

NONCONFORMING LOTS, USES, BUILDINGS, STRUCTURES OR SIGNS

154.045 INTENT.

(A) Within the districts established by this Chapter, there exist:

- (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 which were legally established prior to the effective date of this chapter, but which would be prohibited, regulated or restricted under the provisions of this chapter.

(B) It is the intent of this Chapter to permit these legally established nonconforming lots of record, buildings, structures, uses and signs to continue until they are removed, but not to encourage their survival. It is further the intent of this Chapter that legally established nonconforming buildings, structures, uses and signs shall not:

- (1) be enlarged upon, expanded or extended; or,
- (2) be used as grounds for adding other buildings, structures, uses or signs which are prohibited elsewhere in the same district.

(C) 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 chapter shall not become legally established by virtue of the enactment of this chapter.

(D) 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 chapter 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 chapter, be considered validated as conforming lots of record, buildings, structures, uses and signs for the purposes of interpreting and applying this chapter.

(Ord. 51-05, § 8.01.03A, 5/10/2005)

154.046 INCOMPATIBILITY OF LEGALLY ESTABLISHED NONCONFORMING USES.

(A) Legally established nonconforming uses are declared by this chapter 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 chapter.

(Ord. 51-05, § 8.01.03B, 5/10/05) Penalty, see § 154.999

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154.047 AVOIDANCE OF UNDUE HARDSHIP.

To avoid undue hardship, nothing in this chapter 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 chapter; provided that:

(A) The construction of such building or structure (excluding signs) is commenced within six (6) months of such effective date, or the construction of any such sign is commenced within thirty (30) days of such effective date;

(B) Construction of such building, structure or sign is diligently prosecuted to completion; and,

(C) Construction of such building or structure (excluding signs) shall be completed within two (2) years of the issuance of said improvement location permit, or construction of such sign shall be completed within ninety (90) days of the issuance of said improvement location permit.

(Ord. 51-05, § 8.01.03C, 5/10/05)

154.048 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 the effective date of this chapter, having less than the required minimum lot area or minimum lot width required by the applicable district regulations of this chapter, 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.* Any legally established lot in which the frontage of such lot has been reduced below that which is required by the applicable district regulations of this chapter 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.

(C) *Buildable Lots.* A nonconforming lot of record shall be deemed a legally established nonconforming lot of record may be used as a buildable lot if such nonconforming lot of record complies with one (1) of the following:

(1) Any lot, in its entirety, of a subdivision that was recorded in the Recorder's Office prior to the adoption of this Chapter.

(2) Any part of a lot or any combination of parts of lots of a subdivision provided that prior to the adoption of this ordinance all of the following provisions are complied with:

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- (a) the subdivision was recorded in the Recorder's Office;
- (b) recorded evidence of ownership describing the property as a single and separate ownership was recorded in the Recorder's Office;
- (c) the property met or exceeded the lot area and width requirements of the zoning district in which the property is located; and
- (d) the property had frontage in conformance with the requirements of the zoning ordinance along an improved, dedicated, and accepted public road.

(3) A parcel described by a metes and bounds description, or as lots or any combination of parts of lots of an unrecorded subdivision provided that all of the following provisions are complied with:

- (a) recorded evidence of ownership describing the parcel as a single and separate ownership was recorded in the Recorder's Office prior to March 20, 1961;
- (b) the current legal description describes the parcel as recorded in the Recorder's Office prior to March 20, 1961; and
- (c) the parcel has frontage along an improved, dedicated, and accepted public road.

(4) A parcel described by a metes and bounds description, or lots or any combination of parts of lots of unrecorded subdivisions provided that all of the following provisions are complied with:

- (a) recorded evidence of ownership describing the parcel as a single and separate ownership was recorded in the Recorder's Office between March 20, 1961 and March 30, 1966;
- (b) the current legal description describes the parcel as recorded in the Recorder's Office between March 20, 1961 and March 30, 1966;
- (c) the parcel met or exceeded the lot area and width requirements of the zoning district in which the parcel is located; and
- (d) the parcel has frontage along an improved, dedicated, and accepted public road in conformance with the requirements of this chapter.

