

DRAFT 2
ACCESSORY BUILDING & MISCELLANEOUS. AMENDMENTS

*For Review by the
Lowell Charter Township Planning Commission
August 10, 2020
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New language in Bold / Deletions shown with strike through line

4.15 ACCESSORY BUILDINGS AND STRUCTURES (6 Jun, 2007)

a) General Regulations

The following regulations shall apply to accessory buildings in all zoning districts unless otherwise provided:

- (1) **A building permit is required for detached accessory buildings which exceed 200 sq. ft. of gross floor area or which contain more than one story. Farm buildings as defined herein are exempt from this requirement.**

[Note: This requirement is also contained in Section 4.10 but it is logical to also add it to this Section which regulates accessory buildings.]

- (2) In any zoning district, an accessory building may be erected detached from the permitted principal building or it may **be attached** as an integral part of the permitted principal building. When erected as an attached integral part of the permitted principal building, it shall comply in all respects with the requirements of this Ordinance applicable to the permitted principal building.

- (3) Accessory buildings or garages shall be considered as attached to the principal building when **the principal building and accessory building share a common wall** or if there is no common wall then the principal building and the accessory building shall be connected by an **enclosed** breezeway, solid roof structure similar to the roof of the principal building or a covered colonnade. *[See attached examples of attached garages.]*

[NOTE: Draft 1 in subsection (3) contained the following sentence “Such connection shall be at less than ___ feet in length” After reviewing the attached examples the length of the connection is not relevant as long as the connection meets the description. Thus, this sentence has been removed in Draft 2. Regardless of the length of the connection any attached garage must then meet the setbacks of the principal building.]

- ~~(4) When an accessory use or building is located on a corner lot, it shall not project beyond the front yard setback line required on the lot in the rear of such corner lot. (See Figure 4-1)~~

- (4) An accessory use or building located on a corner lot shall comply with the front yard setback requirements for each street.**

[**Note:** *The new proposed language is clearer than the existing language so perhaps an illustration is not needed.*]

- (5) An accessory building or accessory structure shall not be constructed on a lot before the principal building or use is constructed or established except that **farm buildings are exempt from this requirement.** ~~as may be permitted by Section 4.15(c) below.~~
- (6) Every accessory building hereafter erected or moved shall be on a lot with frontage on a public or private street. ~~adjacent to a public street or with access to an approved private street. All such buildings shall be located so as to provide safe and convenient access for servicing, fire protection, and required off street parking.~~
- (7) **A detached accessory building may be located between the minimum required front yard setback and the principal building provided the accessory building is set back from the side lot line the same distance as required for the principal building.**
- (8) **Accessory uses are permitted only in connection with, incidental to, and on the same lot with a principal use, which is permitted in the particular zoning district.**
- (9) Accessory buildings in any zoning district shall not be erected in any required front or side yards except as may be permitted herein.

(b) AG-1, AG-2, AND R-1 ZONE REQUIREMENTS FOR FARM AND ACCESSORY BUILDINGS.

Current Language

- (1) In the R1, R2, and R3 Zoning Districts, an accessory building or enclosure containing non-house pets such as horses, cattle, swine, fowl and other similar animals shall be set back a minimum of 100 feet from any lot line.
- (2) Accessory buildings in the AG-1 and AG-2 Zoning Districts, when located in the rear yard, shall be set back a minimum of 50 feet from the side and rear lot lines. If such buildings are located in the side yard, as defined herein, the buildings shall be setback a minimum of 50 feet from the side lot line in the AG-1 Zone and a minimum of 25 feet in the AG-2 Zone.

Proposed Language

- (1) The minimum setback for accessory and farm buildings shall not be less than the required setback for principal buildings.
- (2) In the R-1 Zoning District, an accessory building or **any type of roofed** enclosure containing non-house pets such as horses, cattle, swine, fowl and other similar animals shall be set back a minimum of 100 feet from any lot line. **This requirement shall not apply to fences.**
- (3) A farm building as defined herein may be constructed or established on a lot before a principal building or use is established.

