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PART A. GENERAL REGULATIONS

Section 1. Purpose and Scope

Within the districts established by this ordinance or by amendments that may later be adopted, there exist the following:

- A. Nonconforming lots;
- B. Nonconforming uses of land;
- C. Nonconforming structures;

D. Nonconforming uses of land and structures in combination; and

E. Nonconforming characteristics of use;

which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments hereto. It is the intent of this ordinance to permit these nonconforming uses to continue until they are removed, but not to encourage their survival. It is further the intent of this ordinance that nonconforming uses shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses which are prohibited elsewhere in the same district.

Section 2. Illegal Uses

Illegal uses existing at the time this ordinance is enacted shall not be validated by virtue of its enactment.

Section 3. Burden of Owner to Establish Legality of Nonconformity

The burden of establishing the legality of a nonconformity that lawfully exists under the provisions of this Ordinance is upon the property owner of the nonconformity and not upon the City.

PART B. GENERAL STANDARDS OF APPLICABILITY

Section 1. Avoidance of Undue Hardship

Nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building or development on which construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been carried on diligently. Where demolition or removal of an existing building has been substantially begun prior to rebuilding, such demolition or removal shall be deemed to be construction, provided that the work shall be carried on diligently.

Section 2. Uses Under Conditional Use Provisions are Not Nonconforming Uses

Any use which is permitted as a conditional use in a district under the terms of this ordinance shall be deemed a conforming use in such district without further action.

Section 3. Ordinary Repair and Maintenance

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten percent (10%) or the current replacement cost of the nonconforming structure and market value of real estate, or nonconforming portion of the structure, whichever the case may be, provided that the cubic content existing when it became nonconforming shall not be increased. Nothing in this section 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. If a non-conforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

PART C. NONCONFORMING LOTS

Section 1. Single Nonconforming Lots of Record

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record after the effective date of adoption or amendment of this ordinance notwithstanding limitation imposed by other provisions of this ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. 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.

Note: This section shall apply only to single-family residences.

Section 2. Lots in Combination

If two or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots with no buildings do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance; and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this ordinance.

PART D. NONCONFORMING USES OF LAND

Section 1. Authority to Continue

Where, at the time of adoption of this ordinance, lawful uses of land exist which would not be permitted by the regulations imposed by this ordinance, the uses may be continued so long as they remain otherwise lawful, subject to the following provisions.

Section 2. Enlargement of Structure

No such nonconforming uses shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.

Section 3. Moving

No such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this ordinance.

Section 4. Termination by Discontinuance or Abandonment

If any such nonconforming uses of land are discontinued or abandoned for more than one (1) year (except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.

Section 5. New Construction

No additional or accessory structure not conforming to the requirements of this ordinance shall be erected in connection with such nonconforming use of land.

PART E. NONCONFORMING STRUCTURES

Section 1. Authority to Continue

Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not now be built under the terms of this ordinance by reason of restrictions on area, lot, coverage, height, yards, its location on the lot, bulk, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful.

Section 2. Structural Alteration or Enlargement

No such nonconforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.

Section 3. Extension of Use

A nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building.

Section 4. Moving

Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

Section 5. Damage or Destruction

Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to the extent of more than fifty percent (50%) of the fair market value of the building immediately prior to the damage, it shall not be reconstructed except in conformity with the provisions of this ordinance.

PART F. NONCONFORMING USES OF STRUCTURES OR OF STRUCTURES AND LAND IN COMBINATION

If a lawful use involving individual structures, or a structure and land in combination, exists at the effective date of adoption or amendment of this ordinance that would not now be allowed in the district under the terms of this ordinance, the lawful uses may be continued so long as it remains otherwise lawful, except as otherwise provided below.

Section 1. Structural Alteration or Enlargement

No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.

Section 2. Substitution of Nonconforming Use

If no structural alterations are made, any nonconforming use of a structure or structure and land, may, upon appeal to the Board of Zoning Appeals, be changed to another nonconforming use provided that the Board of Zoning Appeals shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accordance with other provisions of this ordinance.

Section 3. Change in Use

Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.

Section 4. Termination by Discontinuance or Abandonment

When a nonconforming use of a structure, or structure and land combination, is discontinued or abandoned for more than one year (except when government action impedes access to the premises), the structure 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.

{ PART G. NONCONFORMING CHARACTERISTICS OF USE**Section 1. Authority to Continue**

If a characteristic of development or use lawfully exists at the effective date of adoption or amendment of this ordinance that would not now be allowed in the district under the terms of this ordinance, the lawful characteristic of development or use may be continued so long as it remains otherwise lawful, except as otherwise provided below. Such characteristics of

development or use shall include, but not be limited to, items such as landscaping, lighting, parking lots, refuse containers, driveway surfacing, and screening.

