

**Section 21-01.03                      Nonconforming Lots, Uses, Buildings, Structures or Signs.**

**(a)      Intent**

Within the *districts* established by this Ordinance, there exist:

- (1)     *nonconforming lots of record;*
- (2)     *nonconforming buildings or structures;*
- (3)     *nonconforming uses of land;*
- (4)     *nonconforming uses within nonconforming buildings or structures; and,*
- (5)     *nonconforming signs*

which were legally established prior to the effective date of this Ordinance, but which would be prohibited, regulated or restricted under the provisions of this Ordinance. It is the intent of this Ordinance to permit these *legally established nonconforming lots of record, buildings, structures, uses and signs* to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that *legally established nonconforming buildings, structures, uses and signs* shall not: (a) be enlarged upon, expanded or extended; or, (b) be used as grounds for adding other *buildings, structures, uses or signs* which are prohibited elsewhere in the same *district*.

*Nonconforming lots of record, nonconforming buildings or structures, nonconforming uses of land, nonconforming uses within nonconforming buildings or structures, and nonconforming signs* that are either illegal or not *legally established* on the effective date of this Ordinance shall not become *legally established* by virtue of the enactment of this Ordinance.

*Nonconforming lots of record, nonconforming buildings or structures, nonconforming uses of land, nonconforming uses within nonconforming buildings or structures, and nonconforming signs* which are in full compliance with the regulations of this Ordinance pertaining to the *permitted uses and development standards* of the *district* to which the real estate is zoned shall, after the effective date of this Ordinance, be considered validated as *conforming lots of record, buildings, structures, uses and signs* for the purposes of interpreting and applying this Ordinance.

**(b)      Certificate of Legally Established Nonconforming Use of Land.**

In order to protect the lawful nonconforming status of a *nonconforming lot, use, building, structure or sign*, a person who owns or operates said *nonconforming lot, use, building, structure or sign* shall request a Certificate of Legally Established Nonconforming Use of Land. The applicant, prior to the issuance of the Certificate of Legally Established Nonconforming Use of Land, shall bear the burden of proof to demonstrate that the *lot,*

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*use, building, structure or sign* was legally established per the requirements of this section. Submitted materials shall include, but not be limited to the following:

- (1) a completed application, on a form properly signed and notarized by the owner of the subject property, and which submittal shall include at a minimum: legal description of the property; a site location map; property tax identification number; township assessor property cards; recorded documents such as contracts, liens, or leases; business records that provide insight into the establishment or continuing use of the property; photographic evidence; Department of Code Enforcement records; and
- (2) any other information deemed appropriate by the *Zoning Administrator* to determine the legal status of the *nonconforming lot, use, building, structure or sign* as a lawful nonconforming use, and for the proper administration and enforcement of this Ordinance, such as but not limited to: lease and building histories, utility bills, city directory listings, historical ads, building permits, zoning and variance histories, affidavits, etc.
- (3) a fee, as established in Title 6 of the South Bend Municipal Code. (Ord. No. 10094-11)

**(c) Incompatibility of Legally Established Nonconforming Uses** (Ord. No. 10094-11)

*Legally established nonconforming uses* are declared by this Ordinance to be incompatible with *permitted uses* in the *district* in which such *legally established nonconforming use* is located.

*A legally established nonconforming use of a building or structure, or a legally established nonconforming use of land, shall not be extended, expanded or enlarged after the effective date of this Ordinance.*

**(d) Avoidance of Undue Hardship** (Ord. No. 10094-11)

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans for or construction of any *building, structure or sign*, or the designation of *use of any building or structure*, for which an *improvement location permit* has been properly issued prior to the effective date of this Ordinance; provided that:

- (1) the construction of such *building or structure* (excluding *signs*) is commenced within six (6) months of such effective date, or the construction of any such *sign* is commenced within thirty (30) days of such effective date;
- (2) construction of such *building, structure or sign* is diligently prosecuted to completion; and,

- (3) construction of such *building* or *structure* (excluding *signs*) shall be completed within two (2) years of the issuance of said *improvement location permit*, or construction of such *sign* shall be completed within ninety (90) days of the issuance of said *improvement location permit*.

