

# Article 11

## Nonconformities

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**Intent**

*Upon adoption of this Ordinance some structures, lots, and uses that were previously established and complied with all applicable requirements, may no longer conform to the regulations of the zoning district in which they are located. This Article provides the rules, policies and regulations that apply to these structures, lots, and uses; referred to as Legal Nonconforming. This Article may be referred to as the "Grandfather" clause - if a use, structure, etc. was established legally under a previously applicable ordinance it shall be "grandfathered" (legal non-conforming).*

*These regulations are intended to inform property owners of the options for using and modifying nonconforming properties, and to support the gradual reduction of the nonconformities.*

## 11.1 Nonconforming Status

- A. **Illegal Structures, Lots, Uses, Signs & Site Features:** A structure, lot, use, sign, or site feature that is nonconforming and that was constructed or is being used without all appropriate Improvement Location Permits or approvals from the applicable Board of Zoning Appeals or Plan Commission is considered illegal. An illegal property shall be subject to actions and penalties allowed by this Ordinance and all other applicable ordinances and shall be altered to conform with the requirements of this Ordinance.
- B. **Legal Nonconforming Described:** Legal nonconforming differs from Illegal in that the reason for the nonconformance is caused by the enactment of a Zoning Ordinance or a change to the Zoning Ordinance (including the Official Zoning Map). The structure, lot, use, sign, or site feature has not changed, but due to the Zoning Ordinance enactment or change, the property no longer conforms to the requirements of the zoning district in which it is located. When this situation occurs, the property is deemed Legal Nonconforming. Legal nonconforming lots, structures, uses, signs, and site features may continue in the manner and to the extent that they existed or were used at the time the change in the Zoning Ordinance was enacted.
- C. **Exemptions:** The following exemptions shall apply:
  - 1. Nonconformities Due to Variance or Other Approval: Structures, uses, lots, signs, and site features that are nonconforming due to prior variance, conditional use, or other approvals shall not be subject to the provisions of this Article, but shall conform to the terms of their approval.
  - 2. Nonconforming Telecommunications Facilities: Consistent with Indiana Code Section 8-1-32.3-15(b)(2) the replacement of a telecommunication facility with a new facility at the same location that is substantially similar to or the same size or smaller than the existing facility shall be exempt from the provisions of this Article. However, the replacement facility shall comply with conditional use or other approvals applicable to the facility being replaced.
- D. **Repairs & Maintenance:** The following applies to legal nonconforming structures, uses of structures, or uses of structures and land in combination:
  - 1. Ordinary Repairs: Work may be done for ordinary repairs or replacement of walls, heating, fixtures, wiring, plumbing, etc.; under the condition that the nonconforming features (setbacks, lot coverage, land use, etc.) are not increased.
  - 2. Structures Declared Unsafe: Nothing in this Article shall be deemed to prevent the strengthening, repairing, or restoring to a safe condition of any structure that has been declared unsafe by the appropriate official.
- E. **Replacement of Nonconformities:** Any nonconforming use, structure, site feature, sign, lot, or other characteristic that is lessened in its nonconformity or replaced by a conforming use, structure, site feature, sign, lot, or other characteristic shall not be restored.

## 11.2 Nonconforming Lots of Record



- A. **Nonconforming Lots of Record:** All lots lawfully established and recorded with the Bartholomew County Recorder prior to the effective date of this Ordinance, or its subsequent amendments, that no longer meet any applicable provision of this Ordinance (such as minimum area, width, or depth) shall be deemed Legal Nonconforming Lots of Record.
1. Conformance Required: Legal Nonconforming Lots of Record may be built upon only if the proposed use is permitted and all other development requirements of the applicable zoning district of this Ordinance are met.
  2. Utilities Exemption: Any lot created prior to September 7, 1999 is exempt from any water and/or sewer utility service requirements for the zoning district in which it is located if it is capable of containing a water supply and sewerage disposal system acceptable to the Bartholomew County Health Department.
- B. **Re-plats and Lot Alterations:** The re-platting of all lots shall comply with the following requirements:
1. Nonconforming Lot Features: Legal nonconforming lots of record may be re-platted and otherwise altered, however any nonconforming features of that lot may only be unaffected or lessened. In no instance shall any nonconforming lot features be increased.
  2. Creation of Nonconformities: No lot shall be re-platted or altered in any way that results in the creation of a nonconforming lot, use, structure, sign, or site feature.

