

Article

8

Nonconformances

*City of Shelbyville
Unified Development
Ordinance*

Nonconforming Structures, Uses, and Lots

8.01 Intent

As new zoning regulations are adopted or zoning map changes are made, lots, structures, and uses that were previously compliant with zoning regulation are sometimes made noncompliant. *Article 8: Nonconformances* specifies the provisions that apply to these legal nonconforming by an amendment to the zoning regulations or a zoning map change.

8.02 Distinction Between Conforming, Illegal Nonconforming, and Legal Nonconforming

Each structure, use, and lot is either "conforming" or "nonconforming." Conforming is used to describe a structure, use, or lot as being in full compliance with the current Unified Development Ordinance. Nonconforming is used to describe a structure, use, or lot that is in violation of the current Unified Development Ordinance. Nonconforming structures, uses, and lots are either "illegal nonconforming" or "legal nonconforming." The following sections determine the nonconforming status of a structure, use, or lot:

A. Illegal Nonconforming:

1. *Structure:* A structure (not including signs) constructed in violation of the zoning ordinance that was in effect when the structure was constructed and which remains in violation of the current Unified Development Ordinance is an illegal nonconforming structure.
2. *Sign:* A sign (not including all other structures) constructed in violation of the zoning ordinance that was in effect when the sign was constructed and which remains in violation of the current Unified Development Ordinance is an illegal nonconforming sign.
3. *Use:* A use that was in violation of the zoning ordinance that was in effect when the use was initiated and which remains in violation of the current Unified Development Ordinance is an illegal nonconforming use. In addition, a legal nonconforming use which is abandoned as described in *Section 8.06(C)(1): Abandonment of Use* shall be considered an illegal nonconforming use.
4. *Lot:* A lot established in violation of the zoning ordinance or subdivision control ordinance that was in effect at the time of establishment and which remains in violation of the current Unified Development Ordinance is an illegal nonconforming lot.

B. Legal Nonconforming:

1. *Structure:* A structure (not including signs) that does not meet one (1) or more development standards of the Unified Development Ordinance, but was legally established prior to the effective date of this Unified Development Ordinance shall be deemed a legal nonconforming structure. Legally established includes structures approved by development standards variance or other special approval as long as they continue to conform to the terms of approval.
2. *Sign:* A sign (not including all other structures) that does not meet one (1) or more development standards of the Unified Development Ordinance, but was legally established prior to the effective date of this Unified Development Ordinance shall be deemed a legal nonconforming sign. Legally established includes signs approved by development standards variance or other special approval as long as they continue to conform to the terms of approval.
3. *Use:* The use of a structure or land (or a structure and land in combination) that was legally established and has since been continuously operated, 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. Legally established includes uses approved by use variance, special exception, or other special approval as long as they continue to conform to the terms of approval.
4. *Lot:* A lot that does not meet one (1) or more lot standards of the Unified Development Ordinance, but was legally established and recorded prior to the effective date of this Unified Development Ordinance shall be deemed a legal nonconforming lot of record. Legally established includes lots approved by development standards variance, or other special approval as long as they continue to conform to the terms of approval.

- C. Setback Exemption: Any primary structure that was established prior to February 18, 2012 and that has an established front setback, side setback, or rear setback less than the minimum required setback in this Unified Development Ordinance shall not be considered legal non-conforming. Said primary structures shall be considered legal as they exist. Expansion of these primary structures shall be permitted as long as said expansion is in compliance with the applicable setback (i.e. the current applicable setback) standards.

8.03 Illegal Nonconforming Structures, Uses, and Lots

An illegal nonconforming structure, use, or lot is subject to the enforcement procedures and penalties of the Unified Development Ordinance. The enforcement procedures and penalties of the zoning ordinance in place at the time the violation occurred shall no longer be in effect.

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8.04 Legal Nonconforming Structures

The following provisions apply to legal nonconforming structures, structures associated with legal nonconforming uses, and structures associated with legal nonconforming lots. The regulations for legal nonconforming structures is divided into three (3) categories: buildings, signs, and all other structures in the below subsections.