(e) **Legally Established Nonconforming Lots** (Ord. No. 10094-11)

- (1) Legally Established Nonconforming Lots of Record

*Any legally established lot* recorded or any *legally established* platted *lot* recorded prior to the effective date of this Ordinance, having less than the required minimum *lot area* or minimum *lot width* required by the applicable *district* regulations of this Ordinance, shall be deemed a permitted exception to such minimum *lot area* or minimum *lot width* and may be used for any *permitted use* within the applicable *district* in which such *lot* is located provided that all other *development standards* are met.

- (2) Legally Established Nonconforming Lot Frontage

*Any legally established lot* in which the *frontage* of such *lot* has been reduced below that which is required by the applicable *district* regulations of this Ordinance by the acquisition of *right-of-way* or *access* rights by a governmental entity, shall be deemed a permitted exception to such minimum *frontage* requirements and may be used for any *permitted use* within the applicable *district* in which such *lot* is located provided that all other *development standards* are met.

- (3) Buildable Lots

*A nonconforming lot of record* shall be deemed a *legally established nonconforming lot of record* may be used as a *buildable lot* if such *nonconforming lot of record* complies with one (1) of the following:

- (A) Any *lot*, in its entirety, of a subdivision that was recorded in the Recorder's Office prior to the adoption of this Ordinance.
- (B) A parcel described by a metes and bounds description, or as *lots* or any combination of parts of *lots* of an unrecorded subdivision provided that all of the following provisions are complied with:
  - i. Recorded evidence of ownership describing the parcel as a single and separate ownership was recorded in the Recorder's Office prior to June 13, 1949;

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- ii. The current legal description describes the parcel as recorded in the Recorder's Office on or before June 13, 1949; and,
  - iii. The parcel has *frontage* along an improved, dedicated, and accepted *public street*.
- (C) A parcel described by a metes and bounds description, or as *lots* or any combination of parts of *lots* of an unrecorded subdivision provided that all of the following provisions are complied with:
- i. Recorded evidence of ownership describing the parcel as a single and separate ownership was recorded in the Recorder's Office after June 13, 1949, but on or before December 11, 1961;
  - ii. The current legal description describes the parcel as recorded in the Recorder's Office after June 13, 1949, but on or before December 11, 1961;
  - iii. The parcel consists of at least six thousand (6,000) square feet; and,
  - iv. The parcel has *frontage* along an improved, dedicated, and accepted *public street*.
- (D) A parcel described by a metes and bounds description, or as *lots* or any combination of parts of *lots* of an unrecorded subdivision provided that all of the following provisions are complied with:
- i. Recorded evidence of ownership describing the parcel as a single and separate ownership was recorded in the Recorder's Office on or before July 27, 1966;
  - ii. The current legal description describes the parcel as recorded in the Recorder's Office on or before July 27, 1966;
  - iii. The parcel meets or exceeds the *lot area* and *lot width* requirements of the *district* in which the parcel is located; and,
  - iv. The parcel has *frontage* as required by the zoning ordinance along an improved, dedicated, and accepted *public street*.
- (E) A parcel of land described by a metes and bounds description, or as a *lot* or *lots* or any combination of parts of *lots* of an unrecorded or recorded subdivision that does not comply with any of the above sub-sections of

this Section 21-01.03 (d) (3) and provided that prior to the adoption of this Ordinance the following were met:

- i. Recorded evidence of ownership describing the property as a single and separate ownership was recorded in the Recorder's Office; and
- ii. A *primary building* existed on the property.

(F) A *lot of record* as defined in sub-sections (A) through (E), above, which is reduced in *lot area* as a result of action by a governmental unit or entity.

