

City of Butler, Indiana Zoning Ordinance

Article 7 – Nonconforming Structures, Lots & Uses



7.1 - Intent - Upon adoption of the Zoning Ordinance and official zoning map, some buildings, structures, lots, and/or uses may no longer conform to the regulations of the zoning district in which they are located. For this reason, Article Seven has been generated to provide the rules, policies and regulations that apply to these buildings, structures, lots, and uses referred to as legal-nonconforming.

7.2 - Distinction Between Illegal-Nonconforming and Legal-Nonconforming

- A. A building, structure, or lot is considered illegal-nonconforming if it meets the following:
1. It was built, constructed or platted after March 7, 1957, and
 2. It does not meet the provisions of this Zoning Ordinance, and
 3. It has not met the provisions of any previous zoning ordinance, and as a result does not have an approved building permit, improvement location permit or approval from the Board of Zoning Appeals or Plan Commission.
- B. An illegal-nonconforming property shall be subject to actions and penalties allowed by the Zoning Ordinance and all other applicable municipal law and shall be altered to conform with all applicable standards and regulations of the Zoning Ordinance. Further, an illegal-nonconforming building, structure, lot or use is created at the fault of a past or the current owner, tenant or property manager.
- C. Legal-nonconforming differs from illegal-nonconforming (illegal) in that the reason for the nonconformance is caused by a change to the Zoning Ordinance and/or the zoning map. The building, structure, lot or use has not changed, but due to the ordinance and/or map change, the property no longer conforms to the policies and standards of the zoning district in which the property resides. When this situation occurs, the property is deemed legal-nonconforming or another term commonly used is "grandfathered." The burden to prove a building, structure, lot or use is legal nonconforming rests with the property owner.

7.3 - Nonconforming Buildings and Structures

- A. Any continuously occupied, lawfully established structure or building prior to the effective date of the Zoning Ordinance, or its subsequent amendments, that no longer meets the design standards due to the reasons listed below shall be deemed a legal-nonconforming building or structure.
- B. Legal-nonconforming building(s) or structure(s) no longer meet one or more of the following development standards of the Zoning Ordinance:
- Setbacks,
 - Lot Coverage,
 - Accessory Structures,
 - Parking,
 - Fences, and any other provision of the Zoning Ordinance that is applicable to the building or structure.

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- C. A legal-nonconforming building or structure may continue to exist provided that it remains the same or fits within the below described tolerances:
1. Legal-Nonconforming building(s) or structure(s) may be expanded or altered if the Community Development Office determines the proposed expansion or alteration does not exceed the existing building setback lines or impervious surface regulations.
 2. Any legal-nonconforming building or structure which is damaged or destroyed by more than 75% of its fair market value by accidental cause, including Acts of God, shall thereafter conform to the regulations of the district in which it is located. If the damage is less than or equal to 75% of the fair market value, the building or structure may be replaced provided the following:
 - a. The elevation of the lowest floor, including the basement floor, shall be at least two feet above the regulatory flood,
 - b. All necessary permits shall be obtained from the Department of Natural Resources,
 - c. An application for a building permit shall be made within six months of the date of destruction, and Nonconforming Structures, Lots, and Uses
 - d. The building or structure is permitted to be rebuilt by either:
 - i. replacing the exact building or structure that was destroyed; or
 - ii. constructing a building or structure that is not any more out of conformance with the current Zoning Ordinance as the building or structure destroyed.
- D. If a building or structure is moved for any reason, for any distance, it shall thereafter conform to the provisions of the Zoning Ordinance.

7.4 - Nonconforming Lots of Record

- A. All legally established and recorded lots prior to the effective date of the Zoning Ordinance, or its subsequent amendments, that no longer meet the lot standards listed below shall be deemed legal-nonconforming lots of record. A legal-nonconforming lot of record no longer meets one or more of the following lot standards of the Zoning Ordinance:
- Lot Area,
 - Lot Width,
 - Lot Depth,
 - Lot Frontage, or
 - Any other provision of the Zoning Ordinance that is applicable to lots.
- B. Legal-nonconforming lots of record may be built upon only if the proposed use is permitted and all development standards of the applicable zoning district of the Zoning Ordinance are met.

7.5 - Nonconforming Uses of Structures, Land, or Structures and Land in Combination -

Any continuous, lawful use of structures, land, or structures and land in combination established prior to the effective date of the Zoning 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. A legal-nonconforming use may continue provided that it remains otherwise lawful, subject to the following conditions:

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- A. No existing structure devoted to a legal-nonconforming use shall be enlarged, expanded, increased, extended, constructed, reconstructed, moved, or structurally altered unless it:
 - 1. changes the use of the structure to a use permitted in the district in which it is located, and
 - 2. meets all the regulations of this Zoning Ordinance.
- B. No new building or structure shall be constructed in connection with an existing legal-nonconforming use of land except fences which must meet all the regulations of the current zoning district.
- C. Any legal-nonconforming use of a structure may be extended throughout any parts of a building which were designed for such use at the effective date of the Zoning Ordinance or its subsequent amendments, but no such use shall be extended to occupy any land outside the building.
- D. If no structural alterations are made, a legal-nonconforming use of structure or structure and land in combination may be changed to another legal-nonconforming use, provided that the Community Development Office shall make specific findings that the proposed use is equally appropriate or more appropriate to the district than the existing legal-nonconforming use. However, if the new use requires more parking area than the previous use, such new use will comply with the appropriate parking standards required in Article Six of the Zoning Ordinance, as determined by the Community Development Office.
- E. If a legal-nonconforming use is abandoned or not occupied for 22 of the last 24 months and the water and wastewater utility service has been turned off for 22 of the last 24 months, any subsequent use of such land, structure or land and structure shall conform to the provisions of the Zoning Ordinance. If a government action impedes access to the premises, this regulation does not apply.
- F. When a legal-nonconforming use is changed to a permitted use, it shall thereafter conform to regulations of the district, the legal-nonconforming use may not thereafter be resumed.
- G. Where a legal-nonconforming use applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming structure of the land and all structures thereafter shall conform to the provisions of this Zoning Ordinance. Destruction is defined as damage of more than 75% of its fair market value at the time of destruction.

