

## CHAPTER 2

# GENERAL PERFORMANCE STANDARDS

### 2.01 Limitation on Land Use

No person, firm or corporation shall use or permit to be used, any land or buildings, nor shall any person, firm or corporation make, erect, construct, move, alter, enlarge or rebuild or permit the making, erection, construction, moving, altering, enlarging or rebuilding of any building, structure or improvement, which is designed, arranged or intended to be used or maintained for any purpose or in any manner except in accordance with the use, height, area, yard, space, and other requirements established in the district in which such land, building, structure or improvements is located. The exception would be as provided in the non-conforming uses later in this Chapter.

### 2.02 Division of Lots

A lot shall not hereafter be divided into two or more lots, unless all lots resulting from such division conform to all the applicable regulations of the zoning district in which the lots are to be located and also comply with the South Whitley Zoning Ordinances.

### 2.03 Single-Family Dwellings on Separate Lot

Every single-family dwelling hereafter erected or structurally altered shall be located on a separate lot or tract. In no case shall there be more than one detached single-family dwelling on one lot or tract (except for accessory buildings or uses, as defined herein.)

### 2.04 Lot and Yard Requirements

The maximum lot area, minimum ground floor area, minimum lot width, maximum lot coverage, minimum depth of front yard, minimum depth of rear yard, minimum width of each side yard, and the maximum building height for each district shall be as specified in its respective Chapter.

A. Every building hereafter erected shall be located on a lot which fronts on a street.

- B. Heights of Buildings:** The height of the principal building shall be a maximum of 35 feet or 2 ½ stories.
- C. Front Yard:** In any residential district (R-1, R-2) where at least 25% of the lots in a block are occupied by existing residential structures, the minimum depth of a front yard may be the average of the depths of the front yards of the existing structures. *(Amended 3/25/03.)*
- D. Side Yard:** The sum of the side yards shall equal not less than 20% of the lot width with a minimum width of five feet for either side yard. On a corner lot the side yard facing the street shall not be less than 15 feet.

All front and side yard depths are increased one foot for each additional foot of height. (2.04, B).

## **2.05 Compliance with Yard Requirements**

Except as otherwise provided, required yards shall be open and unobstructed from the ground to the sky. Yards provided for a building for the purpose of complying with the provisions of this code shall not be considered the yard for any other building, nor considered the yard for any other lot.

- A. Permitted Yard Obstruction:** Permitted yard obstructions such as the following are authorized in all districts subject to the provisions of any and all recorded restrictive covenants running with the land:

- Basketball and/or tennis courts
- Barbeque pits
- Bird baths and bird houses
- Clotheslines
- Cornices, canopies, eaves and similar architectural features may not be more than two feet into a required yard.
- Curbs
- Driveways
- Fire escapes may project not more than four and one-half feet into a required yard.
- Flagpoles
- Hedges, provided they do not impede corner visibility requirements.
- Hot tubs, spas, whirlpools. Required to be ten feet in from any side or rear property line. Not allowed in any required front yard.

- Lamp posts
- Mail boxes
- Name plates, not exceeding 2 square feet
- Parking spaces, no inoperative or unlicensed motor vehicles shall be parked or stored within the front or side yards in a Residential District.
- Patio and Porches
- Playground equipment
- Ponds, trellis, grape harbors, and decorative post
- Public utility installations for local service (such as poles, lines, hydrants, and telephone booths)
- Retaining walls
- Trees, shrubs, plants and flowers; provided they do not impede corner visibility.
- Walks

## **2.06 Accessory Building and Structures:**

A subordinate building, structure or use which is incidental to that of the primary use and is a use other than human occupancy.

Accessory buildings or structures require an improvement location permit and shall be located more than five feet from side and rear property lines. Accessory structures are not permitted in any required front yard. No accessory building shall exceed 16 feet in height above average ground level unless it is agricultural use or if it is approved by the Board of Zoning Appeals.

\*Note: Other building codes may apply.

## **2.07 Fences or Walls**

Fences or walls may be located in any yard provided that corner traffic visibility of 3 ft. to 12 ft. is maintained.

Fences may not be located on a property line, except by agreement of all concerned property owners.

Front yard: No fences shall be hereafter built or erected between the front setback line of the building or buildings except natural fences of hedge, trees, or shrubbery, except by special exception as noted in the "height requirements" section.

Height requirements: Fences and walls in residential districts shall not exceed a height of six feet. Any fence or wall which projects into or encloses a front yard shall not exceed three feet, except that open chain link fences may be erected to four feet in height.

\*Requires a special exemption permit by the Board of Zoning Appeals on all front yard fences.

Building Materials: Fences must be constructed with customary fencing material. Examples include: chain link, wrought iron, picket, stockade type, brick, or other ornamental material. The fence shall be constructed with all braces and supports on the interior, except when both sides are of the same design and appearance.

Maintenance: The screening wall or fence shall be maintained by the owner of the lot fence construction. Failure to maintain after notice shall constitute an offense hereunder.

