

Chapter 09

Nonconformance

Porter County
Unified Development
Ordinance

Nonconforming Lots

9.01 Intent

As new zoning provisions are adopted or map changes are made, lots, structures, and uses that were compliant with the zoning law are sometimes made noncompliant. For example, upon adoption of the Unified Development Ordinance and Official Zoning Map, some lots, structures, and uses may no longer conform to the requirements of the zoning district in which they are located. When zoning changes, special provisions apply to the previously legal lots, structures, and uses that have been rendered noncompliant. *Chapter 09: Nonconformance* specifies the provisions that apply to these legal nonconforming (informally referred to as “grandfathered”) lots, structures, and uses.

9.02 Distinction Between Illegal Nonconforming and Legal Nonconforming Structures and Uses

A structure that was constructed in violation of the zoning law (*e.g.*, in violation of setback requirements or without all required permits or approvals from the Board of Zoning Appeals or Plan Commission) is an illegal nonconforming structure. A use that was initiated in violation of the zoning law is an illegal nonconforming use. In addition, a use that was legally initiated, but abandoned or discontinued for a period of at least one (1) year, is an illegal nonconforming use. An illegal nonconforming structure or use is subject to actions and penalties allowed by the Unified Development Ordinance and all other applicable County laws. Such structure or use shall be altered to conform to all applicable standards and regulations of the Unified Development Ordinance.

A legal nonconforming structure or use results from a change in the provisions of the ordinance that renders noncompliant a structure or use that previously conformed to the zoning law. The noncompliance is not a result of the fault or inappropriate action of the owner, tenant or property manager.

9.03 Nonconforming Lots of Record

- A. **Lot Standards:** Any lot that does not meet the lot standards of the Unified Development Ordinance, but was legally established and recorded prior to the effective date of the Unified Development Ordinance, or its subsequent amendments, shall be deemed a legal nonconforming lot of record. A legal nonconforming lot of record no longer meets one or more of the following lot standards:
1. Lot area;
 2. Lot width;
 3. Lot depth;
 4. Lot frontage; or
 5. Any other provision of the Unified Development Ordinance that is applicable to lots.
- B. **Requirements:** A legal nonconforming lot of record may be built upon if the proposed use is permitted by the applicable zoning district of the Unified Development Ordinance, and is still subject to the remaining portions of the Unified Development Ordinance.

Nonconforming Structures

9.04 Nonconforming Structures

- A. Development Standards: Any structure that does not meet the development standards of the Unified Development Ordinance, but was legally established prior to the effective date of the Unified Development Ordinance, or its subsequent amendments, shall be deemed a legal nonconforming structure. Examples of such development standards are:
1. Front, side and rear setbacks;
 2. Maximum lot coverage;
 3. Minimum main floor area;
 4. Minimum finished floor area;
 5. Height;
 6. Parking;
 7. Accessory structures; or
 8. Any other provision of the Unified Development Ordinance that is applicable to the structure.
- A legal nonconforming structure may continue provided that it remains otherwise lawful, subject to the conditions set out in §9.04.
- B. Enlarged or Altered: A legal nonconforming structure may continue provided that it shall not be enlarged or altered in a manner that increases its nonconformity. A legal nonconforming structure or portion thereof may be altered to decrease its nonconformity.
- C. Destroyed or Removed: A legal nonconforming structure or portion of such a structure which has been partly or completely destroyed or removed by accidental cause, including Acts of God, may be replaced, provided:
1. The owner or agent makes application for a Building Permit within six (6) months of the date of destruction or removal.
 2. The replacement structure shall be placed on the footprint of the old structure, may not be higher than the old structure, and shall be substantially the same architectural design and constructed of similar or upgraded materials, to the extent possible and to the extent permitted by building code or other applicable regulations.
 3. The elevation of the lowest floor, including the basement floor, shall be at least two (2) feet above the regulatory flood and all necessary permits must be obtained from the Indiana Department of Natural Resources;
- D. Moved: If a legal nonconforming structure is moved for any reason, for any distance, it loses its legal nonconforming structure status and shall thereafter conform to the provisions of the Unified Development Ordinance.
- E. Exceptions: Section 9.04 does not apply to signs (see §9.07: *Nonconforming Signs*) or to telecommunication facilities (see §9.08: *Nonconforming Telecommunication Facilities*).

