

## **SECTION 10 - NONCONFORMING SITUATIONS AND VESTED RIGHTS**

**10.1 Definitions.** Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined in this Section shall have the meaning set forth in this Section when used in this Article. Words used in this Article, but not defined in this Section, may be defined in Section 2 of this UDO.

A. Cost. The cost of renovation, repair or restoration shall mean the fair-market value of the materials and services necessary to accomplish a renovation, repair or restoration. Cost shall mean the total cost of all intended work, and no person may avoid the intent of this definition by doing the intended work incrementally.

B. Effective Date of This UDO. Whenever this UDO refers to the effective date of this UDO, the reference shall include the effective date of any ordinance that amends this UDO, if the ordinance, rather than this UDO as originally adopted, creates a nonconforming situation.

C. Nonconforming Lot. A lot that was not created for purposes of evading the restrictions of this UDO, which was lawfully platted and recorded and on file in the office of the Jackson County Recorder prior to the effective date of this UDO, but which does not meet the minimum area requirement of the applicable zoning district.

D. Nonconforming Use. A primary use of property existing on the effective date of this UDO that occurs when property is used for a purpose or in any manner made unlawful by the use regulations or performance and design standards applicable to the zoning district in which the property is located. The term also refers to the activity that constitutes the use made of the property. The term does not refer to accessory use of property.

E. Nonconforming Structure. A structure that was lawfully constructed prior to the effective date of this UDO, but which could not be constructed under the terms of this UDO by reason of restrictions on area, lot coverage, height, setbacks (yards), location on the lot or other requirements concerning structures.

F. Structural value. The then current cost of a structure or its replacement value, if destroyed.

**10.2 General statement of intent and policy.** Within the zoning districts established by this UDO or its subsequent amendment, there exist a) lots; b) structures; and c) uses of land which were lawful before this UDO was adopted or amended, but which would now be prohibited, regulated or restricted under the terms of this UDO or its subsequent amendment.

Such instances shall hereafter be considered lawful nonconformities. It is the intent of this UDO to recognize the legitimate interest of owners of lawful nonconformities by allowing these lawful nonconformities to continue, subject to the provisions contained herein. At the same time, it is recognized that lawful nonconformities may substantially and adversely affect the orderly development, maintenance, use and taxable value of other property in the same zoning district, property that is itself subject to the regulations and terms of this UDO. To secure eventual compliance with the standards of this UDO, it is necessary to regulate intensity and size of lawful nonconformities and to prohibit the re-establishment of nonconformities that have been discontinued, or monitor a change to a more intense use or expansion of a use. 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 on which actual construction was lawfully begun prior to the effective date or amendment of this UDO and upon which actual building construction has been carried on diligently. The burden shall be on the landowner to establish entitlement to continuation of nonconforming situations or on the developer to establish entitlement to complete nonconforming projects. Appeals from an administrative decision related to this Section shall be to the Board of Aldermen.

### **10.3 Lawful nonconformities.**

A. Lots. A structure may be constructed by right on any single lawful nonconforming lot within a zoning district, provided that all other requirements of the zoning district within which the lot is located are complied with, and all appropriate permits are obtained prior to any construction activity.

B. Structures. A lawful nonconforming structure may continue to exist so long as it remains otherwise lawful, provided that no reconstruction, enlargement or alteration of the structure shall occur that will increase its nonconformity, except as provided for in Section 10.6 of this UDO.

C. Uses of land. A lawful nonconforming use of land may be continued so long as it remains otherwise lawful and provided that no enlargement, increase or extension of the lawful nonconforming use of land occurs so that a greater area of land is occupied than that which was occupied on the effective date of this UDO or any amendment thereto that makes the use non-conforming, and that no additional structures or additions to structures existing on the effective date of this UDO shall be constructed on the same lot. Further, no such lawful nonconforming use of land shall be moved or relocated in whole or in part to any other portion of the lot on which it is located, other than that portion occupied at the time of effective date of this UDO. If any lawful nonconforming use of land is not used as such for any reason for a period of more than 180 consecutive days, any subsequent use of that land shall conform to the terms of this UDO.

**10.4 Change from one nonconforming use of a structure to another.** A nonconforming use may be changed to a new use, provided that the new use shall be of the same general character or of a character less intensive (and thus more closely conforming) than the

existing, nonconforming use. The Zoning Administrator shall make the initial determination of whether a proposed use is a conforming use or is less intense, with an appeal to the Board of Zoning and Adjustment. A nonconforming use may not thereafter be changed back to a less conforming use than then it was changed.

**10.5 Lawful nonconforming uses superseded.** Anywhere a lawful nonconforming use is replaced by a permitted use and the lawful nonconforming use is no longer occurring, that lawful nonconforming use shall not thereafter be resumed.

**10.6 Reconstruction of certain lawful nonconforming structures.** Should any lawful nonconforming structure be damaged by any means to an extent of more than fifty percent (50%) of its replacement cost at the time of damage, it may only be reconstructed in conformance with the provisions of this UDO. This subsection does not apply to residential structures, which structures may be reconstructed just as they may be enlarged or replaced as provided in Section 10.8. Reconstruction of a lawful nonconformity, where permitted, must commence within one hundred eighty (180) days of destruction. In those instances where reconstruction does not commence within this limited time frame, the lawful nonconformity will be considered discontinued and the structure shall only be reconstructed as a permitted use.

**10.7 Completion of nonconforming projects -- vested rights.** All nonconforming projects with respect to which a permit was issued prior to the effective date of this UDO may be completed in accordance with the terms of their permits, so long as those permits were validly issued, remain unrevoked and unexpired. If a development has been approved for completion in stages, this subsection shall apply only to the phase that is under construction.

**10.8 Exception for residential nonconforming use.** Any structure used for residential use and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of the previously existing nonconformities.

**10.9 Repair, maintenance and restoration.** Minor repairs to and routine maintenance of structures and property, where nonconforming situations exist, are permitted and encouraged. Major renovation, i.e., work estimated to cost more than fifty percent (50%) of the structural value of the structure to be renovated, shall not be permitted.

**10.10 Determination of structural value and replacement cost.** To determine the structural value and replacement cost of a lawful nonconforming structure, the owner seeking to undertake maintenance, reconstruction or repair, or restoration of a lawful nonconforming structure must submit written estimates, which must be obtained from three (3) separate contractors, detailing the cost of the applicable improvement or repair and the cost of replacement of the entire lawful nonconforming structure. The Zoning Administrator will establish the structural value and/or replacement cost based upon the average of these estimates.