## **2.08 Satellite Antennas**

- A.** Satellite antennas are permitted use in residential districts provided they meet the following standards:
- 1.** Shall be set back from the perimeter property line or lines two feet for every foot in height.
  - 2.** Shall not be permitted as a principal use on the lot.
  - 3.** Shall not be permitted in any required front yard.
- B.** Satellite antennas are permitted as a matter of right in all other districts. If the antenna is to be located on a lot which abuts a residential district, the antenna shall be set back from the common property boundary two feet for every foot of height above grade.
- C.** Satellite antennas which do not meet the standards as set forth above shall require approval of a Special Exception by the Board of Zoning Appeals.
- D.** Satellite antennas which have been installed prior to the effective date of this ordinance shall be permitted to continue. When they are replaced, the new satellite antennas shall come into conformance with the standards listed above.

## **2.09 Swimming Pools**

Swimming pools are any artificial basin of water constructed, installed, modified, or improved for wading, swimming, or diving. This term does not include artificial lakes. Swimming pools are required to be ten feet in from any property line.

Residential swimming pool (family pool) means any constructed pool, permanent or non-permanent, which is intended for non-commercial use as a swimming pool. Any residential swimming pool will be required to be ten feet in from any side or rear property line. Residential swimming pools are not allowed in any required front yard.

Access to residential pools shall be restricted by one of the following means:

- A. Walls or fencing not less than 5 feet high and completely surrounding the pool and deck area with the exception of self-closing and latching gate and door, both capable of being locked.
- B. Other means not less than five feet high and deemed impenetrable by the enforcing authority at the time of construction and completely surrounding the pool and deck area when the pool is not in use.
- C. A combination of subparagraphs A. through B. that completely surrounds the pool and deck with the exception of self-closing and latching gates and doors which are capable of being locked.

## **2.10 Code of Ethics:**

Any member of the South Whitley Town Council, Planning Commission, or Board of Zoning Appeals to whom some private benefit, direct or indirect, financial or otherwise, may come as a result of a public action concerning this ordinance, shall not be a participant in that action. The possibility, not the actuality, of a conflict shall govern. The individual experiencing a conflict of interest shall declare his interest, abstain from the voting on the matter, and refrain from any deliberations on the matter. The individual shall not discuss the matter with a fellow official for the purpose of influencing a decision thereon.

**2.11 Non-Conforming Uses** *(Amended 3/9/2010)*

- A. Scope of Provisions:** The provisions of this chapter shall apply to all non-conforming uses, lands, and structures. A non-conforming land use or structure is one which existed lawfully, whether by variance or otherwise, on the date this Zoning Ordinance or any amendment thereto became effective, and which fails to conform to one or more of the applicable regulations of the Zoning Ordinance or such amendment thereto. Such non-conformities may be incompatible with and detrimental to permitted land uses and structures and may inhibit present and future development of nearby properties; and they confer upon their owners and users a position of unfair advantage.
- B. Statement of Intent:** Existing non-conformities are not to be extended, expanded, or changed; however their continued, lawful existence, within the requirements of this Ordinance, is expressly acknowledged.
- C. Non-Conforming Uses of Lots:** When, on the date of adoption or amendment of this Ordinance, an existing non-conforming use of a parcel or lot may be continued so long as it remains otherwise lawful but shall be subject to the following provisions:
- 1. Enlargement:** No such non-conforming use of a parcel or lot shall be enlarged, expanded or extended to occupy a greater area of land than was occupied on the date of adoption or amendment of this Ordinance and no additional accessory use, building, or structure shall be established thereon.
  - 2. Relocation:** No such non-conforming use of a parcel or lot shall be moved in whole or in part to any other portion of such parcel or lot not so occupied on the date of adoption of this Ordinance, or to a parcel or lot not in conformance with this Ordinance.

3. **Discontinuance:** If cessation of such non-conforming use exceeds more than one hundred eighty (180) consecutive days, except where government action causes such cessation, the subsequent use of such parcel or lot shall conform to the regulations and provisions set by this Ordinance for the district in which such parcel or lot is located. The Board of Zoning Appeals may grant an extension of up to another (180) days as a Special Exception for the continuance of a non-conforming use. For the purposes of the Ordinance, cessation of the non-conforming use shall mean no further active use of the property in the principle non-conforming manner. Continued simple ownership or use of the property for some clearly secondary purpose, such as storage, shall be considered a continuance of the non-conforming use.
  
4. **Change:** An existing non-conforming use of land shall not cause further departures from the Zoning Ordinance. Although an existing non-conforming use may continue, except as hereinafter limited, it may not be changed to another use, except to a use permitted in the district in which it is situated and provided it complies with all other requirements of this Ordinance.

**D. Non-Conforming Buildings and Structures:** Where, on the date of adoption or amendment of this Ordinance, a lawful building or structure exists that could not be built under the regulations of this Ordinance by reasons of restriction upon lot area, lot width, lot coverage, height, open spaces, off-street parking, loading spaces and setbacks, or other characteristics, such building or structure may be continued, so long as it remains otherwise lawful, subject to the following provisions:

1. **Enlargement:** Such building or structure may be enlarged, expanded, extended, or altered only if the non-conformity is removed, except as otherwise provided herein.

