

Article

8

Nonconformances

*City of Richmond
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 (informally referred to as “grandfathered”) lots, structures, and uses.

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 one or more standards in the current Unified Development Ordinance. Nonconforming structures, uses, or lots are either "illegal nonconforming" or "legal nonconforming." The following sections are used to determine the nonconforming status of a structure, use, or lot:

A. Illegal Nonconforming:

1. *Structure*: A structure 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. *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 use that was legally established and is not permitted under the current Unified Development Ordinance, but has been abandoned or discontinued for a period of at least one (1) year, is an illegal nonconforming use.
3. *Lot*: A lot established in violation of the zoning 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 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 the Unified Development Ordinance shall be deemed a legal nonconforming structure. Generally, a structure is rendered legal nonconforming by an amendment to the zoning regulations or a zoning map change. However, a legal nonconformity may be a result of government use of eminent domain or right-of-way acquisition.
2. *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. Generally, a use is rendered legal nonconforming by an amendment to the zoning regulations or a zoning map change.
3. *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 the Unified Development Ordinance shall be deemed a legal nonconforming lot of record. Generally, a lot is rendered legal nonconforming by an amendment to the zoning regulations or a zoning map change. However, a legal nonconformity may be a result of government use of eminent domain or right-of-way acquisition.

8.03 Illegal Nonconforming Structures, Uses, and Lots

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

Nonconforming Structures

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.

- A. **Legal Nonconforming Building Provisions:** The provisions for legal nonconforming buildings, a subcategory of 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 may be relocated if, by moving the building, it decreases the legal nonconformity and the relocation otherwise meets the current Unified Development Ordinance.
- B. **Legal Nonconforming Structure Provisions:** The provisions for legal nonconforming structures, excluding the subcategory of buildings, are as follows:
1. *Structure Alteration:* A legal nonconforming structure shall be permitted to be altered in height, area, mass, and time as long as the nonconformity is not increased and the alteration otherwise meets the current Unified Development Ordinance. For example, if a permanent sign is in violation of the maximum height standard, it can be altered as long as the alteration does not exceed the maximum height standard currently permitted and is otherwise in compliance with Unified Development Ordinance.
 2. *Structure Relocating:* A legal nonconforming structure may be relocated if, by moving the structure, it decreases the legal nonconformity and the relocation otherwise meets 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. 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. **Loss of Legal Nonconforming Structure Status:** The following provisions apply to all types of structures:
1. *Condemned Structures:* If a 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; unless the structure is restored or repaired within three (3) months of the declaration. The Zoning Administrator may grant an appropriate extension of time if work was started within the initial three (3) month period and reasonable attempts are being made by the owner to remedy the condemnation.
 2. *Removal of Permanent Structures:* If a permanent structure is fully or significantly removed or razed (i.e. eighty percent (80%) or more of the structure), the remaining permanent structure shall lose its legal nonconforming status and become illegal nonconforming; unless by significantly removing or razing the permanent structure the remaining permanent structure is in compliance or more in compliance with the current Unified Development Ordinance.
 3. *Removal of Temporary Structures:* If a temporary structure is removed (e.g. moved inside, taken off-site, or replaced by a new temporary structure), the temporary structure shall lose its legal nonconforming status and become illegal nonconforming.
 4. *Flood:* If a structure is severely damaged from a flood, resulting in a loss of either fifty percent (50%) of its market value or fifty percent (50%) of its structure, all reconstruction shall be required to meet the current Unified Development Ordinance. All other flood damaged structures shall be allowed to rebuild the structure that previously existed.

Nonconforming Structures

5. *Acts of God*: If a structure is severely damaged from an act of God, excluding flooding, 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. All other structures damaged by an act of God shall be allowed to rebuild the structure that previously existed.
- D. Maintenance and Repair: Nothing in this section shall be deemed to prevent the maintenance or repair of a structure to keep it in a safe, aesthetic, and functional condition.

Nonconforming Lots

8.05 Legal 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 as long as the desired structure(s) and use(s) meets the current Unified Development Ordinance. If the application of the current Unified Development Ordinance renders the lot undevelopable (e.g. the current setbacks do not permit a developable building envelope), the owner shall request the City apply for reasonable variances from the Board of Zoning Appeals.
- B. Loss of Legal Nonconforming Lot Status:
 1. *Combining Lots Results in Conformity*: If a legal nonconforming lot is combined with an adjacent lot resulting in conformity with the current Unified Development Ordinance, it shall lose its legal nonconforming status. Therefore, future division of the combined lot shall conform to the current Unified Development Ordinance.
 2. *Lots in Combination*: If a legal nonconforming lot is owned by the same person as the adjacent lot, and the owner uses both lots in combination for a duration of more than five (5) years, the legal nonconforming lot shall lose its legal nonconforming status; provided the two (2) or more lots in combination would constitute a single conforming lot.
 3. *Permanent Structure Across Property Lines*: If a legal nonconforming lot is owned by the same person as the adjacent lot, and the owner constructs a permanent structure across the property line, thus permanently using two (2) lots in combination, the legal nonconforming lot shall lose its legal nonconforming status; provided the two (2) lots in combination would constitute a single conforming lot.

8.06 Legal 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, Enlarged, New, or Relocated Buildings:* A legal nonconforming use shall be permitted to occupy or use an existing building, enlarged existing building, newly constructed building, or relocated building, provided the building meets the current Unified Development Ordinance.
2. *Utilizing Existing, Altered, New, or Relocated Structures:* A legal nonconforming use shall be permitted to utilize an existing structure, altered existing structure, newly constructed structure, or relocated structure, provided the building meets the current Unified Development Ordinance.
3. *Utilizing Land:* Any legal nonconforming use shall be permitted to utilize its lot, or lots owned in combination upon the effective date of the Unified Development Ordinance, provided the utilization of land meets the current Unified Development Ordinance.
4. *Increase in Nonconformity:* No legal nonconforming use shall be permitted to increase its nonconformity. The size of operation, number of employees, increase to vehicular traffic and similar increases in size does not increase nonconformity of a use. For example, a five (5) acre legal nonconforming junkyard that expands its operations onto five (5) more acres of land it previously owned, does not qualify as an increase in nonconformity, its still a junkyard. However, if the same junkyard adds a compactor facility which previously did not exist, that would qualify as an increase in nonconformity.

C. Loss of Legal Nonconforming Use Status:

1. *Abandonment of Use:* If a legal nonconforming use is abandoned or is discontinued for twelve (12) or more months, 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:* When a legal nonconforming use is changed, altered, or evolves to be in compliance or more in compliance with the current Unified Development Ordinance, the legal nonconforming use status is lost or partially lost. The current use cannot revert back to the original legal nonconforming use or increments thereof.