

# 3

## Nonconforming Provisions

**3.01 Intent:** It is the intent of this Ordinance to permit these *legally established nonconforming lots of record, buildings, structures, uses and signs* to continue until they are removed or abandoned. It is further the intent of this Ordinance that *legally established nonconforming buildings, structures, uses and signs* shall not be enlarged, expanded, or extended; or be used as grounds for adding other buildings, structures, uses or signs which are prohibited elsewhere in the same district.

- (A) Within the *districts* established by this Ordinance, there exist the following which were *legally established* prior to the effective date of the adoption, revision or amendment of this Ordinance, but which would be prohibited, regulated or restricted under the provisions of this Ordinance:
  - (1) *Nonconforming lots of record;*
  - (2) *Nonconforming buildings or structures;*
  - (3) *Nonconforming uses of land;*
  - (4) *Nonconforming uses within nonconforming buildings or structures;* and,
  - (5) *Nonconforming signs*
- (B) *Nonconforming lots of record, nonconforming buildings or structures, nonconforming uses of land, nonconforming uses within nonconforming buildings or structures, and nonconforming signs* that are either illegal, or not *legally established* on the effective date of this Ordinance, shall not become *legally established* by virtue of the enactment of this Ordinance.
- (C) *Nonconforming lots of record, nonconforming buildings or structures, nonconforming uses of land, nonconforming uses within nonconforming buildings or structures, and nonconforming signs* which are in full compliance with the regulations of this Ordinance pertaining to the permitted *uses and development standards* of the *district* to which the real estate is zoned shall, after the effective date of this Ordinance, be considered validated as *conforming lots of record, buildings, structures, uses and signs* for the purposes of interpreting and applying this ordinance.

### 3.02 Certificate of Legally Established Nonconforming Use of Land

In order to protect the lawful nonconforming status of a *nonconforming lot, use, building, structure or sign*, a person who owns or operates a *nonconforming lot, use, building, structure or sign* may request a Certificate of Legally Established Nonconforming Use of Land. The applicant, prior to the issuance of the Certificate of Legally Established Nonconforming Use of Land, shall bear the burden of proof to demonstrate that the *lot, use, building, structure or sign* was *legally established* per the requirements of this section. Submitted materials shall include, but not be limited to the following:



- (A) A completed application which shall include at a minimum: legal description of the property; a site location map; property tax identification number; Township Assessor property cards; recorded documents such as contracts, liens, or leases; business records that provide insight into the establishment or continuing use of the property; photographic evidence; *Town* records; and
- (B) Any other information deemed appropriate by the *Zoning Administrator* to determine the legal status of the *nonconforming lot, use, building, structure* or *sign* as a lawful *nonconforming use*, and for the proper administration and enforcement of this ordinance, such as but not limited to: lease and *building* histories, utility bills, city directory listings, historical ads, building permits, zoning and variance histories, affidavits, etc.
- (C) A fee, as established by the *Town*.

### 3.03 Incompatibility of Legally Established Nonconforming Uses

- (A) Legally established *nonconforming uses* are declared by this ordinance to be incompatible with *permitted uses* in the *district* in which such *legally established nonconforming use* is located.
- (B) A *legally established nonconforming use* of a *building* or *structure*, or a *legally established nonconforming use* of land, shall not be extended, expanded or enlarged after the effective date of this ordinance.

### 3.04 Avoidance of Undue Hardship

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans for or construction of any *building, structure* or *sign*, or the designation of use of any *building* or *structure*, for which an *improvement location permit* has been properly issued prior to the effective date of this ordinance, provided that:

- (A) The construction of such *building, structure* or *sign* is commenced within three (3) years of such effective date of this ordinance;
- (B) Construction of such *building, structure* or *sign* is diligently prosecuted to completion; and,
- (C) Construction of such *building, structure* or *sign* shall be completed within seven (7) years of the issuance of the *improvement location permit*.



### 3.05 Legally Established Nonconforming Lots

(A) Legally Established Nonconforming Lots of Record.

Any *legally established lot* recorded, or any *legally established* platted *lot* recorded prior to December 31, 1993, having less than the required minimum *lot area* or minimum *lot width* required by the applicable *district* regulations of this ordinance, shall be deemed a permitted exception to such minimum *lot area* or minimum *lot width*, and may be used for any *permitted use* within the applicable *district* in which such *lot* is located, provided that all other *development standards* are met.

(B) Legally Established Nonconforming Lot Frontage or Lot Area Resulting from Acquisition of Right-of-Way.