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A building or structure may be improved to the extent that the proposed improvement does not increase the non-conformity of the particular setback or create a new and different non-conformity such as a different yard setback, parking, or so forth.

2. **Destruction:** Any legal non-conforming building(s) or structure(s) which is damaged or destroyed by fire, flood, explosion, or other casualty may be reconstructed and used as before if such reconstruction is performed within twelve (12) months of that casualty, and if the restored structure has no greater coverage or square footage than before that casualty.
3. **Relocation:** Should any such building or structure be moved for any reason for any distance, it shall thereafter conform to the regulations of the district in which it is located after it is moved.

**E. Non-Conforming Uses of Buildings and Structures:** Where, on the date of adoption or amendment of this Ordinance, a lawful use of a building or structure exists that is no longer permissible under the regulations of this Ordinance, such use may be continued so long as it remains otherwise lawful subject to the following provisions:

1. **Enlargement:** No existing building or structure devoted to a use not permitted by this Ordinance in the district in which it is located shall be enlarged, constructed, reconstructed, moved, or structurally extended or altered except in changing the use of such building or structure to a use permitted in the district in which such building or structure is located.
2. **Change in Use Not Permitted:** An existing non-conforming land use or structure shall not cause further departures from the Zoning Ordinance. Although an existing

non-conforming use may continue, except as hereinafter limited, it may not be changed to another use, except a use permitted in the district in which it is situated and provided it complies with the requirements of that district.

3. Discontinuance: When a non-conforming use of a building or structure is discontinued or abandoned for more than one hundred eighty (180) consecutive days (except where government action prevents access to the premises), the building or structure shall not thereafter be sued except in conformance with the regulations of the district in which it is located.

- F. Repairs and Maintenance:** The following applies to legal non-conforming structures of buildings, legal non-conforming uses of structures, or structures and land in combination:

Work may be done for ordinary repairs or replacement of walls, heating, fixtures, wiring or plumbing; under the condition that the square footage existing when the structure became non-conforming shall not be increased. If a structure or portion of a structure were to become unsafe or condemned due to lack of repairs or maintenance, and is declared by an authorized official to be unsafe or condemned due to physical condition; the building or structure shall be restored, repaired, or rebuilt within six (6) months of the declaration. If the improvements have not been made within the six (6) months, all future improvements must conform to all standards and regulations within this ordinance. If a building or structure becomes unsafe or unlawful due to physical condition and is razed, the building or structure shall be rebuilt in conformity with the district in which it is located. Nothing in this section shall be deemed to prevent the strengthening, repairing, or restoring to a safe condition of any building or structure or part thereof declared to be unsafe by any official charged with protecting public safety upon order of such official.

- G. Change of Ownership or Tenancy:** There may be a change of

tenancy, ownership, or management of an existing non-conforming use, building or structure, provided there is no change in the nature or character, extent or intensity of such non-conforming use, building or structure.

**H. Completion of Pending Construction and Building Permits:** To avoid undue hardships, nothing in this Ordinance shall be deemed to require a change in plans, construction, or designated use of any building on which actual 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. Nothing herein contained shall require any change in the plans or designated use of a building for which a building permit had been heretofore issued, or the plans or final subdivision plats which have been approved by the Board at the time of the passage of this Ordinance.

**I. Substandard Non-Conforming Lots-of-Record:** In any district in which single-family dwellings are permitted notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory buildings or structures may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership as of the date of adoption of this Ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district. Yard dimensions and other requirements, not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. If two or more lots or combinations 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 do not meet the requirements for lot width and area as established by this Ordinance, no portion of said parcel or lot shall be used or sold which does not meet lot width and area requirements established by this Ordinance,

nor shall any division of the parcel or lot be made which leaves remaining any parcel or lot with width or area below the requirements stated in the Ordinance.

**J. Existence of a Non-Conforming Use or Structure:** A non-conformity shall not be deemed to have existed on the date of this Zoning Ordinance, or any amendment thereto, became effective; unless:

1. It was in being on a continuous basis and to its fullest extent on such date.
2. If such non-conformity is a use, such use had not been abandoned as herein defined.
3. If such use existed lawfully under the previous Zoning Ordinance.

In cases of doubt, and on specific questions raised, whether a non-conforming use exists shall be a question of fact and shall be decided by the Board of Zoning Appeals after notice, a public hearing, and receipt of a report and recommendation of the Planning Department.

**K. Non-Conforming Uses Not Validated:** A use in violation of a provision of the Ordinance which this repeals shall not be validated as a non-conforming use by this Ordinance, and it shall conform to the provisions of this Ordinance.

**L. Non-Conformity as Basis for Variance:** The existence of any present non-conformity anywhere in the Town or its jurisdictional area shall not itself be considered grounds for the issuance of a variance for other property.