a lot of man hours and resources and is unlikely to be completed by spring of 2020. Mr. Turisk stated that this will be an on-going effort with current staffing. Ms. Lyon stated that we can anticipate another 20 Planning Commission approvals that will need to be followed up on. Ms. Lyon stated that this shows that there is a need for a full time position to follow up on these approvals along with following up on the previous approvals.

Ms. Johnson stated that staff may not have enough time to put together the information that the Planning Commission is looking for before going to the Board of Commissioners. Ms. Johnson suggested forming a committee to gather this information. Ms. Johnson stated that the Board of Commissioners is in the middle of the budget negotiations and they need this information to make a decision. Ms. Lyon asked Ms. Johnson if she doesn't feel that the report included in the packet is adequate. Ms. Johnson stated no. Ms. Lyon stated that she does not agree with Ms. Johnson. Ms. Johnson stated that this is a portion of it and there is more to it. Mr. Kavanaugh asked how difficult it will be to come up with the number of pending complaints and court cases. Mr. Turisk stated it should be comparatively easy to get this information. Mr. Turisk stated that it has been suggested to him that the Board of Commissioners has received enough information and there wouldn't be a need for another presentation. Ms. Lyon asked if they have reviewed the spreadsheet that the Planning Commission is reviewing tonight. Mr. Turisk stated that administration has been in continuous discussion with the Board of Commissioners regarding this issue. Ms. Johnson stated that the Planning Commission has no idea what information has been presented to the Board of Commissioners. Ms. Johnson stated that she does not know that the Planning Commission's interests are being protected. Ms. Johnson asked how a paid intern will help with zoning enforcement. Ms. Johnson stated that the intern will be here to learn and to be trained and not to sent off to handle zoning enforcement. Mr. Turisk stated it was recently indicated to him that this is a likely first step. Mr. Turisk stated that the Board of Commissioners is aware of this situation since it first became a topic of conversation. Mr. Turisk stated that perhaps administration should be included in a future discussion to provide clarification for the Planning Commission. Mr. Turisk stated that administration could provide the scope of the discussions with the Board of Commissioners. Ms. Johnson stated that if staff believes there is enough information, the Planning Commission should write another letter with the information that they believe should be brought to the Board of Commissioners. Ms. Johnson does not know what information was brought to the Board of Commissioners. Mr. Delana asked if the annual report was presented to the Board of Commissioners. Mr. Turisk stated yes it was presented. Mr. Turisk noted that staff is indifferent regarding this issue. Mr. Turisk stated that yes he would like additional staff as there is plenty of work. Mr. Turisk stated he is not biased and that he doesn't have a horse in this race. Mr. Freese asked what will be the scope of work for the intern. Mr. Turisk stated the intern will have to obtain the first level of certification for the Soil Erosion and Sedimentation Program to be able to perform repeat inspections. Mr. Turisk stated this would free up Mr. Peltier to focus on zoning enforcement. Mr. Freese questioned how much of the summer will be taken up with the intern taking an exam and being trained to perform the inspections. Mr. Turisk stated he discussed this with the County Administrator and the recruit process will begin fairly soon by contacting universities and colleges to see if there is anyone with a background and interest in this intern position. Mr. Freese asked Mr. Turisk how he can say that he doesn't have a horse in this race if we can't stay on top of enforcement. Mr. Turisk stated that resources to address the last six years of Planning Commission approvals will be significant. Mr. Turisk stated that it can be done with current staff and the proposed intern. Mr. Turisk stated that he would like additional staff but it is up to the Board of Commissioners to decide whether an additional full time position is necessary. Mr. Turisk stated he will make do with whatever resources he is provided. Discussion was held. Mr. Turisk stated that he shared all of the data and spreadsheets with the County Administrator and he recognizes that this needs attention. Mr. Turisk stated that the County Administrator is conveying this information to the Board of Commissioners. Mr. Turisk stated that there has been recognition from the County Administrator that additional help is needed and the first step is recruitment of an intern. Ms. Johnson stated that this should be presented to the Board of Commissioners from a Planning Commission standpoint and not from staff or administration standpoint as they may look at things differently than the Planning Commission.

