

# **Chapter 9: Non-conformances.**

## **A. General Provisions.**

1. Intent. Within the districts established by this UDO or by amendments that may later be adopted, there are legally non-conforming lots; legally non-conforming structures; legally non-conforming uses of land; and/or legally non-conforming zoning districts (individually or in combination) that were lawful before this UDO was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this UDO or future amendments.
  - a. It is the intent of this UDO to permit these legal non-conformities to continue until they are removed but not to encourage their survival.
  - b. It is further the intent of this UDO that non-conformities shall not be enlarged upon, expanded, extended, or intensified, nor be used as grounds for adding other structures or uses which are prohibited elsewhere in the same district.
2. Illegal Non-conforming vs. Legal Non-conforming.
  - a. Illegal non-conforming. A structure, lot, or use that is non-conforming and that was established or constructed without an approved improvement location permit or approval from the BZA or PC. An illegal non-conforming property shall be subject to actions and penalties allowed by this UDO and shall be altered to conform with all applicable standards and regulations of this chapter.
  - b. Legal non-conforming. A structure, lot, or use that was legally established prior to the adoption or amendment of this UDO, but would be prohibited, regulated, or restricted under the terms of this UDO are considered legally non-conforming. Legal non-conforming differs from illegal non-conforming in that the reason for the non-conformance is caused by the enactment of a zoning ordinance or a change to the zoning ordinance (including the official zoning map). Legal non-conforming lots, structures, uses, etc., may continue in the manner and to the extent that they existed or were used at the time the change in the zoning ordinance was enacted.
  - c. Exemptions. Structures, uses, and other property features that are non-conforming due to prior variance, variance of use, special exception, or other approvals shall not be subject to the provisions of this subchapter, but shall conform to the terms of their respective approval.
3. Repairs and Maintenance. The following applies to legal non-conforming structures, uses, or uses of structures and land in combination:
  - a. Ordinary Repairs. Ordinary repairs or replacement of walls, heating, fixtures, wiring, plumbing, etc. may be done under the condition that the non-conforming features (setbacks, lot coverage, land use, etc.) are not increased.

- b. **Structures Declared Unsafe.** Nothing in this chapter shall be deemed to prevent the strengthening, repairing, or restoring to a safe condition of any structure that has been declared unsafe by the appropriate county official.
4. **Burden of Proof.** The burden of establishing the legality of a non-conformity that is lawfully existing under the provisions of this UDO is upon the property owner of the non-conformity and not upon the jurisdiction.
5. **Current Construction.**
  - a. To avoid undue hardship, nothing in this UDO shall be deemed to require a change in the plans, construction, or designated use of any building or development on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this UDO and upon which actual building construction has been carried on diligently.
  - b. As long as a permit has been issued, where demolition or removal of an existing building has substantially begun prior to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried on diligently.
  - c. Actual construction is hereby defined, at a minimum, as having a valid ILP and/or BP upon the initial passage of this UDO.

**B. Non-conforming Lots of Record.** Where a lawful lot(s) of record exists at the effective date of adoption or amendment of this UDO that would not be permitted to be created by the regulations imposed by this UDO, the lot may be developed so long as it remains otherwise lawful. Unless a Variance is obtained from the BZA, the following standards shall be met:

1. The lot must be in separate record with road frontage that is not shared with any existing lot(s) unless an easement exists for this purpose;
2. Development conforms with the applicable yard dimensions and development standards/requirements for the zoning district except for lot area and/or lot width; and
3. All other provisions of this UDO are met.

**C. Non-conforming Structures.** Where a lawful structure(s) exists at the effective date of adoption or amendment of this UDO that could not now be built under the terms of this UDO because of restrictions on area, lot, height, location on the lot, or other requirements concerning the structure, such structure(s) may be continued so long as it remains otherwise lawful. Unless a Variance is obtained from the BZA, the following standards shall be met:

1. A non-conforming structure may not be enlarged, altered, or added on to in a way that increases its non-conformity. However, any structure, or portion thereof, may be altered to decrease its non-conformity.

2. Whenever a legal non-conforming structure on a parcel of real property used for residential purposes is damaged or destroyed, the owner of the parcel shall be permitted to reconstruct, repair, or renovate the non-conforming structure if the reconstruction, repair, or renovation meets the following requirements:
  - a. The structure will continue to be used for residential purposes; and
  - b. The new foundation of the reconstructed, repaired, or renovated structure may not exceed the square footage of the foundation of the damaged or destroyed structure.
3. If a non-conforming structure or portion of a non-conforming structure is destroyed or damaged by any means where the damage is more than fifty percent (50%) of its fair market value (as determined by assessed value or appraisal provided by the property owner, whichever is greater), it shall not be repaired or rebuilt except as permitted by this UDO or a previously granted variance.
  - a. The reconstruction process must commence within twelve (12) months of when the damage occurred, including securing the necessary building permits. At the discretion of the Administrator, additional time may be granted in writing for a valid and reasonable explanation.
  - b. The structure must be built equal to or less than the square footage as the previous building.
4. The requirements in subsections "1" and "2" above concerning the reconstruction, repair, or renovation of a damaged or destroyed legal non-conforming structure do not authorize the reconstruction, repair, or renovation of a damaged or destroyed non-conforming structure that is:
  - a. Located within a flood plain (as defined in IC 14-8-2-99), or
  - b. Subject to the jurisdiction of a Historic Preservation Commission (per IC 36-7-11).
5. Should such structure be moved for any reason, it shall conform to all the regulations for the district in which it is located after it is moved.
6. If any non-conforming structure is abandoned for any reason for more than one (1) year, such structure shall be required to conform with all regulations of this UDO unless a variance(s) is obtained from the BZA.

