

## Chapter 9, Nonconformities

### A. General Provisions.

1. Within the districts established by this UDO or by amendments that may later be adopted, there exist individually or in combination: legally nonconforming lots; legally nonconforming structures; legally nonconforming site features; legally nonconforming uses of land; and legally nonconforming zoning districts, which 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.
2. It is the intent of this UDO to permit these legal nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this UDO that nonconformities 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.
3. Illegal uses existing at the time this UDO is enacted shall not be validated by virtue of its enactment.
4. The burden of establishing the legality of a nonconformity that is lawfully existing under the provisions of this UDO is upon the property owner of the nonconformity and not upon the jurisdiction.
5. Nonconforming uses are declared by this UDO to be incompatible with permitted uses in the districts in which such uses are located. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this UDO by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the district in which such use is located.
6. 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.
7. Where demolition or removal of an existing building has been 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. Actual construction is hereby defined at a minimum as having a valid ILP upon the initial passage of this UDO.

### B. Nonconforming Lots of Record.

1. **Compliance Required.** No person may use, occupy, or develop land, buildings, or other structures, or permit the use, occupancy, or development of land, buildings, or other structures except in accordance with all the provisions of this UDO. This includes the subdivision of property which shall be approved by the PC in accordance with the provisions of this UDO and filed with the Johnson County Recorder.
2. **General Provisions.** Where, at the time of adoption of this UDO, lawful lots of record exist which 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, provided that:

- a. The lot must be in separate record and not of continuous frontage with existing lots. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the district provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.
- b. All other provisions of this UDO are met or a variance from the BZA is obtained.

### C. Nonconforming Structures.

1. **General Provisions.** Where a lawful structure exists at the effective date of adoption or amendment of this UDO that could not now be built under the terms of this UDO by reason of restrictions on area, lot, height, 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:
  - a. A nonconforming structure may not be enlarged, altered, or added on to in a way that increases its nonconformity unless a variance is obtained from the BZA. However, any structure or portion thereof may be altered to decrease its nonconformity.
  - b. Should a nonconforming structure or nonconforming portion of structure be destroyed by any means to the extent of more than fifty percent (50%) of its area immediately prior to the damage, it shall not be reconstructed except in conformity with the provisions of this UDO.
  - c. Should such structure be moved for any reason, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
  - d. A nonconforming use may be extended throughout any parts of a building, which manifestly 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.
  - e. If any such nonconforming structure is abandoned for any reason for more than one (1) year, such structure shall be required to conform to the regulations specified by this UDO for the district in which such structure is located unless appropriate developmental standards variances are obtained from the BZA.

### D. Nonconforming Site Features.

1. **Generally.** Where a lawful site feature exists at the effective date of adoption or amendment of this UDO that would not now be permitted by the regulations imposed by this UDO, such site feature may be continued so long as it remains otherwise lawful, subject to the provisions of this section.
2. **Continuation of Legal Nonconforming Site Features.** The continuation and modification of legal nonconforming site features shall be consistent with the following requirements.
  - a. *Increases in Nonconformity.* No legal nonconforming site feature shall be altered, removed, or otherwise modified in a manner that increases the amount of nonconformity. Site features may be modified in a manner that maintains or lessens the extent of the nonconformity.

- b. *Property Redevelopment.* The removal and replacement of the primary structure on a lot to the extent that either its use must be discontinued for any period of time or a phased removal and replacement results in a completely new structure shall require all site features to be brought into compliance with all requirements of this Ordinance. For lots containing multiple primary structures this provision shall apply if a structure or structures totaling more than seventy-five (75%) of the pre-demolition building area (cumulative from the effective date of this Ordinance) is removed and replaced with new development.
- c. *Use and/or Structure Expansion.* If the use of, or structure present on a property is expanded the corresponding site features shall be required to be modified to an extent which is proportional to the expansion. In addition, the screening of all refuse and recycling areas shall be updated to meet requirements of this UDO. Site features that are proportional to use and structures on a property include, but are not limited to, the number of parking spaces, lot interior landscaping, etc. Parking spaces shall also be brought into compliance with Americans with Disabilities Act standards, as required by the applicable local building code. All modifications to site features shall comply with the applicable requirements of this Ordinance.
- d. *Change of Use.* The change of use of a property shall require that all site features that are directly related to use be brought into compliance with this Ordinance. The primary site feature related to use is the number of parking spaces required. However, if the change of use results in a decrease in the extent of the nonconformity, compliance shall not be required. For example, if a new use requires fewer parking spaces than its predecessor, but more than are available on site, that use shall be permitted without additional parking being constructed.

#### E. Nonconforming Uses of Land.

1. **General Provisions.** Where, at the time of adoption of this UDO, lawful uses of land exist which would not be permitted by the regulations imposed by this UDO, the uses may be continued so long as they remain otherwise lawful, provided that:
  - a. A nonconforming use may be continued, but shall not be extended, expanded, or changed to another nonconforming use unless a use variance is obtained from the BZA.
  - b. A nonconforming use shall not be enlarged, increased, or intensified, nor 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 the BZA.
  - c. A nonconforming use shall not 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 or amendment of this UDO.
  - d. If any such nonconforming use of land is discontinued or abandoned for any reason for more than one (1) year, any subsequent use of such land shall conform to the regulations specified by this UDO for the district in which such land is located. There shall be no return to the previous nonconforming use after it is discontinued or

abandoned for more than one (1) year unless a use variance is obtained from the BZA.

- e. No additional structures not conforming to the requirements of this UDO shall be erected in connection with such nonconforming use of land.
- 2. **Provisions for Agricultural Uses.** Consistent with IC 36-7-4-616, an agricultural use of land that constitutes an agricultural nonconforming use may be changed to another agricultural use of land without losing agricultural nonconforming use status. In addition, an agricultural nonconforming use shall not be restricted or required to obtain a variance or special exception so long as an agricultural nonconforming use has been maintained for three (3) years in a five (5) year period.

**F. Nonconforming Uses and Structures in Combination.**

- 1. **General Provisions.** Where a lawful use occupied by a lawful structure existed prior to the effective date of this UDO, as amended from time-to-time, where one or the other, or both, do not comply with the requirements imposed by this UDO, nonconforming combination of use and structure may be continued so long as they both remain otherwise lawful. Such a combination shall also be subject to the following provisions:
  - a. Where nonconforming status applies to a structure and land use in combination, neither shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered, except to change the use from a legally nonconforming use to a conforming use, in which case, such modifications shall be subject to the provisions of this UDO.
  - b. Where nonconforming status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the use, in which case, both the structure and the use shall be brought into conformance with the provisions of this UDO.

**G. Nonconforming Zoning Districts.** At the time of adoption of this UDO, some currently mapped zoning districts may no longer be listed in the text of the UDO. Unless otherwise noted, property zoned under these districts will continue to be zoned as such until such time as the property is rezoned to a conforming zoning district. Under no circumstances may any additional land be zoned to a nonconforming zoning district.