- A. **Legal Nonconforming Building Provisions:** The provisions for legal nonconforming buildings, a subcategory of structures (see *Section 8.04(B): Legal Nonconforming Sign Provisions* for signs and *Section 8.04(C): Legal Nonconforming Structure Provisions* for all other structures), are as follows:
1. *Building Expansion:* A legal nonconforming building shall be permitted to expand in area and height as long as the nonconformity is not increased and the expansion otherwise meets the current Unified Development Ordinance. For example, if a building is in violation of the maximum height standard, it can be expanded in area as long as the new addition does not exceed the maximum height standard and is otherwise in compliance with current Unified Development Ordinance.
 2. *Building Exterior Alteration:* The exterior walls of a building shall not be moved except as provided in the previous clause. Otherwise, the roof and exterior walls may be maintained, repaired, re-faced, and modified, resulting in the original aesthetic character or an altered exterior character, as long as the building's nonconformity is not increased and the alteration otherwise meets the current Unified Development Ordinance.
 3. *Building Interior Alteration:* Ordinary repair and replacement of interior finishes, heating systems, fixtures, electrical systems, or plumbing systems; and interior wall modifications are not regulated by the Unified Development Ordinance.
 4. *Building Relocating:* A legal nonconforming building shall not be relocated or reset unless the relocation meets the requirements of the current Unified Development Ordinance.
- B. **Legal Nonconforming Sign Provisions:** The provisions for legal nonconforming signs, a subcategory of structures (see *Section 8.04(A): Legal Nonconforming Building Provisions* for buildings and *Section 8.04(C): Legal Nonconforming Structure Provisions* for all other structures), are as follows:
1. *Change of Copy:* A legal nonconforming sign shall be permitted to change the copy or sign face as long as the structure, framing material, and dimensions of the sign remain the same.
 2. *Sign Alteration:* A legal nonconforming sign may be altered as long as the alteration results in the sign complying with the current Unified Development Ordinance.
 3. *Sign Relocating:* A legal nonconforming sign shall not be relocated or reset unless the relocation is required by right-of-way acquisition. Any sign rendered legal nonconforming or that is located in a sight visibility triangle due to a right-of-way acquisition shall be relocated to where it meets the requirements of the current Unified Development Ordinance (e.g. setback standards).
 4. *Conversion for Longevity:* Converting a structural component of a legal nonconforming sign to a more permanent material in order to prolong legal nonconformity shall not be permitted. For example, a legal nonconforming permanent pole sign would not be permitted to replace its existing wood posts with metal posts even if dimensionally the same size.
- C. **Legal Nonconforming Structure Provisions:** The provisions for legal nonconforming structures, not including buildings or signs (see *Section 8.04(A): Legal Nonconforming Building Provisions* for buildings and *Section 8.04(B): Legal Nonconforming Sign Provisions* for signs) are as follows:
1. *Structure Alteration:* A legal nonconforming structure shall not be permitted to be altered in height, area, or mass.
 2. *Structure Relocating:* A legal nonconforming structure shall not be relocated or reset unless the relocation meets the requirements of the current Unified Development Ordinance.
 3. *Conversion for Longevity:* Converting a structural component of a legal nonconforming structure to a more permanent material in order to prolong legal nonconformity shall not be permitted.
- D. **Loss of Legal Nonconforming Structure Status:** The following provisions apply to all types of legal nonconforming structures:
1. *Condemned Structures:* If a legal nonconforming structure, through lack of maintenance, is declared by an authorized official to be condemned due to its physical or unsafe condition, it shall lose its legal nonconforming status and become illegal nonconforming.
 2. *Removal of Permanent Structures:* If a legal nonconforming permanent structure is fully removed or razed, it shall lose its legal nonconforming status; further, if a legal nonconforming permanent structure is partially removed or razed resulting in a loss of either seventy percent (70%) of its market value or seventy percent (70%) of its structure, the remaining permanent structure shall lose its legal nonconforming status and become illegal nonconforming.
 3. *Moved or Removal of Temporary Structures:* If a legal nonconforming temporary structure is moved or removed (e.g. moved inside, moved to a new on-site location, or taken off-site), the legal nonconforming temporary structure shall lose its legal nonconforming status and become illegal nonconforming.