Section 2. Alterations to the Site Requiring Compliance

Any additions to the building or the site that increase the area by more than 40% (forty percent) shall require that any nonconforming characteristics of development or use shall comply with the standards of this ordinance.} **ORD. #10-03-13**

PART H. NONCONFORMING USES IN THE FLOOD HAZARD (FH) DISTRICT

Section 1. Nonconforming Status for Flood Hazard (FH) District

Any building, structure, or other use in the Flood Hazard (FH) District which is not in conformance with this ordinance constitutes a nonconforming use.

Section 2. Structural Alteration or Enlargement in a Floodway

In a floodway, no nonconforming use may be expanded or enlarged nor can a building undergo substantial modification without a permit for construction in floodway from the Indiana Department of Natural Resources.

Section 3. Structural Modification in a Floodway Fringe or Flood Plain

In a floodway fringe or flood plain, 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 (40%) of its pre-improvement market value (excluding the value of land), unless such building is permanently changed to a conforming use.

{PART I. NONCONFORMING SIGNS

Regulations relating to non-conforming signs may be found in Article 11.C.6.} **ORD. #10-03-13**

PART J. R1 AND R1/PD SUBDIVISIONS APPROVED PRIOR TO 07-01-2011

Section 1. Nonconforming Status for R1 and R1/PD Subdivisions

Any building, structure, or use located in an approved R1 or R1/PD zoning district shall adhere to the standards and requirements adopted for the PD (Planned Development), Primary and/or Secondary Subdivision Plats, and/or the following R1 Bulk Standards:

Minimum Lot Area per dwelling unit	2 acres (septic) 22,500 square feet on sanitary sewer
Minimum Lot Width	150 feet
Maximum Building Height	35 feet
Minimum Front Yard Setback	
<i>Developed Areas</i>	Average of the setbacks for adjacent buildings
<i>New Developments</i>	Local and Collector Streets – 30 feet Arterial Streets – 40 feet
Minimum Side Yard Setback	9 feet
Minimum Rear Yard Setback	Primary Structure – 20 feet Accessory Structure – 5 feet
Maximum Floor Area Ratio	40%
Minimum Floor Area Per Dwelling	2,200 square feet
Maximum Lot Coverage	35%

Section 2. Structural Alteration , Enlargement, or New Structures

Any existing structure or proposed structure meeting the requirements of the adopted planned development, primary or secondary plat, and/or the requirements above, shall be allowed to construct a new structure or modify an existing structure without having to seek a variance from the Board of Zoning Appeals.

Section 3. R1 and R1/PD Subdivisions Adopted Prior to July 1, 2011

SUBDIVISION NAME – R1	SUBDIVISION NAME – R1
Beaver Ridge	Beck’s Little Acre
Brooks Riverview	Browns
Carlton Heights	Carrigan Cove
Cherry Tree Farms	Clareview
Country Lake Estates	Country Pines
Craig Highlands	Cumberland Knoll
Cumberland Manor	Cumberland Meadows
Diehr Acres	Emerald Acres
Fairview	Farmview
Fishers Oakwood	Fox Crest
Gast Estates	Hacks Minor
Hance Acres (Unrecorded)	Harbour Overlook
Hart Acres	Hickory Woods
Hillsdale	Hinkle Creek Estates
Idlewild Lakes	Independence Way
Inland (Unrecorded)	J & D
Kentre Meadows	Lamplighter
Lipps	Logan’s Pointe
Longacre Farms	Maple Point
McClintock Homestead	Meyer
Mill Creek	Moontown Woods
Morse Overlook	North Deerfield Estates
North Harbour	North Point Ridge
Oak Harbour	Oakbay
Overdorf Place	Peacemaker
Pine Knoll	Powell Woods
Robinson Ridge	Sisson Estates
Sommerwood	Stony Creek Farm
Wellington Bluff	Wellington Estates
Wellington Heights	Wellington North
Wellington Northeast	Wellington Overlook
Westmont	Williams
Wood Place	-----

SUBDIVISION NAME – R1/PD	SUBDIVISION NAME – R1/PD
Arbor Grove	Chapel Woods
Conner Crossing	Creek's Edge at Oakmont
East Haven at Noble West	Enclave at Sagamore
Essex	Hazel Dell Woods
Highland Prairie	Highlands at Stony Creek
Lochaven at Noble West	Meadows Estates
Meadows Glen	Meadows Knoll
Mill Grove	Monarch Springs
Oakmont Glen	Oakmont Green
Oakmont Ridge	Oakmont Village
Oakmont Woods	Park Place at Sagamore
Pebble Brook	Sagamore
Slater Farms	Slater Ridge
Slater Run	Slater Woods
Stoney Creek Estates	Twin Oaks
Villages of Pebble Brook	West Haven at Noble West