

## 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 Churubusco Subdivision Control Ordinance.

### **2.03 Single-Family Dwellings on Separate Lots**

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 minimum 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.** Lots which abut on more than one street shall provide the required front yards along every street. The remaining yards will become side yards for the setback purposes of this ordinance. (The intent of this ordinance is to encourage access to be located on the minor street. )
- B.** No principal structure in an Agricultural or Residential District, except those used by essential services, shall exceed thirty-five (35) feet in height above average ground level and no accessory building shall exceed sixteen (16) feet in height above average

ground level unless it is agriculture use or if it is approved by the Board of Zoning Appeals. No structure in a Business or Industrial District shall exceed fifty (50) feet in height above average ground level. The Board may authorize a variance to this height regulation in any district if:

1. All front and side yard depths are increased one foot for each additional foot of height; or
2. The structure is any of the following but not limited to: television and radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers and scenery lofts, cooling towers, ornamental towers and spires, chimneys, silos, elevator bulkheads, smokestacks, conveyors, and flag poles and does not constitute a hazard to any established airport.

## **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
- Barbecue pits
- Bird baths and bird houses
- Clotheslines
- Cornices, canopies, eaves and similar architectural features may not project more than two (2) feet into a required yard.
- Curbs
- Driveways
- Fire escapes may project not more than four and one-half (4 1/2) feet into a required yard.
- Flagpoles
- Hedges, provided they do not impede corner visibility requirements of Chapter 10.
- Hot tubs, spas, whirlpools. Required to be ten (10) 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, see Chapter 11, Signs.
- Parking spaces, no inoperative or unlicensed motor vehicles shall be parked or

stored within the front or side yards in a Residential District

Patios and Porches.

Playground equipment

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 requirements of Chapter 10.

Walks

**2.06 Accessory Building, Structures and Uses:** A subordinate building, structure or use which is incidental to that of the primary use and is a use other than human occupancy. Accessory building and structures are required to have the same setback regulations as the primary building or structure except in residential and agricultural areas where they may be located no nearer than five (5) feet from the side and/or rear property lines. Accessory buildings or structures which are 120 square feet or larger in area require an improvement location permit and a building permit and shall be located more than five (5) feet from side and rear property lines. Accessory structures smaller than 120 square feet in area do not require an improvement location permit or a building permit but shall be located more than five (5) feet from side and rear property line. Accessory structures are not permitted in any required front yard. \*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 is maintained in accordance with the Off-Street Parking and Loading Requirements in Chapter 10. Other screening devices are detailed in Section 10.04.

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

Height requirements: Fences and walls in residential districts shall not exceed a height of six (6) feet. Any fence or wall which projects into or encloses a required front yard shall not exceed three (3) feet, except that open chain link fences may be erected to four (4) feet in height.

Building Materials: Fence shall be constructed with customary fencing materials. Examples include: chain link, rod iron, picket, stockade type, brick, or other ornamental. Previously used materials shall not be used. 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 are regulated as follows:**

- A. Satellite antennas are a permitted use in residential districts provided they meet the following standards:
1. Shall be setback from the perimeter property line(s) two (2) feet for every foot of 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 setback from the common property boundary two (2) 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. (675 IAC 20-1.18 Definitions) Swimming pools are required to be ten (10) feet in from any property line.

Residential swimming pool (family pool) means any constructed pool, permanent or non-portable, which is intended for non-commercial use as a swimming pool. (675 IAC 20-1.18 Definitions) Any residential swimming pool will be required to be ten (10) 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 (1) of the following means:

- A. Walls or fencing not less than five (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 (5) 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. (This applies to subparagraphs A. through B. and this subparagraph only.

D. A safety pool cover which shall:

1. provide a continuous connection between the cover and the deck, so as to prohibit access to the pool when the cover is completely drawn over the pool;
2. be mechanically operated by a key or key and switch such that the cover cannot be drawn open or retracted without the use of a key;
3. be capable of supporting a four hundred (400) pound imposed load upon a completely drawn cover;
4. be installed with track, rollers, rails, guides or other accessories necessary to accomplish subparagraphs (1) through (3), in accordance with the manufacturer's instructions, and
5. bear an identification tag indicating the name of the manufacturer, name of the installer, installation date and applicable safety standards, if any. (675 IAC 20-4-27 Safety features)

## **2.10 Environmental Performance Standards**

**A. Scope of Provisions:** Every use, activity, process or operation, located or occurring in the Town of Churubusco, or its jurisdictional area, shall comply with the Environmental Performance Standards prescribed in this Chapter, and no such use hereafter shall be altered or modified so as to conflict with, or further conflict with, such Environmental Performance Standards. If, as of the date of adoption of this Ordinance, the operations of any lawful existing use violates these Environmental Performance Standards, such operations shall not in themselves make such use subject to this Chapter.