## 11.3 Nonconforming Structures

- A. Legal Nonconforming Structures:** Any structure (including primary, accessory, agricultural, and incidental structures) lawfully established prior to the effective date of this Ordinance, or its subsequent amendments, that no longer meets the development requirements (setbacks, height, etc.) shall be deemed a legal nonconforming structure.
- B. Continuation of Legal Nonconforming Structures:** The continuation and modification of legal nonconforming structures shall meet the following requirements.
1. Increases in Nonconformity: No legal nonconforming structure shall be enlarged or altered in a manner that increases its nonconformity without the approval of a variance by the Board of Zoning Appeals. Any structure may be altered to decrease its nonconformity.
  2. Intentional Alterations: The intentional alteration of any legal nonconforming structure shall either (a) conform to the regulations of the district in which it is located or (b) decrease the nonconformity. Once intentionally altered, the legal nonconforming features may not be resumed.
  3. Moved or Replaced Structures: Any legal nonconforming structure that is moved for any distance or replaced shall conform to the regulations of the district in which it is located, and the discontinued legal nonconforming features may not be resumed.
  4. Accidental Alterations: Legal nonconforming structures that are altered or removed due to government action or damage from fire, flood, other natural disaster, or criminal act may be restored to their legal nonconforming condition. Such structures, if rebuilt or restored, shall be identical or of reduced nonconformity in volume, height, setback, scale, and all other aspects to that which was altered or removed.
  5. Abandonment: Uses and structures in combination which are abandoned shall comply with the requirements of Section 11.5(B)(8).
  6. Change of Use: The change of use of any legal nonconforming structure shall not cause the loss of legal nonconforming status for the structure itself.

### 11.3 Nonconforming Structures (cont.)

7. Mobile and Manufactured Home and Industrialized Residential Structure Exceptions: As provided by Indiana Code Section 36-7-4-1019, any legal nonconforming mobile home, manufactured home, or industrialized residential structure that is damaged, destroyed, or removed for any reason or due to any circumstance shall be permitted to be reconstructed, repaired, renovated, and/or replaced provided that (1) it will continue to be used for its previous residential purpose and (2) the foundation of the reconstructed, repaired, renovated, or replaced structure will not exceed the square footage that existed previously. This includes the permitted periodic replacement of the individual mobile homes, manufactured homes, and/or industrialized residential structures located in legal nonconforming mobile / manufactured home communities. Any such reconstructed, repaired, renovated, and/or replaced residential legal nonconforming structure shall be subject to the applicable Flood Hazard Area Standards provided by Chapter 4.7 of this Ordinance and in no circumstances shall be considered exempt from those requirements.



**Corresponding Site Feature Example:** *Parking lot landscaping would only be required for new portions of a parking lot that was required to be enlarged due to an expansion of the use on the property - the amount of landscaping in the pre-existing parking areas would be unaffected.*

## 11.4 Nonconforming Site Features

- A. **Legal Nonconforming Site Features:** Any site feature lawfully established prior to the effective date of this Ordinance, or its subsequent amendments, that no longer meets the development standards shall be deemed a legal nonconforming site feature. The phrase site feature shall include landscaping, dumpster enclosures, parking space dimensions, number of parking spaces, signs, vehicle access points, and other similar requirements of this Ordinance. Site features shall not include any building setback or other similar requirements that address the structure(s) on a property.
- B. **Continuation of Legal Nonconforming Site Features:** The continuation and modification of legal nonconforming site features shall be consistent with the following requirements.
1. **Increases in Nonconformity:** No legal nonconforming site feature shall be altered, removed, or otherwise modified in a manner that increases the amount of nonconformity. Site features may be modified in a manner that maintains or lessens the extent of the nonconformity.
  2. **Property Redevelopment:** The removal and replacement of the primary structure on a lot to the extent that either (a) its use must be discontinued for any period of time or (b) a phased removal and replacement results in a completely new structure shall require all site features to be brought into compliance with all requirements of this Ordinance. For lots containing multiple primary structures this provision shall apply if a structure or structures totaling more than 75% of the pre-demolition building area (cumulative from the effective date of this Ordinance) is removed and replaced with new development.
  3. **Use and/or Structure Expansion:** If the use of, or structure present on a property is expanded the corresponding site features shall be required to be modified to an extent which is proportional to the expansion. In addition, the screening of all refuse areas (consistent with Section 6.1(C)(2)) shall be required. Site features that are proportional to use and structures on a property include, but are not limited to, the number of parking spaces, lot interior landscaping, etc. Parking spaces shall also be brought into compliance with Americans with Disabilities Act standards, as required by the applicable local building code. All modifications to site features shall comply with the applicable requirements of this Ordinance.
  4. **Change of Use:** The change of use of a property shall require that all site features that are directly related to use be brought into compliance with this Ordinance. The primary site feature related to use is the number of parking spaces required. However, if the change of use results in a decrease in the extent of the nonconformity, compliance shall not be required. For example, if a new use requires fewer parking spaces than its predecessor, but more than are available on site, that use shall be permitted without additional parking being constructed.