Mr. Graham stated that there was a recent court case that lasted four hours due to requirements that the Planning Commission imposed being imbedded throughout the findings of fact. Mr. Graham stated this is problematic and causes confusion to the court. Mr. Graham stated that if there is a requirement that it be in the list of conditions. Mr. Graham read from section 21.9.1.A, "Any land, dwellings, buildings, or structures, including tents and trailer coaches, used, erected, altered, razed or converted in violation of this Ordinance or in violation of any regulations, conditions, permits....". Mr. Graham stated this is in essence a civil infraction. Mr. Graham stated it is a much more efficient court process to present a decision that shows that the special use permit was approved and a list of conditions that were imposed. Mr. Graham stated that in this court case the applicant did not comply with a condition imposed by the Planning Commission. Mr. Graham stated that he can supply a form that will help with this in the future. Mr. Graham stated do not include the conditions or requirements in the findings of fact. Mr. Graham stated that findings of fact are intended to establish whether or not the standards have been met. Discussion was held.

NEW BUSINESS

Presentation by Bryan E. Graham from Young, Graham & Wendling, P.C. regarding non-conforming uses and structures and the Michigan Regulation and Taxation of Marihuana Act.

Mr. Graham gave a presentation on Nonconformities and Recreation Marihuana (Copy of presentation attached. See Attachment A).

STAFF REPORT

Mr. Turisk stated that the Recreational Plan and Capital Improvement Plan would be reviewed and updated in the near future.

PLANNING COMMISSION COMMENTS

No comments.

PUBLIC COMMENTS

Mr. Muscott presented information on the Emmet County staff, which has the same number as Cheboygan County staff and he feels that it is just a matter of proper utilization of resources at hand in accomplishing the mission.

ADJOURN

Motion by Kavanaugh to adjourn. Motion carried. Meeting was adjourned at 8:47pm.



Charles Freese
Planning Commission Secretary

**CHEBOYGAN COUNTY
PLANNING COMMISSION
and
ZBA**

Nonconformities and Recreation Marihuana

- I. Nonconformities.
 - A. Types: Nonconforming uses, nonconforming structures, nonconforming lots – and any combinations.
 - B. Creation: The use, structure, or lot was lawfully established prior to the enactment of the zoning regulation with which it does not currently meet.
 - C. Right to Continued Use: Once established, the property owner has a vested right to continue use of the nonconformity, but only to the same nature and scope of the nonconformity as it existed when it was created. In other words, the property where does not have the right to change the nature of the nonconformity and does not have the right to change the scope of the nonconformity.
 - D. Abandonment: Under Michigan law the nonconformity is legally abandoned only with the passage of time as specified in the zoning ordinance AND an intent by the property owner to abandon that nonconformity.
 - E. Alterations, Additions, Repairs, and Replacement.
 - 1. It is the general policy of state law for the gradual elimination of nonconformities, so that development can proceed under the terms and conditions of the zoning ordinance.
 - 2. Section 208(4) of the zoning enabling act, MCL 125.3208(4), provides:

The elimination of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use. The legislative body may institute proceedings for condemnation of nonconforming uses and structures under 1911 PA 149, MCL 213.21 to 213.25.
 - 3. Section 208(2) of the zoning enabling act, MCL 125.3208(2), provides:

The legislative body may provide in a zoning ordinance for the completion, resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures upon terms and conditions provided in the zoning ordinance. In establishing terms for the completion, resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures, different classes of nonconforming uses may be established in the zoning ordinance with different requirements applicable to each class.

4. Article 22 of the Cheboygan County Zoning Ordinance specifies the regulations of nonconformities.
 - a. One of the most restrictive nonconforming regulations we deal with.
 - b. Does not recognize classes of nonconformities.
5. See sample nonconformities article.

II. Medical Marihuana Act, MCL 333.26421, *et seq.*

- A. Qualifying Patients.
- B. Primary Caregivers.
- C. New ZO regulations authorizing this new land use. (See Section 17.25 of the zoning ordinance.)
- D. Michigan Supreme Court case pending that will clarify extent of zoning regulations under the MMA.

III. Medical Marihuana Facilities Licensing Act, MCL 333.27101, *et seq.*

- A. Requires state licence to operate a marihuana facility.
- B. Definitions of five (5) different facilities.
 1. "Grower" means a licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.

2. "Processor" means a licensee that is a commercial entity located in this state that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.
3. "Provisioning center" means a licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the Michigan medical marihuana act is not a provisioning center for purposes of this act.
4. "Safety compliance facility" means a licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.
5. "Secure transporter" means a licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.

C. Local Control.

1. Cannot operate a facility unless municipality (township, city, village – not the county) adopts an ordinance that authorizes that type of facility.
2. Any such ordinance cannot regulate the purity or price of the marihuana and cannot conflict with the state statute.
3. If a municipality authorizes a medical marihuana facility, then that becomes a new land use for zoning purposes.