**(f) Legally Established Nonconforming Buildings or Structures (Excluding Signs) (Ord. No. 10094-11)**

Where a *legally established nonconforming building or structure* exists on the effective date of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on: *gross floor area; lot coverage; building height* limitations; front, side and rear *setbacks and yards*; location on the *lot*; bulk; or other provisions of this Ordinance applicable to the *building or structure*, such *building or structure* may continue to exist so long as it remains otherwise lawful, subject to compliance with the following provisions:

- (1) such *legally established nonconforming building or structure* may not be enlarged, expanded or altered in a way which increases its nonconformity, provided such *building or structure* may be altered so as to decrease the extent of nonconformity;
- (2) should such *legally established nonconforming building or structure*, or *legally established nonconforming* portion of a *building or structure*, be damaged or destroyed by any means to the extent that restoration will exceed fifty (50) percent of the cost of construction of the entire *building or structure* at the time the damage or destruction is reported, as determined pursuant to Section 21-01.03, (1) – Determination of Cost of Construction, below, said *building or structure* shall not be reconstructed except in conformity with the provisions of this Ordinance; and (Ord. No. 10115-11
- (3) should such *legally established building or structure* be moved for any reason for any distance whatsoever, such *legally established building or structure* shall thereafter conform to the provisions of this Ordinance.

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**(g) Legally Established Nonconforming Uses of Land (Ord. No. 10115-11)**

Where *legally established nonconforming uses* of land exist on the effective date of this Ordinance which would not be permitted by the provisions of this Ordinance, such *uses* may be continued so long as they remain otherwise lawful provided that:

- (1) such *legally established nonconforming uses* shall not be enlarged, expanded, increased or extended to occupy a greater area of land than was occupied on the effective date of this Ordinance;
- (2) such *legally established nonconforming uses* shall not be moved in whole or in part to any portion of the *lot* or parcel other than that occupied by such *uses* on the effective date of this Ordinance;
- (3) no additional *building* or *structure* shall be erected in connection with such *legally established nonconforming use* of land; and,
- (4) a *legally established nonconforming use* may be changed to a less intense *use* permitted within the same *district* grouping pursuant to Section 21-01.02 (b) – Order of Districts (i.e., from one *use* permitted in the various *districts* of Section 21-03 Commercial / Mixed Use *Districts* to a less intense *use* listed within the various *districts* of Section 21-03 Commercial / Mixed Use *Districts*; but not from a *use* listed in one of the various *districts* of Section 21-03 Commercial / Mixed Use *Districts* to a *use* listed in one of the various *districts* of Section 21-02 Residential *Districts*), provided all other regulations of this Section are complied with.

**(h) Discontinuation of Legally Established Nonconforming Uses of Land (Ord. No. 10115-11)**

- (1) If any *legally established nonconforming use* of land, other than a single family residence, is:
  - (A) *abandoned* for any period of time; or,
  - (B) discontinued or otherwise *vacant* for more than twelve (12) consecutive months (except when a probate related court order or government action impedes access to the premises),

then any subsequent *use* of such land shall conform to the provisions of this Ordinance.

- (2) Any violation of this subsection shall result in enforcement proceedings under Section 21-10 of this Ordinance.

**(i) Legally Established Nonconforming Uses Within Legally Established Nonconforming Buildings or Structures** (Ord. No. 10094-11)

If any *legally established nonconforming use* is located within a *legally established nonconforming building or structure* and such *legally established nonconforming building or structure* becomes unsafe or unlawful by reason of physical condition and is razed, the *legally established nonconforming use* previously being conducted in such *legally established nonconforming building or structure* shall be extinguished and no longer permitted.

If any *legally established nonconforming use* is located within a *legally established nonconforming building or structure* and such *legally established nonconforming building or structure* is damaged or destroyed by any means to the extent that restoration will exceed fifty (50) percent of the cost of construction of the entire *building or structure* at the time the damage or destruction is reported, as determined pursuant to Section 21-01.03, (l) – Determination of Cost of Construction, below, the *legally established nonconforming use* previously being conducted in such *legally established nonconforming building or structure* shall be extinguished and no longer permitted. (Ord. No. 10115-11)

A *legally established nonconforming use* within a *legally established nonconforming building or structure* may be changed to a less intense use pursuant to Section 21-01.02 (b) – Order of Districts (i.e., within Section 21-03 Commercial / Mixed Use *Districts* or within Section 21-04 Industrial *Districts*, but not from Section 21-03 Commercial / Mixed Use *Districts* to Section 21-02 Residential *Districts*), provided all other regulations of this Section are complied with.

