

RESOLUTION: 2024 – R – 1
ORDINANCE: UDO – 89
AN ORDINANCE AMENDING THE
DEKALB COUNTY UNIFIED DEVELOPMENT ORDINANCE

WHEREAS, The General Assembly of the State of Indiana granted powers to the counties to adopt unified development ordinances for their jurisdiction according to IC 36-7-4-600 series; and

WHEREAS, The County of DeKalb, Indiana adopted the DeKalb County Unified Development Ordinance which became effective on January 1, 2009, and has had subsequent amendments to the DeKalb County Unified Development Ordinance; and

WHEREAS, The General Assembly of the State of Indiana granted powers to counties to amend the text of an adopted unified development ordinance according to IC 36-7-4-602 (b), and Section 9.05 of the DeKalb County Unified Development Ordinance allows for the amendment of said Ordinance; and

WHEREAS, The DeKalb County Plan Commission held a public hearing on February 21, 2024, on the proposed textual amendments to the DeKalb County Unified Development Ordinance regarding revisions to:
Article 11: Definitions: Abandonment of Use; Legal Nonconforming Building or Structure;
Legal Nonconforming Lot of Record; Legal Nonconforming Sign; Legal Nonconforming Use
Article 8: Nonconforming Lots, Structures & Uses
and all other related sections, if applicable;

WHEREAS, The DeKalb County Plan Commission did send a favorable recommendation for the text amendments to the DeKalb County Board of Commissioners; and

WHEREAS, The DeKalb County Board of Commissioners believes there is merit in amending the Ordinance, in order to promote the public health, safety, comfort, morals, convenience and general welfare of the community; now therefore, be it

ORDAINED by the DeKalb County Board of Commissioners of DeKalb County, Indiana, as follows:

SECTION 1: That the DeKalb County Unified Development Ordinance be amended according to the amendments, as follows:

Definitions:

Abandonment of Use: A use that has not been occupied by residing in, doing business in, or what the intended use was by the time set in Article 8 shall be considered abandoned. Proof of occupancy cannot be by proof of property or structure maintenance or utility bills, payment of taxes or similar. The Zoning Administrator shall determine if there has been abandonment.

Legal Nonconforming Building or Structure: Any continuously occupied, lawfully established structure or building prior to the effective date of the Unified Development Ordinance, or its subsequent amendments, that no longer meets the development standards, unless otherwise noted in Article 8.

Legal Nonconforming Lot of Record: Any legally established and recorded lot prior to the effective date of this Ordinance, or its subsequent amendments, that no longer meet the lot-specific development standards.

Legal Nonconforming Sign: Any sign lawfully existing on the effective date of this Unified Development Ordinance, or amendment thereto, that does not conform to all the standards and regulations of the Unified Development Ordinance, unless otherwise noted in Article 8.



Legal Nonconforming Use: Any continuous, lawful use of structures, land, or structures and land in combination established prior to the effective date of the Unified Development Ordinance or its subsequent amendments that is no longer a permitted use in the district where it is located, unless otherwise noted in Article 8.

Article 8: Nonconforming Lots, Structures & Uses

8.01 Intent

As new zoning regulations are adopted or zoning map changes are made, lots, structures, and uses that were previously compliant with zoning regulation are sometimes made noncompliant. *Article 08: Nonconformance* specifies the provisions that apply to these legal nonconforming (informally referred to as grandfathered) lots, structures, and uses.

8.02 Transitional Rule

Any enforcement action being conducted prior to the effective date of the Unified Development Ordinance for a known or suspected violation of the preceding zoning ordinance and/or subdivision control ordinance shall be continued under the terms of enforcement and penalties of the preceding zoning ordinance and/or subdivision control ordinance, assuming the Unified Development Ordinance does not make what was previously a violation a non-violation (i.e. fully conforming). All other enforcement actions for known or suspected violation shall be conducted using the Unified Development Ordinance.

8.03 Distinction Between Conforming, Illegal Nonconforming, and Legal Nonconforming and a Change from Illegal Nonconforming or Legal Nonconforming to Conforming

Each structure, use, and lot is either “conforming” or “nonconforming.” Conforming is used to describe a structure, use, or lot as being in full compliance with the Unified Development Ordinance. Nonconforming is used to describe a structure, use, or lot that is in violation of the current Unified Development Ordinance. Nonconforming structures, uses, and lots are either “illegal nonconforming” or “legal nonconforming.” The following sections determine the nonconforming status of a structure, use, or lot and determines when status changes from legal nonconforming to conforming:

A. Illegal Nonconforming:

1. *Structure:* A structure constructed in violation of the zoning ordinance that was in effect at the time of construction which remains in violation of the current Unified Development Ordinance is an illegal structure.
2. *Use:* A use initiated in violation of the zoning ordinance that was in effect at the time of initiation which remains in violation of the current Unified Development Ordinance is an illegal use. In addition, a use that was legally established that now is not permitted under the current Unified Development Ordinance but has been abandoned or discontinued for a period of at least one year, is an illegal use.
3. *Lot:* A lot established in violation of the zoning or subdivision control ordinance that was in effect at the time of establishment which remains in violation of the current Unified Development Ordinance is an illegal lot.