(5) A parcel of land 10 acres or more in size that is zoned A: Agricultural and was zoned R: Single Family prior to April 13, 1979, provided that all of the following provisions are complied with:

- (a) the property is to be used for an agricultural use as defined in this chapter; and

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(b) the property meets or exceeds the then required 100 feet of frontage along an improved, dedicated, and accepted public road; and (*Ord. 68-09*)

(c) recorded evidence of ownership describing the parcel as a single and separate ownership was recorded prior to April 13, 1979 in the Recorder's Office.

(6) A parcel of land 10 acres or more in size that is zoned A: Agricultural and was zoned A: Agricultural prior to April 13, 1979, provided that all of the following provisions are complied with:

(a) the property is to be used for an agricultural use as defined in this Chapter;

(b) the property meets or exceeds the then required 300 feet of frontage along an improved, dedicated, and accepted public road; and

(c) recorded evidence of ownership describing the parcel as a single and separate ownership was recorded prior to April 13, 1979 in the Recorder's Office.

(7) A parcel of land 10 acres or more in size zoned R: Single Family provided that all of the following provisions are complied with:

(a) the parcel has frontage along an improved, dedicated, and accepted public road in conformance with the requirements of Ordinance #78-97 (APC Amendment #669-97);

(b) recorded evidence of ownership describing the parcel as a single and separate ownership was recorded in the Recorder's Office prior to July 8, 1997; and

(c) the current legal description describes the parcel as recorded in the Recorder's Office prior to July 8, 1997.

(8) A parcel of land described by a metes and bound description, or as a lot or lots or any combination of parts of lots of an unrecorded or recorded subdivision that does not meet any of the other sections of this definition and provided that prior to June 27, 2008 the following were met: (*Ord. 68-09*)

(a) recorded evidence of ownership describing the property as a single and separate ownership was recorded in the Recorder's Office; and

(b) a primary structure existed on the property.

(9) A lot of record as defined in items a. through h. above which is reduced in area as a result of action by a governmental unit or entity.

(*Ord. 51-05, § 8.01.03D, 5/10/05; Ord. 68-09, § 2, 8/11/09*)

154.049 LEGALLY ESTABLISHED NONCONFORMING BUILDINGS OR STRUCTURES (EXCLUDING SIGNS).

Where a legally established nonconforming building or structure exists on the effective date of this Chapter that could not be built under the terms of this Chapter 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 Chapter 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 § 154.056, below, said building or structure shall not be reconstructed except in conformity with the provisions of this chapter; 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 chapter.

(Ord. 51-05, § 8.01.03E, 5/10/05) Penalty, see § 154.999

154.050 LEGALLY ESTABLISHED NONCONFORMING USES OF LAND.

Where legally established nonconforming uses of land exist on the effective date of this chapter which would not be permitted by the provisions of this chapter, 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 chapter;

(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 chapter; and

(C) No additional building or structure shall be erected in connection with such legally established nonconforming use of land.

(Ord. 51-05, § 8.01.03F, 5/10/05) Penalty, see § 154.999

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154.051 DISCONTINUATION OF LEGALLY ESTABLISHED NONCONFORMING USES OF LAND.

If any legally established nonconforming use of land, other than single family residential is: (*Ord. 13-14, 3/11/14*)

(A) Abandoned for any period of time; or,

(B) Discontinued for more than six (6) consecutive months (except when a probate related court order or government action impedes access to the premises), any subsequent use of such land shall conform to the provisions of this Chapter.