**B. Administration and Enforcement of Environmental Performance Standards:**

1. Whenever, in the opinion of the Town Council there is a reasonable probability that any use or occupancy violates these Environmental Performance Standards, the property owner shall be given written notice of at least seven (7) days duration that said use or occupancy must be corrected. In case of an emergency the Town Council may take immediate action deemed appropriate to correct the violations. The Town Council is hereby authorized to employ qualified technician or technicians to perform whatever investigations and analyses as are necessary to determine whether or not they are in fact being violated.
2. In the event that a violation is found to exist, the violator shall be liable for the reasonable fee of the technicians employed to perform such investigations and analysis. Such fees may be recovered as a penalty in the same manner as, and in addition to, the penalties specified in Chapter 1 of this Ordinance.
3. If a complaint is received regarding an alleged violation of any of the provisions of this Chapter the Town Council may, as a condition precedent to further investigation, require that the complainant post an escrow deposit in the amount of two hundred dollars (\$200.00) to defray the cost of employing a qualified technician or technicians to perform such investigation and analyses as may be necessary to determine whether or not such violation exists.
  - (a) In the event that the complaint is substantiated, the escrow deposit shall be refunded to the depositor, and the reasonable fees associated with the investigation and analyses shall be recovered in the manner provided above.
  - (b) If the complaint proves unfounded, such fee shall be paid from the complainant's escrow deposit. Any remainder of such deposit shall be refunded to the complainant upon completion of the investigation.

**C. Performance Standards:**

1. Vibration: Every use shall be so operated that the maximum ground vibration generated is not perceptible without instruments at any point on the lot line.
2. Noise: Every use shall be so operated that the pressure level of sound or noise generated, measured in decibels, shall not exceed the maximum decibel levels for the designated octave band as set forth in the following table for the appropriate area:

<b><u>Maximum Permitted Sound Pressure</u></b>		
<b><u>Level in Decibels</u></b>		
<b>Octave Band Cycles per Second</b>	<b>Within or Adjacent to Residential District</b>	<b>Within All Other Area</b>
0 to 75	75	79

75 to 150	67	74
150 to 300	52	59
300 to 600	46	53
600 to 1,200	40	47
1,200 to 2,400	34	42
2,400 to 4,800	32	39

3. Odor: Every use shall be so operated that no controllable offensive or objectionable odor is emitted.
4. Smoke: Every use shall be so operated that no smoke from any source shall be emitted of a greater density than allowable by any Federal or State requirements.
5. Toxic Gases: Every use shall be so operated that there is no emission of toxic, noxious, or corrosive fumes or gases which are detrimental to any person or to the public or which would endanger the health, comfort, and safety of any such person or the public, or which would cause or have a tendency to cause injury or damage to persons, property or business.
6. Emission of Dirt, Dust, Fly Ash, and Other Forms of Particulate Matter: The emission of dirt, dust, fly ash and any other forms of particulate matter shall not exceed any Federal or State Regulations.
7. Radiation: Every use shall be so operated that there is no dangerous amount of radioactive emissions in accordance with all Federal and State regulations.
8. Glare and Heat: Any operation producing intense glare or heat shall be performed in an enclosure in such manner as to be imperceptible along any lot line without the use of instruments.
9. Hazardous Materials: No hazardous materials as defined by the State and Federal Government shall be stored or disposed of on the property, provided however, that such storage or disposal shall be permitted if it complies with all applicable Federal and State health, safety and environmental statutes and regulations.
10. Fire Protection: Fire prevention and fighting equipment acceptable to the Churubusco Fire Department shall be readily available when any activity involving the handling or storage of flammable or explosive materials is carried on.
11. Electrical Disturbances: No activity shall cause an electrical disturbance adversely affecting radio or other equipment in the vicinity.
12. Erosion: No erosion, which will carry objectionable substances onto neighboring properties or which will cause significant loss of topsoil or gulling, shall be permitted.

**13. Water Pollution:** Water pollution shall be subject to the standards established by the State Stream Pollution Control Board. (Ord. 595, passed 9-19-70; Am. Ord. 731, passed 7-8-80). Violations and Penalties: See Chapter 1.14.

## **2.11 Non-Conforming Uses**

- 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 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 and eighty (180) consecutive days, except where government action causes such cessation, the subsequent use of such parcel or lot shall conform to the regulation 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 restrictions 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. 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:** Should any such building or structure be destroyed by any means to an extent of more than fifty (50) percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.

**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 and eighty (180) consecutive days (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.

**F. Repairs and Maintenance:** Nothing in this Ordinance shall be deemed to prohibit the restoration of any structure and its use where such structure has been destroyed by any means out of the control of the owner to an extent less than fifty (50) percent 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 destruction, provided the restoration of such structure and its use in no way increases any former non-conformity, and provided further that restoration of such structure is begun within six (6) months of such destruction and diligently prosecuted to completion within one (1) year

following such destruction. Whenever such structure has been destroyed by any means out of the control of the owner to an extent of more than fifty (50) percent of its replacement value (excluding the value of the land, the cost of land and the value of any foundation adaptable to a conforming use) at the time of destruction, as determined by the Building Inspector 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. When a structure is determined to be substandard by the proper administrative official of the Town of Churubusco under any applicable ordinance of the Town, and the cost of placing the structure in condition to satisfy the standards under such ordinance shall exceed fifty (50) percent of the reconstruction cost of the entire structure, such non-conforming structure shall not be restored for the purpose of continuing a non-conforming use.

**G. Change in 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 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.

**M. Eventual Conformance with Environmental Performance Standards:** Within five (5) years of the date of the adoption of this ordinance or the date of adoption of any applicable amendments to this ordinance, any use which is or becomes a non-conforming use, shall be brought into conformance with the environmental performance standards established in Section 2.10, Environmental Performance Standard Regulations, of this Chapter.

## **2.12 Code of Ethics:**

Any member of the 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 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.