**(j) Repairs and Maintenance of Legally Established Nonconforming Buildings or Structures (Excluding Signs)** (Ord. No. 10094-11)

(1) Ordinary Repairs – On any *legally established nonconforming building or structure*, or portion of a *building or structure* containing a *legally established nonconforming use*, work may be done on ordinary repairs or on the repair or replacement of non-bearing walls, fixtures, wiring or plumbing, provided that the cubic feet content existing when the *building or structure*, or portion of a *building or structure* containing a *legally established nonconforming use* became nonconforming shall not be increased. Nothing herein shall be deemed to prevent the strengthening, repairing or restoring to safe condition of any *building or structure*, or part thereof, declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

(2) Reconstruction Prohibited – If a *legally established nonconforming building or structure* or portions of a *building or structure* containing a *legally established nonconforming use* becomes unsafe or unlawful by reason of physical condition

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and is razed, such *building* or *structure* shall not thereafter be rebuilt or used except in conformity with the provisions of this Ordinance.

- (3) Remodeling – The *gross floor area* and the *maximum building height* devoted to the *legally established nonconforming use* shall not be increased, except as such increase is required to comply with other applicable federal, state or local regulations (i.e., minor enlargements to accommodate ADA accessibility guidelines or current building codes); and,
- (4) *Parking Area, Outside Storage Area Or Outside Operations Area* – A *legally established nonconforming parking area, outside storage area or outside operations area* may be maintained, repaired or upgraded by hardsurfacing with asphalt or concrete provided that:
  - (A) there is no increase in the total area occupied by the *parking area, outside storage area or outside operations area*; and,
  - (B) if, in the discretion of the *Zoning Administrator*, the hardsurfacing would serve to reduce a potential negative impact of the existing *parking area, outside storage area or outside operations area* on surrounding properties (e.g., reduction in fugitive dust emissions, noise, erosion, etc.).

In case of disagreement with the determination of the *Zoning Administrator*, any aggrieved party may file and appeal with the *Board of Zoning Appeals* pursuant to the provision of Section 21-09.03 – Board of Zoning Appeals of this Ordinance. Such hardsurfacing shall require an *improvement location permit* and shall also be subject to full review under and compliance with the storm drainage requirements of the City of South Bend.

**(k) Legally Established Nonconforming Signs.** (Ord. No. 10094-11)

- (1) Any *legally established nonconforming sign* within the City of South Bend may continue to exist, including the performance of normal and routine maintenance, so long as such *sign* remains otherwise lawful.
- (2) *Legally established nonconforming signs* may receive normal and routine repair and maintenance subject to the following provisions:
  - (A) a *legally established nonconforming sign* may not be enlarged, expanded or altered in a way which increases its nonconformity;

- (B) a *legally established nonconforming sign* erected pursuant to the grant of a variance of either a previously enacted zoning regulation or this Ordinance for number of *signs*, height of *sign*, *setback of sign* or *sign surface area* may be altered so as to decrease the extent of nonconformity authorized by such grant of variance;
  - (C) except as provided for in sub-Section (2) (b), above, the removal of a *sign structure* or a *sign cabinet* shall be deemed definitive evidence that such *sign* requires work beyond normal and routine repair and maintenance, and such *sign* shall not be repaired, maintained or reconstructed except in conformity with the provisions of this Ordinance;
  - (D) if a *legally established nonconforming sign* is damaged or destroyed by any means to the extent that the repair or reconstruction of the *sign* exceeds fifty (50) percent of the cost of construction of the entire *sign*, determined pursuant to Section 21-01.03, (I) – Determination of Cost of Construction, below, said *legally established nonconforming sign* shall not be reconstructed except in conformity with the provisions of this Ordinance; (Ord. No. 10115-11)
  - (E) if the cost of normal and routine repair and maintenance of a *legally established nonconforming sign* exceeds fifty (50) percent of the cost of construction of the entire *sign*, determined pursuant to Section 21-01.03, (I) – Determination of Cost of Construction, below, said *legally established nonconforming sign* shall not be repaired, maintained or reconstructed except in conformity with the provisions of this Ordinance; and, (Ord. No. 10115-11)
  - (F) should a *legally established nonconforming sign* be moved for any reason for any distance whatsoever, such *legally established nonconforming sign* shall thereafter conform to the provisions of this Ordinance.
- (3) Amortization of Off-Premise Signs (i.e., Billboards).
- (A) Intent and Purpose
- Attractive and integrated urban design features tend to improve the image of the community, raise property values within the community, attract new business and residents to the community, and improve the overall quality of life of the community. Attention to urban design features, therefore, is determined by the Common Council of the City of South Bend to be in the best economic interest of the citizens and business owners of the City of South Bend.