Any *legally established lot* in which the frontage of such *lot* or the area of such *lot* has been reduced below that which is required by the applicable *district* regulations of this ordinance by the acquisition of *right-of-way* or access rights by a governmental entity, shall be deemed a permitted exception to such minimum frontage requirements and may be used for any *permitted use* within the applicable *district* in which such *lot* is located provided that all other *development standards* are met.

### 3.06 Legally Established Nonconforming Buildings or Structures (Excluding Signs)

Where a *legally established nonconforming building* or *structure* exists on the effective date of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on: *gross floor area*; *lot coverage*; *building* height limitations; *front, side and rear setbacks* and *yards*; location on the *lot*; bulk; or other provisions of this ordinance applicable to the *building* or *structure*, such *building* or *structure* may continue to exist so long as it remains otherwise lawful, subject to compliance with the following provisions:

- (A) Such *legally established nonconforming building* or *structure* may not be enlarged, expanded or altered in a way which increases its nonconformity, provided such *building* or *structure* may be altered so as to decrease the extent of nonconformity;
- (B) Should such *legally established nonconforming building* or *structure*, or *legally established nonconforming* portion of a *building* or *structure*, be damaged or destroyed by any means to the extent that restoration will exceed fifty (50) percent of the cost of construction of the entire *building* or *structure* at the time the damage or destruction is reported, as determined pursuant to Section 3.12 Determination of Cost of Construction, below, said *building* or *structure* shall not be reconstructed except in conformity with the provisions of this ordinance; and
- (C) Should such *legally established building* or *structure* be moved for any reason for any distance whatsoever, such *legally established building* or *structure* shall thereafter conform to the provisions of this ordinance.



### 3.07 Legally Established Nonconforming Uses of Land

Where *legally established nonconforming uses of land* exist on the effective date of this Ordinance which would not be permitted by the provisions of this Ordinance, such *uses* may be continued so long as they remain otherwise lawful provided that:

- (A) Such *legally established nonconforming uses* shall not be enlarged, expanded, increased or extended to occupy a greater area of land than was occupied on the effective date of this Ordinance;
- (B) Such *legally established nonconforming uses* shall not be moved in whole or in part to any portion of the *lot* or parcel other than that occupied by such *uses* on the effective date of this Ordinance; and
- (C) No additional *building* or *structure* shall be erected in connection with such *legally established nonconforming* use of land, except as where provided under Section 3.13 Below.

### 3.08 Discontinuation of Legally Established Nonconforming Uses of Land

If any *legally established nonconforming use*, other than single family, is *abandoned* for any period of time; or is discontinued for more than twelve (12) consecutive months (except, when a probate related court order or governmental action impedes access to the premises), it shall conform to the provisions of this Ordinance.

### 3.09 Legally Established Nonconforming Uses within Legally Established Nonconforming Buildings or Structures

- (A) If any *legally established nonconforming use* is located within a *legally established nonconforming building* or *structure*, and such *legally established nonconforming building* or *structure* becomes unsafe or unlawful by reason of physical condition and is razed, the *legally established nonconforming use* previously being conducted in such *legally established nonconforming building* or *structure* shall be extinguished and no longer permitted.
- (B) If any *legally established nonconforming use* is located within a *legally established nonconforming building* or *structure* and such *legally established nonconforming building* or *structure* is damaged or destroyed by any means to the extent that restoration will exceed fifty (50) percent of the cost of construction of the entire *building* or *structure* at the time the damage or destruction is reported, as determined pursuant to Section 3.12 Determination of Cost of Construction, below, the *legally established nonconforming use* previously being conducted in such *legally established nonconforming building* or *structure* shall be extinguished and no longer permitted.



## 3.10

**Repairs and Maintenance of Legally Established Nonconforming Buildings or Structures (Excluding Signs)**

- (A) Ordinary Repairs. On any *legally established nonconforming building or structure*, or portion of a *building or structure* containing a *legally established nonconforming use*, work may be done on ordinary repairs or on the repair or replacement of walls, fixtures, wiring or plumbing, provided that the cubic feet content existing when the *building or structure*, or portion of a *building or structure* containing a *legally established nonconforming use* became *nonconforming* shall not be increased. Nothing herein shall be deemed to prevent the strengthening, repairing or restoring to safe condition of any *building or structure*, or part thereof, declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
- (B) Reconstruction Prohibited. If a *legally established nonconforming building or structure* or portions of a *building or structure* containing a *legally established nonconforming use* becomes unsafe or unlawful by reason of physical condition and is razed, such *building or structure* shall not thereafter be rebuilt or used except in conformity with the provisions of this ordinance.
- (C) Remodeling. The *gross floor area* and the maximum *building height* devoted to the *legally established nonconforming use* shall not be increased, except as such increase is required to comply with other applicable federal, state or local regulations (i.e., minor enlargements to accommodate ADA accessibility guidelines or current building codes).
- (D) Parking Area, Outside Storage Area or Outside Operations Area.

