

ARTICLE SEVEN
NON CONFORMITIES

701 NON CONFORMING USES OF LAND OR STRUCTURES: The following provisions shall apply to all non conforming uses:

701.01 A non conforming use of land or structure or both in combination may be continued but may not be extended, expanded, or changed unless to a conforming use, except as specified herein or as permitted by the Board of Zoning Appeals in accordance with the provisions of this Ordinance.

A. Any use existing in any Floodway Overlay or Floodway Fringe Overlay District at the time of adoption of this Ordinance which is not in accordance with the standards and regulations specified in Section 402 herein may be expanded or enlarged, provided such modification does not increase the value of the use by more than 50% of its pre-improvement market value (excluding the value of the land). Prior to the issuance of any local permits, such modification must be reviewed and approved by the Indiana Department of Natural Resources.

B. A non conforming residential use may be expanded, subject to the approval of a special exception by the Board of Zoning Appeals. No expansion may result in additional dwelling units. In reviewing petitions, the Board shall, in addition to other criteria, consider the following:

1. The number of times a home may be expanded shall be limited to once, unless special circumstances warrant.
2. Expansions which would significantly increase the market value of the home shall be discouraged unless special circumstances warrant. As a general guide, the Board shall consider an increase of 50% over the pre-improvement market value as being a significant increase.

701.02 An existing non conforming use which occupies only a portion of an existing structure may be extended throughout such structure, provided such change or extension does not eliminate, displace, prevent, or restrict the continuance of any then existing use being concurrently carried on in said structure which conforms with the requirements of this Ordinance.

701.03 If no structural alterations are made, any non conforming use of a structure, or structure and land, may be changed to another non conforming use provided that the Board of Zoning Appeals approves of such change as a special exception. In reviewing specific cases, the Board shall only approve a proposed use if it is equally appropriate or more

appropriate to the district than the existing or former non conforming use. In addition, the Board of Zoning Appeals may require appropriate conditions and safeguards in accord with the provisions of this Ordinance.

701.04 If any non conforming use of land or structure or both in combination ceases for any reason for a period of more than 12 consecutive months, the land, structure, or structure and land in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located, unless -- after this time period has elapsed -- a use is approved as a special exception by the Board of Zoning Appeals.

701.05 Whenever a non conforming use has been changed to a conforming use, it shall not thereafter be changed again to a non conforming use unless permitted by the Board of Zoning Appeals in accordance with the use variance procedure.

701.06 There shall be no expansion whatsoever of a non conforming junkyard to cover a greater land area than what was covered on the effective date of this Ordinance.

701.07 An existing use which is listed herein as a special exception, and which is located in a district in which such special exception may be permitted, is a conforming use. Any expansion of such special exception involving the enlargement of buildings, structures, and land area devoted to such use, shall be subject to special exception approval by the Board of Zoning Appeals.

702 **NON CONFORMING LOT OF RECORD:** In any zoning district, notwithstanding limitations imposed by other provisions of this Ordinance, a lot of record may be sold, or used, or structures and customary accessory structures may be erected on any single lot of record as of the effective date of the Ordinance provided that there is no encroachment of use or structure over a lot line. If adjoining lots of record are under single ownership, a lot of record may be sold, or used, or structures and customary accessory structures may be erected providing all setback requirements, excepting area and width, as established by the zoning district in which the lots under single ownership are located can be met. Variance from any requirement other than area or width shall be obtained through the Board of Zoning Appeals.

703 **NON CONFORMING STRUCTURES:** Where a structure exists that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, and other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

703.01 No such structure may be enlarged or altered in a way which increases its nonconformity.

- A. Any structure which is non conforming only with respect to the regulations specified in Section 402 may be expanded or enlarged, provided such modification is on a one-time basis and further provided that such modification does not increase the value of the structure by more than 40% of its pre-improvement market value (excluding the value of land). Prior to the issuance of any local permits, such modification must be reviewed and approved by the Indiana Department of Natural Resources.
- B. An open porch or carport non conforming only to setbacks may be enclosed provided the original foundation or roof and supports are not removed and the structure can be built according to building code, but in no event shall such improvement be less than 50% of the setback distance required.
- C. A structure non conforming only to the setback regulations may be added to or enlarged if said additions or enlargements do not encroach into any portion of any required yard to a greater extent than the existing non conforming building, but in no event shall any such additions or enlargements be less than 50% of that distance required by the yard requirements of the district in which the lot is located.

703.02 If any non conforming structure is damaged by fire, flood, explosion, or other casualty to an extent more than 75% of its pre-damaged value, such structure shall not be restored except in conformity with the regulations of the district within which it is located. Any non conforming structure damaged to a lesser extent shall be subject to approval of required variances by the Board of Zoning Appeals prior to reconstruction or restoration.

- A. Non conforming structures located in any Floodway Overlay or Floodway Fringe Overlay District may not be reconstructed if the amount of damage exceeds 40% of the pre-damaged value of the structure.