**FIRST READING – INTRODUCED April 1, 2024**

**ORDINANCE #\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

AMENDMENT TO CHAPTER 46,

**Zoning**,

 Charter Township of Brandon Code of Ordinances,

 Article XI, Sections 46-6 and 46-487 to 46-492,

 **Nonconforming Structures and Lots of Record**

Sec. 46-6.- Definitions

Existing Definition

*Nonconforming use, building or structure* means a structure or building lawfully constructed that does not conform to the requirements of the district in which it is situated.

Proposed Definitions

NONCONFORMITY, ILLEGAL. A structure, use lot, site, or portion thereof that did not meet the standards of the zoning ordinance in effect at the time it was created or begun and that does not meet the standards of the current Ordinance.

NONCONFORMITY, LEGAL. A structure, use, lot, site, or portion thereof, lawfully existing at the time of adoption of a zoning ordinance or subsequent amendment that does not meet the standards of the current Ordinance.

ARTICLE XI. – LEGAL NONCONFORMING STRUCTURES, USES, AND LOTS OF RECORD

Sec. 46-487. - Existing nonconformities.

Within the districts established by this chapter, there exists:

(1)  Lots;

(2)  Structures;

(3)  Uses of land and structures; and

(4)  Characteristics of use which were lawful prior to adoption of this chapter. Except where specified elsewhere in this section, it is the intent of this chapter to permit these nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district. Nonconforming uses are declared by this chapter to be incompatible with permitted uses in the districts involved. A nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this chapter, the nature of which would be prohibited in the district involved.

Sec. 46-488. - Nonconforming structures.

Where a lawful structure exists at the effective date of adoption of the ordinance from which this chapter is derived that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

(1) No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity. Legally nonconforming structures may be expanded if the expansion meets the required setbacks and other developmental standards of this Ordinance at the time of expansion. Additional height above a nonconforming portion of a structure shall not be permitted.

(2) Structure. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 100 percent of the state equalized valuation at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter. If such nonconforming structure is destroyed by any means to an extent of equal to or less than 100 percent of the state equalized valuation at the time of destruction, the legal nonconforming structure may be reconstructed in its current location (footprint) but may not be enlarged or altered in a way which increases its nonconformity.

(3) Residential Structure. In the event a nonconforming residential structure is damaged by fire or natural cause, a residential structure may be reconstructed on the same foundation, provided the first-floor footprint and the total floor area does not exceed the size of the previous residence regardless of the extent (percentage) of damage. A nonconforming residential structure may be expanded based on Section 46-488.1. above.

(4)  Should such structure be moved for any reason whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

Sec. 46-489. - Nonconforming uses of land.

Where, at the time of passage of the ordinance from which this chapter is derived, lawful use of land exists which would not be permitted by the regulations imposed by this chapter, the use may be continued so long as it remains otherwise lawful provided:

(1)  No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption of the ordinance from which this chapter is derived, or amendment of this chapter, except as allowed below.

a. Residential. Legally nonconforming single-family and two-family residential uses and the structures those uses occupy may be enlarged, expanded, or extended, in whole or in part, to occupy a greater area than was occupied by that use on the effective date of this Ordinance, provided all dimensional standards are met for the district in which it is located.

b. Structure. A legally nonconforming use may be expanded throughout an existing building. The building shall not be expanded beyond the building envelope that existed on the effective date of this Ordinance.

(2) No such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption of the ordinance from which this chapter is derived, or amendment of this chapter.

(3)  If any such nonconforming use of land ceases for any reason for a period of more than one year, such land shall conform to the regulations specified by this chapter for the district in which such land is located.

(4)  No additional structure not conforming to the requirements of this chapter shall be erected in connection with such nonconforming use of land.

Sec. 46-490. - Nonconforming uses and structures.

If lawful use involving individual structures or of structure and premises in combination exists at the effective date of adoption of the ordinance from which this chapter is derived, that would not be allowed in the district under the terms of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions and subject to Section 46-492 Repairs and Maintenance of this section:

(1)  An existing structure devoted to a use not permitted by this chapter in the district in which it is located shall not be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which is it located.

(2)  Any nonconforming use may be extended throughout any parts of a building which were validly arranged or designed for such use at the time of adoption or amendment of this chapter, but no such use shall be extended to occupy any land outside such building.

(3)  If no structural alterations are made, any nonconforming use of a structure, or structures and premises, may be changed to another nonconforming use provided that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use, provided that the ZBA first finds that the proposed use is equally appropriate or more appropriate in the district than the existing nonconforming use. In permitting such change, the ZBA may require appropriate conditions and safeguards in accordance with the purpose and intent of this title. Whenever a nonconforming use has been changed to a conforming use, or to a permitted use in a district of greater restriction, it shall not thereafter be changed to a nonconforming use.

