ORDINANCE 2015-007       PASSED: APRIL 13, 2015

AMENDING THE MUNICIPAL CODE OF THE CITY OF
DEKALB, ILLINOIS, CHAPTER 23 “UNIFIED
DEVELOPMENT ORDINANCE (UDO), ARTICLE 19
“NON-CONFORMING SITUATIONS”.

WHEREAS, the City of DeKalb is a Home Rule Unit by virtue of the provisions of the Constitution
of the State of Illinois of 1970; and,

WHEREAS, Section 6(a) of Article VII of the Illinois Constitution of 1970 gives to Home Rule
Municipalities the authority to exercise any powers pertaining to its government and affairs
including, but not limited to, the power to regulate for the protection of the public health, safety,
morals and general welfare; and,

WHEREAS, the City of DeKalb has adopted a Unified Development Ordinance (the "UDO"), which
sets forth the zoning and subdivision standards and procedures for the City of DeKalb; and,

WHEREAS, Article 19 of that Unified Development Ordinance sets forth the regulations for Non-
Conforming Situations; and,

WHEREAS, the proposed amendment to that Article updates language referring to Non-Conforming
Repairs and Maintenance; and,

WHEREAS, the Planning and Zoning Commission held a public hearing on this proposed
amendment at its meetings of August 27, September 10 and continued to the October 15, 2014, at
which time the Commission recommended approval of the proposed amendment; now,

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as
follows:

Section 1. That the current Article 19 of the Unified Development Ordinance of the City of DeKalb,
Illinois, “Non-Nonconforming Situations,” Sections 19.03 Paragraph 3, 19.05 Paragraph 3, 19.06
Paragraph 4, 19.11.02, 19.12 and 19.13 are hereby amended to delete therefrom the language shown
with strikethrough, and add thereto the language underlined, to wit:

19.03.03 When a non-conforming use of a parcel or lot is discontinued or abandoned for more than
six (6) months (except where government action prevents access to the premises), the
parcel or lot shall not thereafter be used except in conformance with the regulations of the
district in which it is located.

19.05.03. When a non-conforming use of a building or structure is discontinued or abandoned for
more than six (6) months (except where government action prevents access to the
premises), the building or structure shall not thereafter be used except in conformance
with the regulations of the district in which it is located.

19.06.04 Repair or replacement of a damaged structure as permitted in Paragraph 1, above, shall be
commenced in full compliance with the City’s Building Codes and other codes, within
twelve (12) months of the occurrence of the damage and diligently managed to
completion. Failure to begin repair within that twelve (12) month period, or the commencement of repairs in violation of other Codes, will result in the forfeiture of the rights provided by this Article and after that period, the building or structure may only be repaired and/or used in full compliance with the provisions of this Ordinance.

19.12 Existence of a Non-Conforming Use
A non-conformity shall not be deemed to have existed on the date this Ordinance or any amendment thereto became effective; unless:
1. It was being used 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 or discontinued.
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 Council after notice, a public hearing, and receipt of a report and recommendation of the Planning and Zoning Commission.

19.13 Non-conforming Lots of Record
Lots of record, established prior to the effective date of this Ordinance or amendments thereto, that have size and/or dimensional non-conformities may be used for purposes allowable by this Ordinance, provided that all buildings placed on such lots meet the required setbacks in that Zoning District.

19.14 Non-conformity as Basis for Variance
The existence of any non-conformity anywhere in the City shall not itself be considered grounds for the issuance of a variance for that property or any other property.

Section 2. That each section, paragraph, sentence, clause and provision of this Ordinance is separable and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance, other than the part affected by such a decision.

Section 3. Upon its passage and approval according to law, this Ordinance shall, by authority of the City Council, be published in pamphlet form. On the tenth day after the date of publication, this Ordinance shall be in full force and effect. Publication Date: April 14, 2015. Effective Date: April 24, 2015.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 13th day of April and approved by me as Mayor on the same day. Passage on first reading with waiver of second reading on a 5-0-3 roll call vote. Aye: Finucane, Lash, Naylor, O'Leary, Rey. Absent: Jacobson, Snow, Baker.

ATTEST:

[Signature]
MARCIA E. SWEIGERT, City Clerk

[Signature]
JOHN A. REY, Mayor
ARTICLE 19

NON-CONFORMING SITUATIONS

19.01 Scope of Provisions

The provisions of the section 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 Ordinance or any amendment thereto became effective, and which fails to conform to one or more of the applicable regulations of this Ordinance or such amendment thereto.

19.02 Statement of Intent

Non-conforming situations may be incompatible with, and detrimental to, permitted land uses and structures in the zoning districts in which they are situated; may inhibit present and future development of nearby properties; and/or may confer upon their owners and users a position of unfair advantage. Non-conforming situations should be abolished or brought to conformity as quickly as the fair interest to the parties will permit.

19.03 Non-Conforming Uses of Lots

Where, on the date of adoption or amendment of this Ordinance, a lawful use of a parcel or lot, on which no buildings exist, no longer conforms to the provisions of this Ordinance or amendment thereto, such principal use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. 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 accessary use, building or structure shall be established thereon.

2. 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 amendment thereto or to a parcel or lot not in conformance with this Ordinance.