## 11.5 Nonconforming Uses

- A. **Legal Nonconforming Uses:** Any lawful use of structures, land, or structures and land in combination established prior to the effective date of this Ordinance or its subsequent amendments that is no longer a permitted use in the district where it is located shall be deemed a Legal Nonconforming Use. The following shall apply to all legal nonconforming uses:
1. **Change of Use (to Another Nonconforming Use):** If no structural alterations are made, it is possible to change any nonconforming use to another nonconforming use.
    - a. **Similar Uses:** Nonconforming uses may be changed to another similar nonconforming use. For the purpose of this Section similar uses shall be considered those within the same land use categories (such as office uses, retail uses, etc.) as provided by Article 3 of this Ordinance.
    - b. **Dissimilar Uses:** Nonconforming uses may only be changed to other dissimilar nonconforming uses with the approval of the Board of Zoning Appeals (as a use variance). For the purpose of this Section, dissimilar uses shall be considered those that are not within the same land use categories (such as office uses, retail uses, etc.) as provided by Article 3 of this Ordinance. Following the change of use, the previous nonconforming use may not be resumed.
  2. **Change of Use (to a Permitted Use):** When a legal nonconforming use is replaced by a permitted use, or a different nonpermitted use allowed by conditional use or a use variance, it shall thereafter conform to the regulations of the district in which it is located or the applicable conditional use / use variance approval. The legal nonconforming use may not be resumed.
- B. **Continuation of Legal Nonconforming Uses:** In addition to the provisions of Section 11.5(A) above, the continuation and modification of legal non-conforming uses shall meet the following requirements:
1. **Modification of Structures:** No existing structure devoted to a legal nonconforming use shall be enlarged, expanded, increased, extended, constructed, reconstructed, or moved except as to change the use of the structure to a use permitted in the district in which it is located.
  2. **New Structures:** No new structure shall be constructed in connection with an existing legal nonconforming use of land.
  3. **Expansion Within Structures:** Any legal nonconforming use may be extended throughout any parts of an existing structure that were plainly arranged or designed for such use at the effective date of this Ordinance or its subsequent, applicable amendments.
  4. **Expansion on the Property:** No legal nonconforming use of land shall be enlarged, increased, extended to occupy a greater area of land, or moved in whole or in part to any other portion of a lot than was occupied at the effective date of this Ordinance or its subsequent, applicable amendments.