B. Legal Nonconforming:

1. *Structure:* A structure that does not meet one or more development standards of the Unified Development Ordinance, but was legally established prior to the effective date of the Unified Development Ordinance shall be deemed a legal nonconforming structure. Generally, a structure is rendered legal nonconforming by an amendment to the zoning regulations or a zoning map change. However, a legal nonconformity may be caused by a government's use of eminent domain or right-of-way acquisition.
2. *Use:* The use of a structure or land (or a structure and land in combination) that was legally established and has since been continuously operated, that is no longer permitted by the Unified Development Ordinance in the zoning district in which it is located, shall be deemed a legal nonconforming use. Generally, a use is rendered legal nonconforming by an amendment to the zoning regulations or zone map change.
3. *Lot:* A lot that does not meet one or more lot standards of the Unified Development Ordinance, but was legally established and recorded prior to the effective date of the Unified Development Ordinance shall be

deemed a legal nonconforming lot of record. Generally, a lot is rendered legal nonconforming by an amendment to the zoning regulations or a zoning map change. Periodically, a legal nonconformity may be caused by a governments use of eminent domain or right-of-way acquisition.

C. The status of an Illegal Nonconforming or Legal Nonconforming structure and/or use may change or become a Conforming structure and/or use if the structure and/or use has been in continual use or existence for 15 years. For example: a parcel that has a small engine or lawn mower repair shop that may be an illegal nonconforming use shall become a legal conforming use if the use is 15 years or older. If the use is 15 years or newer, it shall be deemed in violation of the Unified Development Ordinance.

8.04 Illegal Nonconforming Structure, Use, and Lot

An illegal structure, use, or lot is subject to the enforcement procedures and penalties of the Unified Development Ordinance as amended, unless otherwise noted in this Article.

8.05 Legal Nonconforming Structure

The following provisions apply to a legal nonconforming structure, a structure associated with legal nonconforming uses, and structures associated with legal nonconforming lots that are 15 years or newer:

A. Legal Nonconforming Building Provisions: The provisions for legal nonconforming buildings, a subcategory of structures, are as follows:

1. *Building Expansion:* A legal nonconforming building shall be permitted to expand in area and height as long as the nonconformity is not increased and the expansion otherwise meets the current Unified Development Ordinance. For example, if a building is in violation of the maximum height standard, it can be expanded in area as long as the new addition does not exceed the maximum height standard and is otherwise in compliance with current Unified Development Ordinance.
2. *Building Exterior Alteration:* The exterior walls of a building shall not be moved except as provided in the previous clause. Otherwise, the roof and exterior walls may be maintained, repaired, re-faced, and modified, resulting in the original aesthetic character or an altered exterior character, as long as the building's nonconformity is not increased and the alteration otherwise meets the current Unified Development Ordinance.
3. *Building Interior Alteration:* Ordinary repair and replacement of interior finishes, heating systems, fixtures, electrical systems, or plumbing systems; and interior wall modifications are not regulated by the Unified Development Ordinance.
4. *Building Relocating:* A legal nonconforming building may be relocated if, by moving the building, it decreases the legal nonconformity and the relocation otherwise meets the current Unified Development Ordinance.

B. Legal Nonconforming Structure Provisions: The provisions for legal nonconforming structures, excluding the subcategory of buildings, are as follows:

1. *Structure Alteration:* A legal nonconforming structure shall be permitted to be altered in height, area, mass, and time as long as the nonconformity is not increased and the alteration otherwise meets the current Unified Development Ordinance. For example, if a permanent sign is in violation of the maximum height standard, it can be altered as long as the alteration does not exceed the currently allowed maximum height standard and is otherwise in compliance with Unified Development Ordinance.
2. *Structure Relocating:* A legal nonconforming structure may be relocated if, by moving the structure, it decreases the legal nonconformity and the relocation otherwise meets the current Unified Development ordinance.
3. *Conversion for Longevity:* Converting a structural component of a legal nonconforming structure to a more permanent material in order to prolong legal nonconformity shall not be permitted. For example, a legal nonconforming permanent pole sign would not be permitted to replace its existing wood posts with metal posts even if dimensionally the same size.

C. Loss of Legal Nonconforming Structure Status: The following provisions apply to all types of structures:

1. *Condemned Structures*: If a structure, through lack of maintenance, is declared by an authorized official to be condemned due to its physical or unsafe condition, it shall lose its legal nonconforming status and become illegal nonconforming; unless the structure is restored or repaired within three months of the declaration. The Zoning Administrator may grant an appropriate extension of time if work was started within the initial three month period and reasonable attempts are being made by the owner to remedy the condemnation.
2. *Removal of Permanent Structures*: If a permanent structure is fully or significantly removed or razed (i.e. 80% or more of the exterior walls, structure area, structure height), the remaining permanent structure shall lose its legal nonconforming status and become illegal nonconforming; unless by significantly removing or razing the permanent structure the remaining permanent structure is in compliance or more in compliance with the current Unified Development Ordinance.
3. *Removal of Temporary Structures*: If a temporary structure is removed (e.g. moved inside, taken off-site, or replaced by a new temporary structure), the temporary structure shall lose its legal nonconforming status and become illegal nonconforming.
4. *Flood*: If a structure is severely damaged from a flood, resulting in a loss of either 50% of its market value or 50% of its structure, all reconstruction shall be required to meet the current Unified Development Ordinance. All other flood damaged structures shall be allowed to rebuild the structure that previously existed.
5. *Acts of God*: If a structure is severely damaged from an act of god, excluding flooding, resulting in a loss of either 70% of its market value or 70% of its structure, all reconstruction shall be required to meet the current Unified Development Ordinance. All other structures damaged by an act of god shall be allowed to rebuild the structure that previously existed.

