NON-CONFORMING USES

§ 156.420 PURPOSE.

The regulations of this chapter govern nonconformities, which are structures, use, lots, developments, signs, fences, parking areas and floodway/floodway fringe use that were lawfully established but because of the adoption of new or amended regulations no longer comply with one or more requirements of this Zoning Ordinance. (Ord. 0-09-0008, passed 4-27-2009)

§ 156.421 INTENT.

In older cities, such as East Chicago, many structures and uses that were established in compliance with all regulations in effect at the time of their establishment have been made nonconforming by zoning map changes (rezoning) or amendments to the Zoning Ordinance text. The regulations of this chapter are intended to clarify the effect of such nonconforming status and avoid confusion with illegal structures and uses (those established in violation of zoning rules). The regulations are also intended to:

(A) Recognize the interests of landowners in continuing to use their property for uses and activities that were lawfully established;

(B) Promote maintenance, reuse and rehabilitation of existing building; and

(C) Place reasonable limits on nonconformities that have the potential to adversely affect surrounding properties or the community as a whole. (Ord. 0-09-0008, passed 4-27-2009)

§ 156.422 AUTHORITY TO CONTINUE.

Any nonconformity that existed on the effective dates specified in § 10.05 or any situation that becomes nonconformity upon adoption of any amendment to this Zoning Ordinance may be continued in accordance with the regulations of this chapter. (Ord. 0-09-0008, passed 4-27-2009)

§ 156.423 DETERMINATION OF NONCONFORMITY STATUS.

The burden of proving that nonconformity exists (as opposed to a violation of this Zoning Ordinance) rests with the subject landowner. (Ord. 0-09-0008, passed 4-27-2009)

§ 156.424 REPAIRS AND MAINTENANCE.

(A) Nonconformities must be maintained to be safe and in good repair.

(B) Incidental repairs and normal maintenance necessary to keep nonconformity in sound condition are permitted unless otherwise expressly prohibited by this Zoning Ordinance.

(C) If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to the lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt after three months of such declaration except in conformity with the regulations of the district in which it is located.

(D) Nothing in this title shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

(E) When the structure is destroyed or damaged by fire or other casualty the structure can be restored to the condition in which it was before the occurrence of the fire or other casualty only if the reconstruction cost does not exceed fifty (50) percent of the cost of replacement of the entire building. (As stated on the property owner's record card located in the Township Assessor's office.) (Ord. 0-09-0008, passed 4-27-2009)

§ 156.425 NONCONFORMING STRUCTURES.

Where a lawful structure exists at the effective date of adoption or amendment of this chapter but could not be built under the terms of this title by reason of restrictions on area, lot coverage, height, setback lines, intensity, 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) No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity to a conforming use.

(B) A detached residential accessory structure which becomes a nonconforming structure due to the demolition or other removal of the primary residential structure shall be permitted to continue. However, the failure to construct a new primary residential structure on the same lot, tract, or development parcel within 12 months of the removal of the primary structure shall be construed as intent to abandon the accessory structure. (Ord. 0-09-0008, passed 4-27-2009)

§ 156.426 NONCONFORMING USE.

A lawful use involving individual structures, land or of structures and land in combination, exists at the effective date of adoption or amendment of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

(A) Whenever a non-conforming use has been changed to a conforming use or to a use permitted in a district or greater restrictions, it shall not thereafter be changed to a non-conforming use or a less restricted use, except upon approval of the Board of Zoning Appeals. Provided, however, that where a property in an "M-1" or "M-2" district conforms with requirements for off-street parking through the utilization of leased land at the time of the enactment of this Ordinance, the use of that property shall not be considered to have changed from conforming to non-conforming use by virtue of the loss of the right to the use of leased property for off-street parking purposes, until such time or unless additional property become available, in which event off-street parking requirements shall be met before other uses are established.

(B) A non-conforming use of a building or structure designed for a conforming use shall not be expanded or extended into any other portion of such conforming building or structure nor changed except to a conforming use.

(C) These provisions apply in the same manner to a use which may become a non-conforming use due to a later amendment to this Ordinance.

(D) The non-conforming use of land for storage purposes shall be discontinued within five (5)) years from the date of the adoption and approval of this Ordinance, and the use of land for storage purposes which becomes non-conforming by reason of subsequent change in the Ordinance shall also be discontinued with five (5) years from the date of change. In addition, an environmental remediation plan to restore the land shall be established prior to the termination of the non-conforming use and such plan must be implemented by the land owners or leaser of land at the termination of the non-conforming use.

(E) Whenever a non-conforming use has been discontinued for a period of one (1) year such use shall not thereafter be established and any future use shall be in conformity with the provisions of this Ordinance.

(F) If no structural alterations are made to a structure or structure and land in combination, a nonconforming use may be changed to another nonconforming use, provided that the zoning administrator shall make specific findings that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. The determination of the zoning administrator may be referred by the applicant or the staff of the board of zoning appeals which may make the findings and require appropriate conditions and safeguards.

(G) When a nonconforming use of a structure, land, or a structure and land in combination is discontinued or abandoned for (1) year, or when governmental action impedes access to the premises, the structure, land, or structure and land in combination shall not thereafter be used except in conformity with the regulations of the district in which it is located.

(H) If a nonconforming adult use or open use of land is discontinued for (6) continuous months or more, all nonconforming use rights are lost and re-establishment of the nonconforming use is prohibited.

(I) When a structure containing a nonconforming use is intentionally damaged by causes within the control of the owner, re-establishment of the nonconforming use is prohibited.

(J) The Board of Zoning Appeals may authorize, by written permit, in a residential district for a period of not more than one (1) year from the date of such permit, a temporary building for commercial or industrial use incidental to the residential construction and development of such district. (Ord. 0-09-0008, passed 4-27-2009)

§ 156.427 NONCONFORMING LOTS.