A *legally established nonconforming parking area*, outside storage area or outside operations area may be maintained, repaired or upgraded by hard surfacing with asphalt or concrete provided that:

- (1) There is no increase in the total area occupied by the *parking area*, outside storage area or outside operations area; and,
- (2) If, in the discretion of the *Zoning Administrator*, the hard surfacing would serve to reduce a potential negative impact of the existing *parking area*, outside storage area or outside operations area on surrounding properties (e.g., reduction in fugitive dust emissions, noise, erosion, etc.).
- (3) Any improvements to a legally established nonconforming parking area, outside storage area or outside operations area under the provisions of subsection (1), above, shall provide at least 25% of the required landscaping requirements for the underlying zoning district each time such improvement is made.



- (E) In case of disagreement with the determination of the *Zoning Administrator*, any aggrieved party may file an appeal with the *Board of Zoning Appeals* pursuant to the provision of Section 14.03 Board of Zoning Appeals, of this Ordinance. Such hard surfacing shall require an *improvement location permit* and shall also be subject to full review under, and compliance with, the storm drainage requirements of the *Town*.

### 3.11 Legally Established Nonconforming Signs

- (A) Continued Existence. Any *legally established nonconforming sign* may continue to exist, including the performance of normal and routine maintenance, so long as such *sign* remains otherwise lawful.
- (B) Repair and Maintenance. *Legally established nonconforming signs* may receive normal and routine repair and maintenance subject to the following provisions:
- (1) A *legally established nonconforming sign* may not be enlarged, expanded or altered in a way which increases its nonconformity;
  - (2) A *legally established nonconforming sign* erected pursuant to the grant of a *variance* of either a previously enacted zoning regulation or this ordinance for number of *signs*, height of *sign*, setback of *sign* or *sign* surface area may be altered so as to decrease the extent of nonconformity authorized by such grant of *variance*;
  - (3) Except as provided for in sub-Section 3.10 (B)(2), above, the removal of a *sign structure* or a *sign* cabinet shall be deemed definitive evidence that such *sign* requires work beyond normal and routine repair and maintenance, and such *sign* shall not be repaired, maintained or reconstructed except in conformity with the provisions of this ordinance;
  - (4) If a *legally established nonconforming sign* is damaged or destroyed by any means to the extent that the repair or reconstruction of the *sign* exceeds fifty (50) percent of the cost of construction of the entire *sign*, determined pursuant to Section 3.12 Determination of Cost of Construction, below, said *legally established nonconforming sign* shall not be reconstructed except in conformity with the provisions of this ordinance;
  - (5) If the cost of normal and routine repair and maintenance of a *legally established nonconforming sign* exceeds fifty (50) percent of the cost of construction of the entire *sign*, determined pursuant to Section 3.12 Determination of Cost of Construction, below, said *legally established nonconforming sign* shall not be repaired, maintained or reconstructed except in conformity with the provisions of this ordinance;



- (6) Should a *legally established nonconforming sign* be moved for any reason for any distance whatsoever, such *legally established nonconforming sign* shall thereafter conform to the provisions of this ordinance.

## 3.12 Determination of Cost of Construction

In determining the reported cost of construction of a *building* or *structure* or the cost of construction of a *sign*, the *Zoning Administrator* may consider the following items:

- (A) *Building* or *Structure*. Documentation prepared by and provided by the applicable insurance company responsible for adjusting the loss;
- (B) *Sign*. Documentation prepared by and provided by an appraiser licensed by the State of Indiana to appraise the type of property involved; or,
- (C) Other documentary evidence relevant to reported cost of construction deemed appropriate by the *Zoning Administrator*.

## 3.13 Reconstruction, Remodeling or Enlargement of Legally Established Nonconforming Single Family Dwelling or Two Family Dwelling

- (A) Notwithstanding any provision of this section to the contrary, any *legally established nonconforming* single family dwelling may be either:
  - (1) Reconstructed if damaged or destroyed by fire, natural disaster or for any other reasons; or
  - (2) Remodeled or enlarged,
 provided that such remodeling or additions comply with the *development standards* of the District in which it is located.
- (B) Notwithstanding any provision of this section to the contrary, any *legally established nonconforming* two family dwelling may be either:
  - (1) reconstructed if damaged or destroyed by fire, natural disaster or for any other reasons; or
  - (2) remodeled or enlarged,
 provided that such remodeling or additions comply with the *development standards* of the District in which it is located.