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*Signs*, due to their inherent visibility and incursion upon the urban landscape, represent a prominent urban design feature. The regulations contained in Section 21-07.03 – Sign Regulations of this Ordinance were prepared in recognition of the impact of *signs* as a prominent urban design feature. The intent the *Sign Regulations* of this Ordinance is, in part: to encourage the effective use of *signs* as a means of communication in the City of South Bend; to create a more attractive economic and business climate; to minimize the possible adverse effects of *signs* on nearby public and private property; to foster and improve the economic vitality of the community by enhancing and protecting the physical appearance of the community; and, to promote the public health, safety and general welfare of the community.

The purpose of the regulations contained in this Section 21-01.03 (k) (3) – Amortization of Nonconforming Off-Premise Signs are intended to implement the intent set forth above. (Ord. No. 10115-11)

(B) *Impact of Off-Premise Signs*

It is hereby declared by the Common Council of the City of South Bend that *off-premise signs* have the greatest potential of all *signs* to have a significant negative impact on the urban design features of the City of South Bend and the public health, safety and general welfare of the community due to: *sign surface area* in relation to *lot area*; *sign surface area* in relation to size of *buildings*; *sign surface area* in relation to the *sign surface area* permitted for *on-premise business signs*; *sign surface area* in relation to the *sign surface area* of traffic control *signs*; inherent needs for high visibility; and, predominantly being located along highly traveled thoroughfares.

(C) *Declaration of Nonconforming Off-Premise Signs*

By operation of law, any *off-premise sign* which is in existence on the effective date of this Ordinance and which does not comply with the provisions of Section 21-07.03 – Sign Regulations of this Ordinance are either *nonconforming off-premise signs* or *legally established nonconforming off-premise signs*.

(D) Declaration of *Legally Established Off-Premise Signs*

- i. A *nonconforming off-premise sign* shall be deemed to be a *legally established nonconforming off-premise sign* relative to both *use and development standards* if the following conditions apply:
  - a. the *off-premise sign* existed prior to January 1, 1992;
  - b. the *off-premise sign* has continued to exist from January 1, 1992 to the present;
  - c. the *off-premise sign* has not been abandoned; and,
  - d. the *sign surface* of the *off-premise sign* has not been left blank for a period of three-hundred and sixty-five (365) consecutive days.
- ii. A *nonconforming off-premise sign* shall be deemed to be a *legally established nonconforming off-premise sign* relative to both *use and development standards* if the *off-premise sign* was erected between January 1, 1992 and December 31, 1992 in conformance with a permit which was issued prior to January 1, 1992 and which permit was still valid at the time of construction.
- iii. A *legally established nonconforming off-premise sign* shall either:
  - a. comply with the conditions listed in Section 21-01.03, (k), (3), D., i., above; (Ord. No. 10115-11)
  - b. comply with the conditions listed in Section 21-01.03, (k), (3), D., ii., above, or, (Ord. No. 10115-11)
  - c. have been issued a valid permit from the City of South Bend on or after January 1, 1992 for the construction and placement of said *off-premise sign*, which permit was issued in full compliance with all applicable regulations of the City of South Bend Zoning Ordinance in effect at the time of issuance of such permit, and the *off-premise sign* was constructed, completed and maintained in full compliance with all applicable regulations of the City of South Bend Zoning Ordinance in effect at the time of issuance of such permit.

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(E) Removal of *Nonconforming Off-Premise Signs*

Any *nonconforming off-premise sign* (i.e., an *off-premise sign* which was not in compliance with applicable *sign* regulations or grant of *variance* at the time of the construction, erection or placement of such *sign*) shall be subject to immediate enforcement pursuant to Section 21-10 – Enforcement of this Ordinance.

(F) Registration of *Legally Established Nonconforming Off-Premise Signs*

The owner of any *lot* which includes a *legally established nonconforming off-premise sign*, or the owner of the *legally established nonconforming off-premise sign*, shall register such *legally established nonconforming off-premise sign* with the City of South Bend within six (6) months of the effective date of this Ordinance.