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4. *Alterations that Result in Greater Nonconformity*: Any modification that is not specifically permitted by *Section 8.04: Legal Nonconforming Structures* and that increases the structure's nonconformity shall lose its legal nonconformity status and become illegal. For example increasing the height of a structure that was deemed legal nonconforming because it was taller than allowed in the current regulations.
 5. *Acts of Nature*: If a legal nonconforming structure is damaged from an act of nature resulting in a loss of either seventy percent (70%) of its market value or seventy percent (70%) of its structure, all reconstruction shall be required to meet the current Unified Development Ordinance.
- E. Maintenance and Repair: Nothing in this section shall be deemed to prevent the ordinary and necessary maintenance or repair of a legal nonconforming structure to keep it in a safe, aesthetic, and functional condition. Moving or replacing interior walls, heating, fixtures, wiring, or plumbing shall be considered maintenance.

8.05 Nonconforming Lots

The following provisions apply to legal nonconforming lots:

- A. Legal Nonconforming Lot Provisions: A legal nonconforming lot shall be permitted to be developed and used as long as the proposed structure(s) and use(s) meets the current Unified Development Ordinance. All standards other than the minimum lot area, maximum lot area, minimum lot width, and minimum frontage shall still apply.
- B. Loss of Legal Nonconforming Lot Status:
 1. *Combining Lots Results in Conformity*: If a legal nonconforming lot is used in combination with an adjacent lot as a single unit for development purposes, and the two (2) lots in combination would constitute a single conforming lot, the legal nonconforming lot(s) shall lose its (their) legal nonconforming status. Thereafter, future division of the combined lot shall conform to the current Unified Development Ordinance.
 2. *Permanent Structure Across Property Lines*: If a legal nonconforming lot is owned by the same person as an adjacent lot, and the owner constructs a permanent structure across the property line of the two lots, thus permanently using the two (2) lots in combination, and the two (2) lots in combination would constitute a single conforming lot, then the legal nonconforming lot shall lose its legal nonconforming status at the time the permanent structure is constructed across the property line or at the time the Unified Development Ordinance was adopted if the improvement already existed.

8.06 Nonconforming Uses

The following provisions apply to legal nonconforming uses:

- A. Cross Reference:
 1. *Agricultural*: With respect to agricultural legal nonconforming uses, nothing in this section shall be interpreted in a manner that is inconsistent with *IC 36-7-4-616: Zoning Ordinance; Agricultural Nonconforming Use*.
- B. Legal Nonconforming Use Provisions: The provisions for legal nonconforming uses are as follows:
 1. *Utilizing Existing Buildings*: A legal nonconforming use shall be permitted to continue to occupy or use an existing building.
 2. *Utilizing Existing Structures*: A legal nonconforming use shall be permitted to continue to utilize an existing structure.
 3. *Utilizing Land*: Any legal nonconforming use shall be restricted to the area of land that was being utilized upon the effective date of the current Unified Development Ordinance. Any extension, expansion, relocation, or enlargement of the area of land that was legal nonconforming is expressly prohibited.
 4. *Increase in Nonconformity*: No legal nonconforming use shall be permitted to increase its degree of nonconformity.
- C. Loss of Legal Nonconforming Use Status:
 1. *Abandonment of Use*: If a legal nonconforming use is abandoned or is discontinued for one (1) year or more, except when a government action impedes access to the premises, it shall lose its legal nonconforming status. Any subsequent use shall conform to the provisions of the current Unified Development Ordinance.
 2. *Change of Use*: The right to continue a legal nonconforming use applies only to the same use that existed upon the effective date of the current Unified Development Ordinance. Further, when a legal nonconforming use is changed, altered, or evolves to be in compliance with the current Unified Development Ordinance, the legal nonconforming use status is lost and the current use cannot revert back to the original legal nonconforming use.
 - a. Exception: The Zoning Administrator may permit a nonconforming use to evolve to another nonconforming use if the proposed nonconforming use is within the same "category" of uses (e.g. a change from a clothing store to a shoe store) or otherwise is clearly similar in intensity and other attributes.