(c) R-2 AND R-3 ZONE REQUIREMENTS:

Current Language

- (1) For accessory buildings in the R1, R2, and R3 zoning districts the minimum front setback shall not be less than the required setback for principal buildings except as set forth in Section 4.15 (b) (4) herein.
- (2) Accessory buildings in the R1, R3 and OS-PUD Zoning Districts shall be set back a minimum of 10 feet from the rear lot line.
- (3) Accessory buildings in the R2 Zoning District when located in the side or rear yard shall be set back a minimum of three feet from the side lot line and five feet from the rear lot line. The drip edge of an accessory building shall be at least one foot from any lot line.

Proposed Language

- (1) The minimum front setback shall not be less than the required setback for principal buildings.
- (2) Accessory buildings which contain 200 sq. ft. or less of floor area shall be set back a minimum of three feet from the side lot line and five feet from the rear lot line. The drip edge of an accessory building shall be at least one foot from any lot line.
- (3) Accessory buildings which contain more than 200 sq. ft. of floor area shall comply with the minimum setback requirements for the principal building.

d) **Commercial and Light Industrial Zone Requirements.** The minimum setbacks for accessory buildings shall not be less than the required setbacks for principal buildings.

e) **Farm Accessory Buildings**

- ~~(1) A farm building as defined herein may be constructed or established on a lot before a principal building or use is established.~~
- ~~(2) Farm buildings shall comply with the setback requirements of the zoning district in which it is to be located.~~

DELETED SECTION 4.09 LAND USE NOT SPECIFICALLY LISTED

A land use not provided for and which is not listed because of uniqueness and uncommon existence to the area shall require a special use permit, and shall follow the requirements of Article 20, until such time when an amendment is adopted which specifically lists the use as permitted by right or by special use permit; and which designates the appropriate districts wherein the use may be located.

Why Delete?

In 2010 the Michigan Court of Appeals, in the case of Whitman, et al V. Galien, ruled that in order for a township to validly authorize a special use permit, the use must be specifically listed in the township’s zoning ordinance. The Michigan Zoning Enabling Act states that a local zoning ordinance “shall specify... the special land uses and activities eligible for approval” in order to encourage uniformity within a zoning district by placing limits on discretionary zoning decisions.

The language in Section 4.09 is in violation of the court's decision and should therefore be deleted.

Current Language

4.06 MAIN USE OF A LOT

No lot shall contain more than one building constructed as its main use, together with accessory buildings for uses customarily incidental to it, including such open spaces as are arranged and designed to be used in connection with the main building and its accessory buildings. (30 Jun, 84)

Proposed Language

Each parcel shall contain only one main building or principal use, except for groups of related commercial, industrial, and office buildings, and multiple-family dwellings contained within a single, integrated complex, sharing parking, signs, access, and other similar features, which together form a unified function and appearance. A parcel may contain more than one Special Land Use if approved by the Planning Commission in accordance with these criteria.

AMEND THE FOLLOWING DEFINITIONS

Reason to Amend

The following definitions were adopted in 2007 as part of the Township Zoning Ordinance and were based on the definitions contained in the Michigan Right to Farm Act which was and is the most recognizable authority on farm terminology. Rather than repeat the RTFA definition in the Township ZO the ordinance simply referenced the RTFA. Thus, if the language in the Act ever changed then the Township ZO would not have to be updated.

However, it is extra effort for Township Zoning Administrator, Planner and other readers of the Ordinance to search out the RTFA when seeking the meaning of the following terms. Therefore, the proposed amendment would add the RTFA definitions to the Township Zoning Ordinance so it is more user friendly.

Current language

Farm - As defined by the Michigan Right to Farm Act, Act 93 of 1981 as it may be amended from time to time. (2 May, 2007)

Proposed Language

Farm - As defined by the Michigan Right to Farm Act, Act 93 of 1981 and which means the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products.