## 11.5 Nonconforming Uses (cont.)

5. Abandonment: If a legal nonconforming use is intentionally abandoned for 1 year or longer, any subsequent use of such land, structure, or land and structure in combination shall conform to the provisions of this Ordinance. A legal nonconforming use shall be considered intentionally abandoned if the Planning Director determines that one or more of the following conditions exists:
    - a. utilities, such as water, gas, and electricity, to the property have been disconnected.
    - b. the property, buildings, and/or grounds have fallen into obvious disrepair.
    - c. equipment, fixtures, or facilities that are necessary for the operation of the use have been removed.
    - d. damaged structures have not been secured from the weather and trespassing or reinforced to prevent further damage.
    - e. other alterations to the property have occurred that constitute a clear intention on the part of the property owner to abandon the use.
  6. Nonconforming Structures and Land in Combination: Where legal nonconforming use status applies to a structure and land in combination, an intentional removal or alteration of the structure, or its use, that establishes conformity shall also eliminate the legal nonconforming status of the land.
- C. **Exemptions**: The following legal nonconforming uses shall be exempt from the provisions of this Chapter and may be restored or expanded under the terms and conditions specified for each below.
1. Involuntarily Discontinued Uses: Uses that are required to be discontinued due to government action that impedes access to the premises or damage from fire, flood, other natural disaster, or criminal act may be restored. In no instance shall acts of arson by the property owner, government enforcement of unsafe building codes, or other similar circumstances be considered as qualification for this exemption. If replaced by a different use, the previous nonconforming use may not be resumed. These uses, if restored, shall be either identical or of reduced nonconformity in scale, volume, lot coverage, and all other aspects to that which was discontinued.
  2. Residential Uses: Residential uses that are legal nonconforming due to their presence in any industrial or commercial zoning district shall be permitted to expand on the property and through the modification, addition, or expansion of structures provided any change complies with the development standards (building setbacks, etc.) applicable in that zoning district, or any necessary variances are obtained. Further, the residential legal non-conforming use of a property shall not be affected by the destruction, removal, or other alteration of a mobile home, manufactured home, or industrialized residential structure on that property consistent with Section 11.3(B)(6) of this Ordinance and Indiana Code Section 36-7-4-1019.



## 11.5 Nonconforming Uses (cont.)

3. Farm Uses: As specified by Indiana Code Section 36-7-4-616, farm uses that are legal nonconforming shall be permitted to expand on the property and through the modification, addition, or expansion of structures provided any change complies with the development standards (building setbacks, etc.) applicable in that zoning district, or any necessary variances are obtained. In no instance shall any land previously used as a farm and later set aside or withheld from production for conservation or other purposes be considered abandoned or otherwise denied legal nonconforming status. Further, in no instance shall a legal nonconforming farm be denied changes to its operation or type of production so long as the result continues to meet the definition of a farm provided by this Ordinance.



## 11.6 Nonconforming Signs

- A. **Legal Nonconforming Signs:** Any sign, lawfully established prior to the effective date of this Ordinance, or its subsequent amendments, that no longer meets the development requirements shall be deemed a Legal Nonconforming Sign.
- B. **Sign Defined:** For the purposes of this Article, a sign shall include the sign face and any supports, poles, frames, or other associated lighting, electrical, mechanical, and structural features.
- C. **Continuation of Legal Nonconforming Signs:** The continuation and modification of legal nonconforming signs shall be consistent with the following requirements:
1. Increases in Nonconformity: No legal nonconforming sign shall be enlarged or altered in terms of face area, height, or any other aspect that increases its nonconformity.
  2. Intentional Alterations: Any legal nonconforming sign that is intentionally altered, moved for any distance, or replaced shall conform to the regulations of the district in which it is located, and the discontinued legal nonconforming features may not be resumed. In no instance shall this provision be interpreted as prohibiting signs from being temporarily removed for painting or other maintenance, so long as the original sign is returned to its original location within a period of 60 days from the date of its removal.
  3. Accidental Alterations: Legal nonconforming signs that are required to be altered or removed due to government action or damage resulting from fire, flood, other natural disaster, or a criminal act may be restored to their legal nonconforming condition. Such signs, if replaced, shall either (a) conform with the requirements of this Ordinance or (b) be identical in scale and all other aspects to that which was altered or removed. If replaced the sign shall comply with Section 11.1(E).
  4. Change of Use & Site Modifications: Signs shall be considered a site feature and shall comply with Sections 11.4(B)(2) and (3) in the event of a change of use or site modification.
  5. Sign Faces and Messages: The sign faces and/or message on a legal nonconforming sign may be altered, replaced, repainted, and repaired provided that the nonconformity of the sign is not increased. Nothing in this Article shall be interpreted as requiring a sign to be brought into conformance with this Ordinance if its message is changed, but the sign is not increased in size or altered in shape.
  6. Temporary Signs: Any signs in existence at the time this Ordinance becomes effective that were previously permitted as temporary signs may only remain in use consistent with the requirements of this Ordinance. Any temporary signs that are no longer permitted shall be removed within 60 days of the effective date of this Ordinance. Any nonconforming temporary signs shall be considered to be in violation of this Ordinance and shall be subject to the provisions of Article 13, Enforcement and Penalties.