A nonconforming lot is a tract of land lawfully established as a lot on a plat recorded or registered, pursuant to statute, with the Recorder of Deeds of Lake County Indiana and the City of East Chicago, Indiana that does not comply with the minimum lot area or lot width standards of the zoning district in which it is now located. The lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

(A) In residential zoning districts, a nonconforming lot may not be developed unless approved by BZA. However, if a nonconforming lot is voluntarily increased in size and complies with applicable lot area or lot width standards, such lot may be developed within a residential zoning district.

(B) In nonresidential zoning districts, a nonconforming lot may not be developed without approved by BZA. How However, if a nonconforming lot is voluntarily increased in size and complies with applicable lot area or lot width standards, such lot may be developed within a nonresidential zoning district. (Ord. 0-09-0008, passed 4-27-2009)

§ 156.428 NONCONFORMING DEVELOPMENTS.

A nonconforming development is any aspect of a development other than a nonconforming lot, nonconforming use or nonconforming sign that was lawfully established, in accordance with zoning regulations in effect at the time of its establishment but that no longer complies with one or more standards of this Zoning Ordinance. Common examples of nonconforming developments are buildings that do not comply with current setback or height standards, off-street parking or loading areas that contain fewer spaces than required by current standards or sites that do not comply with current landscaping standards. Nonconforming developments may remain, subject to the regulations of this section.

Unless otherwise expressly stated in this Zoning Ordinance, nonconforming developments may be altered or enlarged as long as the alteration or enlargement does not increase the extent of conformity. A building addition to an existing nonconforming development that projects further into a required setback or further above the permitted maximum height is an example of increasing the extent of nonconformity. (Ord. 0-09-0008, passed 4-27-2009)

§ 156.429 NONCONFORMING SIGNS.

A nonconforming sign is a sign that was lawfully established prior to the effective date of adoption or amendment of this chapter, the lawful sign may be continued so long as it remains otherwise lawful, subject to the following provisions:

(A) Nonconforming signs must be maintained in good repair, and must comply with all other requirements of this Zoning Ordinance.

(B) Nonconforming signs shall be reviewed by zoning district and determinations made based on the provisions of the Sign Ordinance.

(C) Change of copy or the substitution of panels or faces on nonconforming signs is permitted without affecting the legal status of a sign as a nonconforming sign (subject to requirements for building and electrical permits). No other alterations are allowed, except for routine maintenance and repair.

(D) Any nonconforming on-premise sign that is located on property that has failed to maintain a valid business license or that becomes vacant and unoccupied for a period of (3) months, or any nonconforming on-premise sign that pertains to a time, event or purpose that is no longer imminent or pending will be deemed to have been abandoned.

(E) Any nonconforming off-premise sign that is not used or for which a valid permit or license does not exist for a continuous period of (3) months will be deemed to have been abandoned. City of East Chicago Municipal Code Version 2012.4.24 858

(F) Abandoned nonconforming signs are prohibited and must be removed by the owner of the sign or the property owner of the premises. No building permits or approvals may be issued for buildings occupied by nonconforming abandoned signs until such signs are removed or updated to present sign ordinance. (Ord. 0-09-0008, passed 4-27-2009)

§ 156.430 NONCONFORMING FENCES.

Fences which are legal non-conforming with regard to location on the lot may be maintained and repaired as necessary. Such a fence may also be replaced, provided the, location and type of fence remains the same and the height is not increased. However, in the event of (30%) of a non-conforming fence is damaged by unforeseen incident, or a non-conforming fence containing barbed wire, razor wire or other harmful material, the replacement of the fence shall only be permitted in accordance with the applicable current requirements of the zoning district where the fence is located. Any person proposing to replace such a nonconforming fence shall submit adequate documentation as part of the fence application for the Improvement Location Permit for the fence verifying the current location, height and fencing material to a Zoning Enforcement Officer. (Ord. 0-09-0008, passed 4-27-2009)

§ 156.431 NONCONFORMING PARKING AREAS.

Parking areas which do not conform to the improvements and or landscaping standards or the screening and buffering standards may continue to be used. Any proposed addition to or expansion of such a parking area shall be required to conform to the current applicable parking requirements including the improvement and landscaping standards, and the screening and buffering standards. The resurfacing, re-striping, or similar maintenance of existing parking area shall not be considered an addition or expansion. (Ord. 0-09-0008, passed 4-27-2009)

§ 156.432 NONCONFORMING FLOODWAY/FLOODWAY FRINGE/FLOOD PLAIN.

In a floodway (FW) district, no nonconforming use may be expanded or enlarged nor can a building undergo substantial modification without a permit for construction in a floodway from Natural Resources.

In a floodway fringe (FF) district a building which constitutes a nonconforming use may undergo substantial modification provided such modification is on a one-time only basis and further provided that such modification does not increase the value of the building, by more than forty percent of its pre-improvement market value, (excluding the value of land) unless such building is permanently changed to a conforming use.

A nonconforming use in a floodplain (FP) district may be altered, enlarged, or extended, on a one-time-only basis, provided the procedures set forth in the ordinance codified in this section with respect to new construction in a floodplain (FP) district are followed and further provided such alterations, enlargements, or extensions do not increase the value of the building structure, or other use (excluding the value of land) by more than forty percent of its pre-improvement market value, unless such building, structure or use is permanently changed to a conforming use.

Any nonconforming use in the FW, FF, and FP district which is damaged by flood, fire, explosion, act of God, or the public enemy may be restored to its original dimensions and conditions, provided the damage does not reduce the value of the buildings, excluding the value of the land, by more than forty percent of its pre-damage value. (Ord. 0-09-0008, passed 4-27-2009)