Current language

Farm Operation - As defined by the Michigan Right to Farm Act, Act 93 of 1981 as it may be amended from time to time. (2 May, 2007)

Proposed language

Farm Operation - As defined by the Michigan Right to Farm Act, Act 93 of 1981 and which means the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products, and includes, but is not limited to:

- a) Marketing produce at roadside stands or farm markets.
- b) The generation of noise, odors, dust, fumes, and other associated conditions.
- c) The operation of machinery and equipment necessary for a farm including, but not limited to, irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.
- d) Field preparation and ground and aerial seeding and spraying **including the monitoring of farm operations.**
- e) The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides.
- f) Use of alternative pest management techniques.
- g) The fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals.
- h) The management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes.
- i) The conversion from a farm operation activity to other farm operation activities.
- j) The employment and use of labor.

Current Language

Farm Product – As defined by the Michigan Right to Farm Act, Act 93 of 1981 as it may be amended from time to time. (2 May, 2007)

Proposed Language

Farm Product – As defined by the Michigan Right to Farm Act, Act 93 of 1981 and means those plants and animals useful to human beings produced by agriculture and includes, but is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms, and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur, as determined by the Michigan commission of agriculture.

Current Language

Generally Accepted Agricultural and Management Practices (GAAMP) - As defined by the Michigan Right to Farm Act, Act 93 of 1981 as it may be amended from time to time. (2 May, 2007)

Proposed Language

Generally Accepted Agricultural and Management Practices (GAAMP) - As defined by the

Michigan Right to Farm Act, Act 93 of 1981 and which means those practices as defined by the Michigan commission of agriculture.

DISCUSS POSSIBLE CHANGES TO THIS SECTION

4.21 KEEPING OF DOMESTIC ANIMALS (28 May, 93)

d) Other Domestic Animals

(1) Horses, cattle, swine, or other animals or fowls which are not usually considered house pets can be kept in any district on parcels of land four acres or larger. Such animals shall be kept under sanitary conditions and in sanitary enclosures. Such livestock can be kept on parcels of land smaller than four acres with a permit obtained from the building official. In all residential areas, any building or confined feeding area in which such animals are kept or fed shall be at least 100 feet from any adjoining property or street line. (10 Jan, 81) (28 May, 93)

(2) All premises on which said animals are housed are to be kept sanitary and shall be subject to inspection at any reasonable time or times by the building official and/or health officer of the township. Should said premises become unsanitary, or objectionable odors therefrom become an annoyance to adjoining residents, said building official may revoke said permit forthwith, which revocation shall continue until the premises have been put in a sanitary condition and such objectionable odors and their cause be removed or remedied and the building official has approved the premises, after which time, the building official may issue a new permit. (10 Jan, 81) (28 May, 93)

Discussion Points

1. This section allows animals in any district on parcels less than 4 acres which is the minimum lot size in the AG-2 Zone. Therefore, animals are allowed in the R-1, R-2, R-3 and the Commercial and Industrial zones. Farming is allowed in the R-1 Zone which has a minimum lot size of 2 acres so this language seems acceptable for the R-1 Zone.
2. Most R-2 and R-3 zoned land is developed with subdivision lots containing less than 12,000 sq. ft. so, any one of these lot owners could request a permit although the 100 feet setback rule would preclude most requests from being approved. There are several larger lots outside of subdivisions in these zones which could meet the setback rule. (See Zoning Map)
3. Allowing farm animals to be kept on commercial and industrial zoned lands where farming is not allowed seems to be a conflict although a fair amount of these vacant lands do exist in the Township.
4. Should this section be amended to:
 - Only allow the keeping of farm animals on sub 4 acre lots in the R-1 Zone.
 - Prohibit the keeping of farm animals in commercial and industrial zones.
 - Not change anything.