Nonconforming Uses

9.05 Nonconforming Uses of Structures, Land, or Structures and Land in Combination

Any use of structures or land (or a structure and land in combination) that was legally established and has been continuous since the time it was started that is no longer permitted by the Unified Development Ordinance in the zoning district in which it is located shall be deemed a legal nonconforming use. A legal nonconforming use may continue provided it remains otherwise lawful, subject to the following conditions:

- A. **Enlarged or Altered:** No existing structure devoted to a legal nonconforming use shall be enlarged, expanded, increased, extended, constructed, moved, or structurally altered unless it changes the use of the structure to a use permitted in the zoning district in which it is located and meets the development standards of the Unified Development Ordinance.
- B. **Additional Structures:** No additional building or structure shall be constructed in connection with an existing legal nonconforming use of land except accessory structures for single-family residential uses or agricultural uses.
- C. **Interior:** Any legal nonconforming use of a structure may be extended throughout any parts of a building that were plainly arranged or designed for such use at a point in time when the nonconforming use was legal, but no such use shall be extended to occupy any land outside the building.
- D. **Abandonment of Use:** If a legal nonconforming use is abandoned or is discontinued for one (1) year, except when government action impedes access to the premises, any subsequent use of such land, structure or land and structure in combination shall conform to the provisions of the Unified Development Ordinance.
- E. **Change of Use:** When a legal nonconforming use is changed to a permitted use, the new use shall conform to regulations of the zoning district.
- F. **Exceptions:** *Section 9.05* does not apply to signs (see *§9.07: Nonconforming Signs*) or to telecommunication facilities (see *§9.08: Nonconforming Telecommunication Facilities*). With respect to legal agricultural nonconforming uses, nothing in *§9.05* shall be interpreted in a manner that is inconsistent with IC 36-7-4-616.

9.06 Repairs and Maintenance

The following provisions apply to legal nonconforming structures, legal nonconforming uses of structures, and legal nonconforming structures and land in combination:

- A. **Interior Repairs:** Ordinary repair of walls, heating, fixtures, wiring, or plumbing may be accomplished. Replacement of interior walls is also permitted.
- B. **Exterior Walls:** Exterior walls shall not be moved.
- C. **Unsafe Structures:** Nothing in *§9.06* shall be deemed to prevent the strengthening, repairing, or restoring to a safe condition of any structure declared to be unsafe by any official charged with protecting public safety upon order of such official. If a structure or portion of a structure is declared by an authorized official to be unsafe or condemned due to physical condition, unless the structure is restored, repaired or rebuilt within six (6) months of the declaration (or a reasonable extension of time allowed by the Executive Director after such work is initiated), all future improvements shall conform to all standards and regulations within the Unified Development Ordinance. The provisions of *§C* shall not be construed or interpreted in a manner that conflicts with or impedes the provisions of Porter County Code; Title 8: Health & Safety; Chapter 8.036: Unsafe Building Law.
- D. **Reconstruction:** If a structure becomes unsafe or unlawful due to physical condition and is razed, the structure shall be rebuilt in conformity with the zoning district in which it is located.