## **D. Non-conforming Signs.**

1. Any sign lawfully existing on the effective date of this ordinance, or amendment thereto that does not conform to all the standards and regulations of this ordinance is considered a legal non-conforming sign.
2. Signs which existed prior to the time this ordinance was passed and were in conformance with previous ordinances will be legally non-conforming until such time as a major change is made to the sign. Major changes include:
  - a. Change of business entity,

- b. Modification to the size, shape, or height,
- c. Adding lights or illumination,
- d. Adding/moving electronic components,
- e. Structural alterations, and/or
- f. Relocation or moving of the sign

3. Repair, Maintenance, and Replacement.

- a. All legal non-conforming signs shall be kept in good repair, safe, neat, clean, and attractive condition. In the event non-conforming signs are not kept in said condition or are demolished by any force whatsoever to the extent of fifty percent (50%) or more of the sign area, said signs shall then be made to conform to this ordinance.
- b. Legal non-conforming signs that are damaged from fire, flood, other natural disaster, or criminal act may be restored to their legal non-conforming condition. Such signs, if rebuilt or restored, shall be identical or smaller in volume, height, setback, scale, and all other aspects to that which was altered or removed.

4. A sign shall be removed by the owner or lessee of the premises upon which the sign is located when the business which it advertises is no longer conducted on the premises. If the owner or lessee fails to remove the sign, the Administrator shall give the owner thirty (30) days written notice to remove it. Upon failure to comply with this notice, the Administrator may remove the sign at cost to the property owner or lessee.

## **E. Non-conforming Uses of Land.**

1. Where a lawful use(s) of land exists at the effective date of adoption or amendment of this UDO that would not be permitted by the regulations imposed by this UDO, this use(s) may be continued so long as they remain otherwise lawful, provided that:
  - a. A legally non-conforming use may be continued but shall not be extended, expanded, or changed to another non-conforming use unless a Variance of Use is obtained from the BZA.
  - b. A non-conforming use may be extended throughout any part of an existing structure if the structure was arranged or designed for such use at the time of adoption or amendment of this UDO, but no such use shall be extended to occupy any land outside such building.
  - c. A legally non-conforming use shall not be enlarged, increased, intensified, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this UDO, except as permitted by a Variance of Use from the BZA.
  - d. A legal non-conforming single-family residence located in any commercial, industrial, or institutional zoning district may be replaced or expanded for the purpose of continuing the

residential use of the property. Required setbacks and lot coverage for the residence shall be either those established by the Residential (R) zoning district, or those provided by the pre-expansion structure, whichever is less restrictive.

- e. A legally non-conforming use shall not be moved, in whole or in part, to any portion of the lot or parcel that was not occupied by such use at the effective date of adoption or amendment of this UDO.
- f. If any such legally non-conforming use of land is discontinued or abandoned for any reason for more than six (6) months, any subsequent use of such land shall conform to all regulations of this UDO. There shall be no return to the previous non-conforming use after it is discontinued or abandoned for more than six (6) months unless a Variance of Use is granted by the BZA.
  - i. Uses that are required to be discontinued due to governmental action that impedes access to the premises or damage from fire, flood, other natural disaster, or criminal act shall be exempt from this provision.
- g. No additional structures shall be erected in connection with a non-conforming use of land that do not conform to all requirements of this UDO.
- h. Where non-conforming status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the non-conforming status of the use, in which case, both the structure and the use shall be brought into conformance with the provisions of this UDO

2. Agricultural Uses. Consistent with IC 36-7-4-616, an agricultural use of land that constitutes an agricultural legally non-conforming use may be changed to another agricultural use of land without losing agricultural non-conforming use status. In addition, an agricultural non-conforming use shall not be restricted or required to obtain a variance of use or special exception so long as an agricultural legally non-conforming use has been maintained for three (3) years in a five (5) year period.

**F. Non-conforming Zoning Districts.** At the time of adoption or amendment of this UDO, if a zoning district(s) is no longer listed in the text of the UDO, property zoned under this district(s) will continue to be zoned as such until the property is rezoned to a conforming zoning district. The development standards and permitted uses previously associated with the non-conforming zoning district shall still apply until rezoning to a conforming zoning district occurs.