(G) Failure to Register

A *legally established nonconforming off-premise sign* which is not registered with the City of South Bend within six (6) months of the effective date of this Ordinance shall be deemed to be a *nonconforming off-premise sign* and shall become subject to the provisions of sub-Section (E), above, regarding removal.

(H) Removal of *Legally Established Nonconforming Off-Premise Signs*

Any *legally established nonconforming off-premise sign* which: (i) is not brought into compliance with the terms and conditions of Section 21-07.03 – Sign Regulations of this Ordinance; or (ii) does not obtain the *variance(s)* necessary to establish such *sign* as a permitted *sign* under this Ordinance, shall be removed within five (5) years of the effective date of this Ordinance.

Any *off-premise sign* which becomes a *legally established nonconforming off-premise sign* by virtue of: any future amendment of this Ordinance; any future zone map amendment; or, any annexation of lands into the corporate jurisdiction of the City of South Bend, which: (i) is not brought into compliance with the terms and conditions of Section 21-07.03 – Sign Regulations of this Ordinance (as such regulations may be amended from time to time); or (ii) does not obtain the *variance(s)* necessary to establish such *sign* as a permitted *sign* under this Ordinance, shall be removed within five (5) years of the such amendment or annexation.

Removal shall include the removal of the *sign surface* and any *sign structure* (including any *sign cabinet*, pole, base, foundation, support, tie rods, upright, bracing or framework) which supports or is capable of supporting such *sign surface*.

(I) Maintenance of *Legally Established Nonconforming Off-Premise Signs*

*Legally established nonconforming off-premise signs* shall be subject to the provisions of sub-Section 21-01.03 (k) (2) above, regarding maintenance.

(l) **Determination of Cost of Construction.** (Ord. No. 10094-11)

In determining the reported cost of construction of a *building* or *structure* (excluding *signs*) or the cost of construction of a *sign*, the *Zoning Administrators* may consider the following items:

- (1) *Building* or *structure* - documentation prepared by and provided by the applicable insurance company responsible for adjusting the loss;
- (2) *Sign* - documentation prepared by and provided by an appraiser licensed by the State of Indiana to appraise the type of property involved; or,
- (3) Other documentary evidence relevant to reported cost of construction deemed appropriate by the *Zoning Administrator*.

(m) **Reconstruction, Remodeling or Enlargement of a *Legally Established Nonconforming Single Family Dwelling* or *Two Family Dwelling*.** (Ord. No. 10094-11)

Notwithstanding any provision of this Section to the contrary, any *legally established nonconforming single family dwelling* or *two family dwelling* may be:

- (1) reconstructed if damaged or destroyed by fire, natural disaster or for any other reasons; or,
- (2) remodeled or enlarged,

provided that such remodeling or additions comply with the *development standards* of the applicable SF1 or SF2 *District* related to maximum *lot coverage*, *minimum yards* and *building setbacks*, *maximum building height*, and *off-street parking*.

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**(n) Reconstruction or Remodeling of a *Legally Established Nonconforming Multifamily Dwelling*.** (Ord. No. 10094-11)

Notwithstanding any provision of this Section to the contrary, any *legally established nonconforming multifamily dwelling* which contains five (5) *dwelling units* or less may be:

- (1) reconstructed if damaged or destroyed by fire, natural disaster or for any other reasons; or,
- (2) remodeled, provided that such remodeling:
  - (A) does not increase the height, area or bulk of the *building*; or,
  - (B) does not increase the number of *dwelling units* in the *building*;
  - (C) does not increase the number of bedrooms in any *dwelling unit* in the *building*.

**(o) Agricultural Nonconforming Use.** (Ord. No. 10094-11)

An *agricultural nonconforming use* may be changed to another *agricultural use* without losing *agricultural nonconforming use* status, provided, however, such *agricultural nonconforming use* shall be:

- (1) maintained for at least any three (3) year period in a five (5) year period;
- (2) maintained and operated in compliance with all state environmental and state health laws and rules; and,
- (3) maintained and operated in compliance with all requirements of the St. Joseph County Zoning Ordinance applicable to conforming *agricultural uses*, as such ordinance may be amended from time to time.