3. When a non-conforming use of a parcel or lot is discontinued or abandoned for more than one (1) year or six (6) months (except where government action prevents access to the premises), the parcel or lot shall not thereafter be used except in conformity with the regulations of the district in which it is located.

19.04 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, or amendment thereto, by reason of restrictions upon lot area, lot width, lot coverage, height, open spaces, off-street parking, loading spaces and setbacks, or other characteristics (other than use), such building or structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. Such building or structure may be enlarged, expanded, extended, or altered only if such building or structure modification conforms to the requirements of this Ordinance and does not expand any dimensional nonconformity.

2. Should any such building or 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 shall not be reconstructed except in conformity with the provisions of this Ordinance.

UPDATED April 2015

19-1 January 2007 Edition
3. 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.

19.05 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 or amendment thereto, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. An existing building or structure shall not be enlarged, constructed, reconstructed, moved or structurally extended or altered except to change the use of such building or structure to a use permitted in the district in which such building or structure is located.

2. Although an existing non-conforming use may continue, except as hereinafter limited, it may not be changed to another use, except to a use of the same or of a less intense nature, or a use permitted in the district in which it is situated.

3. When a non-conforming use of a building or structure is discontinued or abandoned for more than one (1)-year, six (6) months (except where government action prevents access to the premises), the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.

4. When a non-conforming use of a building or structure changes ownership, use or tenancy the legal non-conforming use must be discontinued.

19.06 Repairs and Maintenance

1. Nothing in this Ordinance shall be deemed to prohibit the restoration of any structure and its use where such structure has been damaged by any means out of the control of the owner to an extent of less than fifty percent (50%) of its replacement value (excluding the value of the land, the cost of preparation of land, and the value of any foundation adaptable to a conforming use) at the time of damage, provided the restoration of such structure and its use in no way increases any former non-conformity.

2. Whenever such structure has been damaged to an extent of more than fifty percent (50%) of its replacement value (excluding the value of the land, the cost of preparation of land and the value of any foundation adaptable to a conforming use), at the time of damage, as determined by the Director of Community Development or by any means within the control of the owner to any extent whatsoever, the structure shall not be restored except in full conformity with all regulations of the district in which such structure is situated.

3. When a structure is determined to be in violation of any applicable health or safety code by the Director of Community Development under any applicable Code or Ordinance of the City and the cost of placing the structure in condition to satisfy the standards under such ordinance shall exceed fifty percent (50%) of the replacement cost of the structure, such non-conforming structure shall not be restored for the purpose of continuing a non-conforming use.

4. Repair or replacement of a damaged structure as permitted in Paragraph 1, above, shall be commenced in full compliance with the City's Building Codes and other codes, within twelve (12) months of the occurrence of the damage and diligently prosecuted, managed to completion. Failure to begin repair within that twelve (12) month period, or the commencement of repairs in violation of other Codes, will result in the forfeiture of the rights provided by this Article and after that period, the building or structure may only be repaired and/or used in full compliance with the provisions of this Ordinance.
19.07 Reversion Prohibited

Whenever any part of a nonconforming lot, structure or use has been amortized, changed, converted to or replaced by a conforming structure or use, or if the previous nonconformity is brought into conformity with this Ordinance, such building, structure or lot shall not thereafter be altered, used or occupied by the same, nor any other, nonconformity, or nonconforming use or structure.

19.08 Enlargement / Replacement of Non-conforming Residential Dwellings Within Commercial Districts

Within the NC, LC, GC and CBD zoning districts, a non-conforming residential dwelling, where such was created by adoption of this ordinance, or amendment thereto, and not by actions of the property owner, may be enlarged, altered or replaced, provided such activity does not increase a dimensional non-conformity.

19.09 Change of Tenancy or Ownership

Provided there is no change in the nature or character, extent or intensity of such non-conforming use, building or structure (other than signage), there may be a change of tenancy, ownership or management of an existing non-conforming use, building or structure.

19.10 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 site plan or designated use of a building for which a building permit had been heretofore issued, or plans or preliminary or final subdivision plats which have been approved by the City at the time of the passage of this Ordinance or amendment provided that actual construction is begun within one-hundred eighty (180) days of such permit issuance or approval thereto.

19.11 Special Uses

Any use existing at the time of adoption or amendment to this Ordinance and which is permitted as a special use in the district in which said use is located under the terms of this Ordinance or amendment, shall be deemed a legal non-conforming use in such district until such time as a Special Use Permit may be issued to bring the property into conformity.

19.11–12 Existence of a Non-Conforming Use

A non-conformity shall not be deemed to have existed on the date this Ordinance or any amendment thereto became effective; unless:

1. It was being used 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 or discontinued.

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 Council after notice, a public hearing, and receipt of a report and recommendation of the Planning and Zoning Commission.

UPDATED April 2015

January 2007 Edition
19.1213 Non-conforming Lots of Record

Lots of record, established prior to the effective date of this Ordinance or amendments thereto, that have size and/or dimensional non-conformities may be used for purposes allowable by this Ordinance, provided that all buildings placed on such lots meet the required setbacks in that Zoning District.

19.13-14 Non-conformity as Basis for Variance

The existence of any non-conformity anywhere in the City shall not itself be considered grounds for the issuance of a variance for that property or any other property.