- a. Section 205(4) of the MMFLA, MCL 333.27205(4), provides:

Information a municipality obtains from an applicant under this section is exempt from disclosure under

the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

b. This provision evidences a legislative intent to keep the information confidential.

c. Section 205(1) of the MMFLA provides:

A municipality may adopt other ordinances relating to marihuana facilities within its jurisdiction, including zoning regulations, but shall not impose regulations regarding the purity or pricing of marihuana or interfering or conflicting with this act or rules for licensing marihuana facilities.

d. Definition of municipality does not include the county. Therefore, does the county have the right to impose zoning regulations? An open question.

e. As a result, it has been my advice to our township and village clients that zoning authorize the land use as a use by right and not by special use permit, which requires a public hearing before the planning commission.

f. To the extent the county desires to impose zoning regulations, it should coordinate the regulations for this land use with the local municipality. In addition, local regulations cannot be in conflict with the statute and with the administrative rules.

D. Fee.

1. Municipal ordinance may establish an annual, nonrefundable fee of not more than \$5,000.00 to help defray administrative and enforcement costs associated with the operation of a marihuana facility in the municipality.

2. Limits under *Bolt*.

IV. Michigan Regulation and Taxation of Marihuana Act, MCL 333.27951 (Recreational Marihuana Statute)

A. Requires state licence to operate a marihuana establishment.

B. Definitions of six (6) different establishments.

1. "Marihuana grower" means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.
2. "Marihuana microbusiness" means a person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.
3. "Marihuana processor" means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.
4. "Marihuana retailer" means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.
5. "Marihuana secure transporter" means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.
6. "Marihuana safety compliance facility" means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

C. Local control.

1. Can operate an establishment with a state license, **unless** municipality enacts an ordinance that completely prohibits or limits the number of marihuana establishments within its boundaries.
2. Regardless of municipality's action, an individual may petition to initiate an ordinance to provide for the number of marihuana establishments allowed within the municipality or to completely prohibit marihuana establishments within the municipality. (Goes both ways.)
 - a. Petition must be signed qualified electors greater than 5% of the votes cast for governor at the last gubernatorial election.

- b. If petition requirements met, then initiated ordinance must be submitted to electors at the next regular election. (There are certain filing deadlines under the election law that must be met.)

3. Zoning implications.

- a. Section 9.7 of the Act, MCL 333.27959.7, provides:

Information obtained from an applicant related to licensure under this act is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

- b. Act does not mention zoning at all. Unlike the MMFLA, that in Section 205(1) provides: "A municipality may adopt other ordinances relating to marihuana facilities within its jurisdiction, including zoning regulations, but shall not impose regulations regarding the purity or pricing of marihuana or interfering or conflicting with this act or rules for licensing marihuana facilities."

D. Fee.

- 1. Municipality may charge an annual fee of not more than \$5,000 to defray application, administrative, and enforcement costs associated with the operation of the marihuana establishment in the municipality.
- 2. Limits under *Bolt*.

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.

ARTICLE VI
NONCONFORMING USES, BUILDINGS, STRUCTURES, AND LOTS

Section 6.1 – Purpose

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

Section 6.2 – Nonconforming Use Permitted; Completion of Nonconforming Buildings or Structures

- A. If a nonconforming building or structure, a building that contains a nonconforming use, or a nonconforming use of land was lawful at the time of enactment of this Ordinance, or any subsequent amendment, then that nonconformity may be continued although it 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 6.3 – Classification of Nonconformities

- A. All nonconforming uses, buildings, and structures shall be designated either a Class A nonconformity or a Class B nonconformity. Unless designated a Class A nonconformity under subsection B, the nonconforming use, building, or structure shall be deemed a Class B nonconformity. If a Class B nonconformity is damaged or destroyed, the property owner may seek a Class A designation under subsection B after such damage or destruction. The Class B nonconformity shall then be judged for the Class A designation on the nonconformity as it existed prior to the damage or destruction.