D. Maintenance and Repair: Nothing in this section shall be deemed to prevent the maintenance or repair of a structure to keep it in a safe, aesthetic, and functional condition.

8.06 Legal Nonconforming Lot

The following provisions apply to legal nonconforming lots:

A. Legal Nonconforming Lot Provisions: A legal nonconforming lot shall be permitted to be developed as long as the desired structure and use meets the current Unified Development Ordinance. If the application of the current Unified Development Ordinance renders the lot undevelopable (e.g. the current setbacks don't allow a developable building envelope), reasonable variances shall be applied for by the County to the Board of Zoning Appeals for relief.

B. Loss of Legal Nonconforming Lot Status:

1. *Combining Lots Results in Conformity*: If a legal nonconforming lot is combined with an adjacent lot resulting in conformity with the current Unified Development Ordinance, it shall lose its legal nonconforming status. Therefore, future division of the combined lot shall conform to the current Unified Development Ordinance.
2. *Lots in Combination*: If a legal nonconforming lot is owned by the same person as the adjacent lot, and the owner uses both lots in combination for a duration of more than five years, the legal nonconforming lot shall lose its legal nonconforming status; provided the two or more lots in combination would constitute a single conforming lot.
3. *Permanent Structure Across Property Lines*: If a legal nonconforming lot is owned by the same person as the adjacent lot, and the owner constructs a permanent structure across the property line, thus permanently using two lots in combination, the legal nonconforming lot shall lose its legal nonconforming status; provided the two lots in combination would constitute a single conforming lot.

8.07 Legal Nonconforming Use

The following provisions apply to legal nonconforming uses that are 15 years or newer:

A. Cross Reference:

1. *Agricultural*: With respect to agricultural legal nonconforming uses, nothing in this section shall be interpreted in a manner that is inconsistent with IC: 36-7-4-616: *Zoning ordinance; agricultural nonconforming use*.

B. Legal Nonconforming Use Provisions: The provisions for legal nonconforming uses are as follows:

1. *Utilizing Existing Enlarged, New or Relocated Buildings*: A legal nonconforming use shall be permitted to occupy or use an existing building, enlarged existing building, newly constructed building, or relocated building, provided the building meets the current Unified Development Ordinance.

2. *Utilizing Existing, Altered, New or Relocated Structures*: A legal nonconforming use shall be permitted to utilize an existing structure, altered existing structure, newly constructed structure, or relocated structure, provided the building meets the current Unified Development Ordinance.

3. *Utilizing Land*: Any legal nonconforming use shall be permitted to utilize its lot, or lots owned in combination upon the effective date of the Unified Development Ordinance, provided the utilization of land meets the current Unified Development Ordinance.

4. *Increase in Nonconformity*: No legal nonconforming use shall be permitted to increase its nonconformity. The size of operation, number of employees, increase to vehicular traffic and similar increases in size does not increase nonconformity of a use. For example, a five acre legal nonconforming junkyard that expands its operations onto five more acres of land it previously owned, does not qualify as an increase in nonconformity, its still a junkyard. However, if the same junkyard adds a compactor facility which previously did not exist, that would qualify as an increase in nonconformity.

C. Loss of Legal Nonconforming Use Status:


1. *Abandonment of Use*: If a legal nonconforming use is abandoned or is discontinued for one year or more, except when a government action impedes access to the premises, it shall lose its legal nonconforming status. Any subsequent use shall conform to the provisions of the current Unified Development Ordinance. See definition.

2. *Change of Use*: When a legal nonconforming use is changed, altered, or evolves to be in compliance or more in compliance with the current Unified Development Ordinance, the legal nonconforming use status is lost or partially lost. The current use cannot revert back to the original legal nonconforming use or increments thereof.

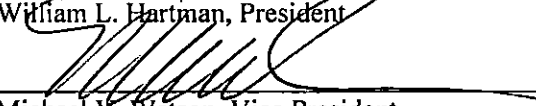
SECTION 2: That this amendment be in full force and effect upon its passage by the DeKalb County Board of Commissioners.

The DeKalb County Commissioners have voted to adopt (as certified) or reject the proposal.

DULY PASSED AND RESOLVED this 11th day of March 2024.



William L. Hartman, President



Michael V. Watson, Vice President



Todd R. Sanderson, Vice President



Attest, Susan M. Sleeper, Auditor

Prepared by: Chris Gaumer "I affirm under the penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law."