7.6 - Nonconforming Signs - Any sign lawfully existing on the effective date of the Zoning Ordinance, or amendment thereto, that does not conform to all the standards and regulations of the Zoning Ordinance is considered a legal-nonconforming sign. The following applies to legal-nonconforming signs:

- A. Signs which existed prior to the time the Zoning Ordinance was passed and were in conformance with previous ordinances will be legally nonconforming until such time the sign is structurally altered or a major change is made. Structurally altered and major change include changing the size, changing the height, adding lights, altering light intensity, relocation of the sign or complete replacement.
- B. Legal-nonconforming signs which are structurally altered by a major change, relocated, or replaced shall comply immediately with all provisions of the Zoning Ordinance.

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- C. All legal-nonconforming signs shall be kept in good repair, safe, neat, clean and attractive condition. In the event nonconforming signs are not kept in said condition or are demolished by any force whatsoever to the extent of 50% or more of the fair market value of the sign structure, said signs shall then be made to conform to the Zoning Ordinance.
- D. All legal-nonconforming signs shall be removed by the owner or lessee of the premises upon which the sign is located when the business which it advertises is no longer conducted on the premises. If the owner or lessee fails to remove the sign, the Plan Commission or Community Development Office shall give the owner 30 days written notice to remove it. Upon failure to comply with this notice, the Plan Commission or Community Development Office may remove the sign at cost to the property owner or lessee.

7.7 - Nonconforming Telecommunications Facilities

- A. Any telecommunications facility in existence on or before the date this ordinance was adopted which does not conform to or comply with the telecommunications facility standards in Article Six is considered legal nonconforming if:
 - 1. The telecommunication facility was covered by an Improvement Location Permit, a building permit or variance or,
 - 2. If no Improvement Location Permit or building permit was required under applicable law for the telecommunications facility in question, the telecommunications facility had legal nonconforming status at such time.
- B. Any nonconforming telecommunications facility in existence and that does not fit the definition of a legal nonconforming telecommunication facility is an illegal nonconforming telecommunication facility.
- C. If land is annexed to the City of Butler subsequent to the date this ordinance was adopted, any telecommunications facility upon such annexation which does not conform to the telecommunications facility standards at such time shall have legal nonconforming status if:
 - 1. Under applicable federal, state and county regulations, the telecommunications facility was legal in all respects immediately prior to annexation; and
 - 2. The annexation was not conditioned upon the removal or modification of the telecommunications facility. Any telecommunications facility not meeting such requirements is an illegal nonconforming telecommunications facility.
- D. Any legal-nonconforming telecommunications facility shall immediately lose its legal nonconforming status if:
 - 1. The telecommunications facility, because of improper installation or maintenance, constitutes a threat to public health or safety and remains in such condition after a reasonable time is given to remedy the problem;
 - 2. The telecommunications facility is demolished or damaged to the extent of 50% or more of its value; or

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3. The telecommunications facility is substantially structurally altered so as to prolong its expected life.

On the happening of any one of the above-listed events, the telecommunications facility shall be immediately brought into compliance with the development standards in the Zoning Ordinance or shall be removed.

- E. Nothing in the telecommunication facility standards shall relieve the owner or user of a legal-nonconforming telecommunications facility or owner of the property on which the legal-nonconforming telecommunications facility is located from any provisions regarding safety, maintenance and repair of the telecommunications facility.

7.8 - Repairs and Maintenance - The following applies to legal-nonconforming structures or buildings, and legal-nonconforming uses of structures, or structures and land in combination.

- A. Work may be done for ordinary repairs and maintenance including: siding, re-roofing, mechanical systems, windows, doors etc. under the condition that there is no increase in square footage or volume of usable space.
- B. If a structure or portion of a structure were to become unsafe or condemned due to lack of repairs or maintenance, and is declared to be unsafe or condemned due to physical condition; the building or structure shall be restored, repaired or rebuilt within six months of the declaration. If the improvements have not been made within the six months, all future improvements must conform to all standards and regulations within the Zoning Ordinance.
- C. If a building or structure becomes unsafe or unlawful due to physical condition and is demolished, the building or structure shall be rebuilt in conformity with the district in which it is located.
- D. Nothing in this section shall be deemed to prevent the strengthening, repairing, or restoring to a safe condition of any building or structure or part thereof declared to be unsafe by any official charged with protecting public safety upon order of such official.

7.9 - Certificate of Nonconforming Use - In order to protect the lawful nonconforming status of a nonconforming use, a person who owns or operates a nonconforming use may request a certificate of nonconforming use from the Community Development Office. The applicant shall demonstrate that the use is a lawful nonconforming use prior to the issuance of the certificate.