Nonconforming Signs

9.07 Nonconforming Signs

Any sign that was legally established and has been in continuous use since the time of its placement that no longer conforms to all the standards of the Unified Development Ordinance shall be deemed a legal nonconforming sign. A legal nonconforming sign may continue provided it remains otherwise lawful, subject to the following conditions:

- A. **Major Changes:** A sign retains its protected status as a legal nonconforming sign until a major change is made to the sign. The protected status is lost if a major change is made. Major changes include:
 1. Changing the size of the sign;
 2. Changing the height of the sign; and/or
 3. Relocation of the sign.
- B. **Minor Changes:** Every legal nonconforming sign shall be kept in good repair and operating condition. Minor changes that include ordinary maintenance are permitted, and shall include replacement of supports with different materials or design than the previous supports. The dimensions of replaced supports shall not be enlarged. A legal nonconforming sign that is not kept in good repair loses its protected status as a legal nonconforming sign and shall comply immediately with all provisions of the Unified Development Ordinance.
- C. **Removal:** A legal nonconforming sign on a premises loses its protected status if the business it advertises is no longer conducted on the premises. The sign and its supporting structure shall be removed within thirty (30) days when the business it advertises is no longer conducted on the premises.
- D. **Compliance:** A legal nonconforming sign that is structurally altered by a major change or relocated loses its protected status as a legal nonconforming sign and shall comply immediately with all provisions of the Unified Development Ordinance.
- E. **Right-of-way Acquisition:**
 1. *Existing Conforming Signs:* In the case of a legally established sign that would become a legal nonconformity due to its setback from the new right-of-way line or position within a redefined vision clearance triangle by virtue of right-of-way acquisition by any government entity, the sign shall be required to be relocated to a position that would bring it into compliance with *Chapter 05; §SG: Sign Standards* and *§VC: Vision Clearance Standards*. The cost of such relocation should be factored into the price paid for the additional right-of-way during the condemnation proceedings, and the property owner or lessee shall be responsible for accomplishing the relocation within ninety (90) days of receiving payment for the right-of-way.
 2. *Existing Legal Nonconforming Signs:* In the case of a legal nonconforming sign for which the nonconformity is increased due to its setback from the new right-of-way line or position within a redefined vision clearance triangle by virtue of right-of-way acquisition by any government entity, the sign shall be required to be relocated to a position that would bring it into compliance with *Chapter 05; §SG: Sign Standards* and *§VC: Vision Clearance Standards*. The cost of such relocation should be factored into the price paid for the additional right-of-way during the condemnation proceedings, and the property owner or lessee shall be responsible for accomplishing the relocation within ninety (90) days of receiving payment for the right-of-way.
 3. *Existing Illegal Nonconforming Signs:* Illegal nonconforming signs that may be discovered during right-of-way acquisition by any government entity shall be removed at the cost of the property owner or lessee.

Nonconforming Telecommunication Facility

9.08 Nonconforming Telecommunication Facilities

Any telecommunication facility that was legally established and has been in continuous use since the time of its placement that no longer conforms to all the standards of the Unified Development Ordinance shall be deemed a legal nonconforming telecommunication facility.

- A. Illegal Nonconforming Telecommunication Facility: Any nonconforming telecommunication facility which does not meet the criteria for a legal nonconforming use is an illegal nonconforming telecommunication facility and shall be removed.
- B. Legal Nonconforming Telecommunication Facility: A legal nonconforming telecommunication facility shall immediately lose its legal nonconforming use status if any of these events occur:
 1. The telecommunication facility, because of improper installation or maintenance or failure to maintain it in safe conditions and in good repair, becomes or constitutes a threat to public health or safety, if the condition is not remedied within sixty (60) days after written notice from the Building Commissioner or Executive Director.
 2. The telecommunication facility is demolished or damaged (*e.g.* because of fire, weather conditions, *etc.*) to the extent of fifty percent (50%) or more of its value.
 3. The permit, variance or Special Exception under which the facility was permitted expires or any condition of or commitment related to such permit, variance, or Special Exception is not fully satisfied or compliance with any condition or commitment lapses.
 4. The telecommunication facility is structurally altered so as to prolong its expected life, unless such alteration is made in compliance with the provisions of the Unified Development Ordinance.