(*Ord. 51-05, § 8.01.03G, 5/10/05*) Penalty, see § 154.999

154.052 DISCONTINUATION OF LEGALLY ESTABLISHED NONCONFORMING USES WITHIN LEGALLY ESTABLISHED BUILDINGS OR STRUCTURES.

If any legally established nonconforming use with a legally established building or structure is:

(A) Abandoned for any period of time; or,

(B) Discontinued for more than twelve (12) consecutive months (except when a probate related court order or government action impedes access to the premises), any subsequent use of such land shall conform to the provisions of this Chapter.

(*Ord. 51-05, § 8.01.03H, 5/10/05*) Penalty, see § 154.999

154.053 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 § 154.056, below, the legally established nonconforming use previously being conducted in such legally established nonconforming building or structure shall be extinguished and no longer permitted.

(*Ord. 51-05, § 8.01.03I, 5/10/2005*) Penalty, see § 154.999

**154.054 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 non-bearing 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 chapter.

(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); and,

(D) *Parking Area, outside storage area or outside operations area.*

(1) A legally established nonconforming parking area, outside storage area or outside operations area may be maintained, repaired or upgraded by hardsurfacing with asphalt or concrete provided that:

(a) There is no increase in the total area occupied by the parking area, outside storage area or outside operations area; and,

(b) If, in the discretion of the Zoning Administrator, the hardsurfacing 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.).

(2) In case of disagreement with the determination of the Zoning Administrator, any aggrieved party may file and appeal with the Board of Zoning Appeals pursuant to the provision of §§ 154.555 through 154.565 of this chapter. Such hardsurfacing shall require an improvement location permit and shall also be subject to full review under and compliance with the storm drainage requirements of St. Joseph County.

(Ord. 51-05, § 8.01.03J, 5/10/05) Penalty, see § 154.999

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154.055 LEGALLY ESTABLISHED NONCONFORMING SIGNS.

(A) Any legally established nonconforming sign within St. Joseph County may continue to exist, including the performance of normal and routine maintenance, so long as such sign remains otherwise lawful.

(B) 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 chapter 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 division (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 chapter;

(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 § 154.056, below, said legally established nonconforming sign shall not be reconstructed except in conformity with the provisions of this chapter;

(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 § 154.056, below, said legally established nonconforming sign shall not be repaired, maintained or reconstructed except in conformity with the provisions of this Chapter; and,

(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 chapter.

(Ord. 51-05, § 8.01.03K, 5/10/05) Penalty, see § 154.999

154.056 DETERMINATION OF COST OF CONSTRUCTION.

In determining the reported cost of construction of a building or structure (excluding signs) or the cost of construction of a sign, the Zoning Administrators 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.

(Ord. 51-05, § 8.01.03L, 5/10/05)

154.057 RECONSTRUCTION, REMODELING OR ENLARGEMENT OF A LEGALLY ESTABLISHED NONCONFORMING SINGLE FAMILY DWELLING OR TWO FAMILY DWELLING.

Notwithstanding any provision of this Chapter to the contrary, any legally established nonconforming single-family dwelling or two-family dwelling, and accessory buildings may be:
(Ord. 19-20, 2/18/20)

(A) Reconstructed if damaged or destroyed by fire, natural disaster or for any other reasons; or,

(B) Remodeled or enlarged, provided that such remodeling or additions comply with the development standards of the R: Single Family District related to maximum lot coverage, minimum yards and building setbacks, maximum building height, and off-street parking.

(Ord. 51-05, § 8.01.03M, 5/10/05)

154.058 AGRICULTURAL NONCONFORMING USE.

An agricultural nonconforming use may be changed to another agricultural use without losing agricultural nonconforming use status, provided, however, such agricultural nonconforming use shall be:

(A) Maintained for at least any three (3) year period in a five (5) year period;

(B) Maintained and operated in compliance with all state environmental and state health laws and rules; and,

(C) Maintained and operated in compliance with all requirements of the St. Joseph County Zoning Ordinance applicable to conforming agricultural uses, as such ordinance may be amended from time to time.

(Ord. 51-05, § 8.01.03N, 5/10/05)