(4)  When a non-residential nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for one year, the structure, or structure and premises in combination, is discontinued or abandoned for one year, the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district which it is located.

 Legally nonconforming residential uses shall be considered ceased or abandoned if the use is discontinued for a period of two (2) years.

(5)  Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this section is defined as damage to an extent of more than 100 percent of the state equalized valuation at time of destruction.

Sec. 46-491. - Nonconforming lots of record.

(a)  In the RE, Rural Estate District in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this chapter, a single-family dwelling and customary accessory buildings may be erected on any single lot of record after the effective date of adoption of the ordinance from which this chapter is derived. Permission to use a single nonconforming lot as herein provided shall apply even though such lot fails to meet the requirements for area or width or both, that are generally applicable in the district. Side yard dimensions may be reduced provided that in no event shall a side yard be less than 20 feet.

(b)  This subsection applies to R-1A and R-1B, Single-Family Districts only and is intended to provide relief for the owners of nonconforming lots of record where said lot or lots in combination do not meet the minimum standards of this chapter. It is intended that this subsection be used to permit construction of a dwelling on all nonconforming lots of record; it is recognized that some such lots are simply too small to permit the construction of an adequate dwelling, the storage of family automobiles (in recognition of the fact that on street parking is not desirable), the maintenance of sufficient open space to permit fire protection, reasonable light and air, as well as room and view to permit and encourage property maintenance.

(1)  No permit shall issue hereunder except with approval of the board of appeals after public hearing. The application to the board of appeals shall simply state, "Nonconforming Lot of Record," and the board of appeals may grant such variances as are necessary to permit construction on such lot, subject to the following standards:

a.  Permits shall not be issued hereunder unless the construction that will result from the issuance of said permits will be in keeping with the general character of the neighborhood in which the construction will take place.

b.  The board of appeals shall at all times consider and reconcile the interests of adjoining and nearby property owners.

c.  Subject to the above, where the owner of a nonconforming lot of record cannot reasonably acquire sufficient land to enable him to conform to the requirements of this chapter relating to lot area, lot width, or both, such lot of record may be used by such owner as a building site, provided that, as required by the board of appeals, the other requirements of this section are met, which requirements for the purpose of this section shall be deemed to include reasonable provisions for automobile parking.

(2)  For the purpose of maintaining building sites in compliance or near compliance with this chapter, in those instances where the same owner has adjoining nonconforming lots of record, the following regulations shall apply: Where two or more abutting lots of record are held under one ownership, and where one or both of these lots are nonconforming, they shall each be considered as a single lot of record and are subject to the provisions of this chapter, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this chapter.

(3)  Notwithstanding the provisions as contained in subsection (b) of this section, the building department may issue a building permit in those instances where an isolated nonconforming lot or combination of lots of record meets 80 percent of the minimum frontage or area requirements of this chapter upon a determination that said 80 percent is in conformance with the general standards of the neighborhood. This subsection is intended to provide relief for those owners of isolated parcels that have more than 90 percent but less than 100 percent of the frontage or area required in section 46-215, schedule of regulations, and it is not intended to provide for the division or creation of parcels. In no event may this subsection be applied so as to accomplish a division or creation of any lot or combination of lots of record to reduce said frontage or area requirements to anything less than those standards set forth in section 46-215, schedule of regulations.

(4)  In no event shall the side yards be less than seven feet to permit fire equipment reasonable access and further to prevent the spreading of fire.

Sec. 46-492. - Repairs and maintenance.

(a) Repairs, Improvements and Modernization. Repairs, improvements, or modernization of nonconforming buildings or structures shall be permitted, provided such repairs or improvements do not exceed one-half of the value of the building or structure during any period of twelve consecutive months. This cost/value calculation shall not include any costs associated with modernization of electrical, plumbing, heating or cooling systems to meet building code requirements.

(b)  If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to a lack of repairs and maintenance, and is declared by the director of planning and building to be unsafe or unlawful by reason of physical condition, it may be enlarged or structurally altered to make it comply with the health and safety laws or ordinances; provided further that the cost of such work does not exceed 50 percent of the state equalized valuation of such building or structure at the time such work is done.

(c) Reconstruction of a Fire Damaged Residential Structure. In the event a nonconforming residential structure/use is damaged by fire or natural cause, a residential structure may be reconstructed on the same foundation, provided the first-floor footprint and the total floor area does not exceed the size of the previous residence. Expansion of a residential nonconforming structure and use may be made in conformance with the provisions of this section.

(d) Safe Condition of Building. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.