- B. A property owner who desires that his or her property be designated a Class A nonconformity shall file an application with the Zoning Administrator requesting the designation. The application shall include the names and addresses of all people and legal entities with an interest in the property, the legal description of the property, the facts that establish the standards for approving a Class A designation have been met, and the fee as provided in Section XXXXX of this Ordinance. After the Zoning Administrator receives a completed application, he or she shall forward the application to the Planning Commission for consideration. The Planning Commission shall then hold at least one (1) public hearing on the application. The notice of the public hearing shall be the same as for a special use permit before the Planning Commission. The Planning Commission's decision whether to grant the Class A designation shall be based on written findings of fact made pursuant to the standards contained in subsection C. The Planning Commission may attach reasonable conditions to the Class A designation to assure compatibility of the nonconforming use, building, or structure with surrounding property uses. The property owner shall receive no vested interest or rights in the Class A designation, since that designation may be revoked by the Planning Commission under subsection D.
- C. The Planning Commission shall grant a Class A designation for a nonconforming use, building, or structure if it finds that all of the following standards are met:
1. The nonconforming use, building, or structure was lawful at the time of its inception.
 2. The continuation of the nonconforming use, building, or structure will not significantly and adversely affect surrounding properties and will not significantly depress property values in the immediate area.
 3. If the nonconforming structure is a sign, the nonconformity is due to dimensional regulations other than the limitation on the area of the sign surface or the limitation on the height of the sign.
 4. The nonconforming use, building, or structure does not significantly and adversely impact on steep slopes as regulated in Section XXX of this Ordinance, is not located within the greenbelt required by Section XXX of this Ordinance (except as otherwise permitted by Section XXX), and is not located within a wetland regulated by the State of Michigan or as regulated in Section XXX of this Ordinance.
 5. The nonconforming use, building, or structure is of economic benefit to the Village.
- D. Upon the filing of a request by the Zoning Administrator or by the Planning Commission's own action, a Class A designation shall be revoked by the

Planning Commission following the same procedures required for the initial designation upon a finding that as a result of any change of conditions or circumstances the standards for the Class A designation under subsection C no longer qualify the nonconforming use, building, or structure for the Class A designation.

Section 6.4 – Regulations concerning Class A Nonconformities

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

- A. Normal maintenance and incidental repairs, including repair or replacement of nonbearing walls, fixtures, wiring, or plumbing may be performed on any nonconforming building or structure or on any building containing a nonconforming use.
- B. A nonconforming building or structure or a building that contains a nonconforming use which is unsafe or unlawful due to a lack of repairs or maintenance, as determined by the Zoning Administrator or County Building Official, may be restored to a safe condition.
- C. If a nonconforming building or structure (including a nonconforming sign) or a building that contains a nonconforming use is damaged or destroyed by any means or is removed by the property owner, then such nonconforming building or structure may be restored, rebuilt, or repaired to its original configuration and on its original foundation.
- D. A nonconforming building or structure or a building that contains a nonconforming use may be enlarged or altered in any way, provided such enlargement or alteration does not increase the degree or extent of any nonconformity on both the horizontal and vertical planes.
- E. A nonconforming use shall not be extended to any portion of the lot that was not lawfully occupied by such nonconforming use on the effective date of this Ordinance, or any subsequent amendments, creating such nonconformity, unless in complete conformity with the requirements of this Ordinance. However, a nonconforming use may be extended throughout any part of a building, which was designed for such use, and which existed at the time the use became nonconforming.
- F. A Class A nonconforming use, building, or structure may be replaced by another Class A nonconforming use, building, or structure if the Planning Commission finds, following the procedures of Section 6.3.B, that the new nonconforming use, building, or structure qualifies for a Class A designation and that the new

nonconforming use, building, or structure will not increase the extent or intensity of the nonconformity on the property.

Section 6.5 – Regulations concerning Class B Nonconformities

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

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

- E. Except for repairs or maintenance authorized under subsections A and B above, a nonconforming building or structure or a building that contains a nonconforming use shall not be enlarged or altered, unless such enlargement or alteration is in complete conformity with the requirements of this Ordinance.
- F. A nonconforming use shall not be extended to any portion of the lot or extended throughout any part of a building in which it is located that was not lawfully occupied by such nonconforming use on the effective date of this Ordinance, or any subsequent amendments, creating such nonconformity, unless such extension is in complete conformity with the requirements of this Ordinance.
- G. A Class B nonconforming use, building, or structure may not be replaced by another Class B nonconforming use, building, or structure. However, a Class B nonconforming use, building, or structure may be replaced with a Class A nonconforming use, building, or structure if the Planning Commission finds, following the procedures of Section 6.3.B, that the new nonconforming use, building, or structure qualifies for a Class A designation and that the new nonconforming use, building, or structure will not increase the extent or intensity of the nonconformity on the property.

Section 6.6 – Change of Nonconforming Use, Building, or Structure

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 6.7 – Nonconforming Lots of Record

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

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

Section 6.8 – Abandonment of a Nonconforming Use, Building, or Structure

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

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