

9.1 Nonconforming Lots, Uses, Buildings, Structures or Signs

A. Intent.

Within the zoning *Districts* established by this Ordinance, there exist:

1. nonconforming *Lots of Record*;
2. nonconforming *Buildings* or *Structures*;
3. nonconforming uses of land;
4. nonconforming uses within nonconforming *Buildings* or *Structures*; and,
5. nonconforming *Signs*.

which were legally established prior to the effective date of this Ordinance, but which would be prohibited, regulated or restricted under the provisions of this Ordinance. It is the intent of this Ordinance to permit these *Legally Established Nonconforming Lots, Buildings, Structures, Signs* and *Uses* to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that *Legally Established Nonconforming Buildings, Structures, Signs* and *Uses* shall not: (a) be enlarged upon, expanded or extended; or (b) be used as grounds for adding other *Structures* or uses which are prohibited elsewhere in the same *District*.

Nonconforming *Lots of Record*, nonconforming *Buildings* or *Structures*, nonconforming uses of land, and nonconforming uses within nonconforming *Buildings* or *Structures* that are either illegal or not legally established on the effective date of this Ordinance shall not become legally established or validated by virtue of the enactment of this Ordinance.

Previously illegal or not legally established nonconforming *Lots Of Record*, nonconforming *Buildings* or *Structures*, nonconforming uses of land, nonconforming uses within nonconforming *buildings* or *structures*, and nonconforming *Signs* which are in full compliance with the regulations of this Ordinance pertaining to the *Permitted Uses* and *Development Standards* of the *District* to which the real estate is zoned shall, after the effective date of this Ordinance, be considered validated as conforming *Lots Of Record, Buildings, Structures, uses* and *Signs* for the purposes of interpreting and applying this Ordinance.

B. Incompatibility of Legally Established Nonconforming Uses.

Legally Established Nonconforming Uses are declared by this Ordinance to be incompatible with *Permitted Uses* in the zoning district in which such *Legally Established Nonconforming Use* is located.

A *Legally Established Nonconforming Use* of a *Building* or *Structure*, or a *Legally Established Nonconforming Use* of land, shall not be extended, expanded or enlarged, nor shall additional *Signs* for such *Legally Established Non-conforming Use* be erected on the *Lot*, after the effective date of this Ordinance.

C. Avoidance of Undue Hardship.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans for or construction of any *Building, Structure* or *Sign* or the designation of use of any *Building* or *Structure*, for which an *Improvement Location Permit* has been properly filed for or issued prior to the effective date of this Ordinance; provided that the construction of such *Building, Structure* or *Sign* is commenced within six (6) months of such effective date and diligently prosecuted to completion; and, provided further however that such construction shall be completed within two (2) years of the issuance of said *Improvement Location Permit*.

D. Legally Established Nonconforming Lots of Record.

Any legally established *Lot* recorded or any legally established platted *Lot* recorded prior to the effective date of this Ordinance, having less than the required minimum *Lot Area* or

minimum *Lot Width* required by the applicable zoning *District* regulations of this Ordinance, shall be deemed a permitted exception to such minimum *Lot Area* or minimum *Lot Width* and may be used for any use permitted within the applicable zoning *District* in which such *Lot* is located provided that:

1. all other *Development Standards* are met; and
2. such *Lot* must be in separate ownership and not of continuous *Frontage* with other *Lots* in the same ownership.

E. Legally Established Nonconforming Buildings or Structures (Excluding Signs).

Where a *Legally Established Nonconforming Building or Structure* (excluding *Signs*) exists on the effective date of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on: *Gross Floor Area*; *Lot Coverage*; *Building Height* limitations; front, side and rear *Setbacks* and *Yards*; location on the *Lot*, bulk; or other provisions of this Ordinance applicable to the *Building or Structure*, such *Building or Structure* may continue to exist so long as it remains otherwise lawful, subject to compliance with the following provisions:

1. such *Legally Established Nonconforming Building or Structure* may not be enlarged, expanded or altered in a way which increases its nonconformity, provided such *Building or Structure* may be altered so as to decrease the extent of nonconformity;
2. should such *Legally Established Nonconforming Building or Structure*, or *Legally Established Nonconforming* portion of a *Building or Structure*, be damaged or destroyed by any means to the extent of more than two-thirds (2/3) of the Fair Market Value of the *Building or Structure* immediately prior to the damage or destruction, said *Building or Structure* shall not be reconstructed except in conformity with the provisions of this Ordinance; and
3. should such *Building or Structure* be moved for any reason for any distance whatsoever, such *Building or Structure* shall thereafter conform to the provisions of this Ordinance.

F. Legally Established Nonconforming Uses of Land.

Where *Legally Established Nonconforming Uses* of land exist on the effective date of this Ordinance which would not be permitted by the provisions of this Ordinance, such uses may be continued so long as they remain otherwise lawful provided that:

1. such *Legally Established Nonconforming Uses* shall not be enlarged, expanded, increased or extended to occupy a greater area of land than was occupied on the effective date of this Ordinance;
2. such *Legally Established Nonconforming Uses* shall not be expanded or increased by:
 - a. volume;
 - b. activity on the land occupied; or,
 - c. other means,

where such expanded or increased *Legally Established Nonconforming Use* results in a difference in the quality, character, or degree of the *Legally Established Nonconforming Use*, or results in a *Legally Established Nonconforming Use* that has an increased and detrimental impact or effect on any adjoining property or the surrounding area. A difference in the quality, character or degree, or an increased and detrimental impact or effect may include but not be limited to any impact or effect resulting from: an increase in traffic volume; a change in the nature of vehicular traffic (i.e., both type and size of vehicles); change in hours of operation (i.e., from normal business hours to include evening or 24-hour operations); or, an increase in vibration, smoke, dust, odor, noise, glare, or any other activity or characteristic of the *Legally Established Nonconforming Use* which impacts any of the items listed as Performance Standards in Article 4.8 of this Ordinance.

3. such *Legally Established Nonconforming Uses* shall not be moved in whole or in part to any portion of the *Lot* or parcel other than that occupied by such uses on the effective date of this Ordinance; and
4. no additional *Building* or *Structure* shall be erected in connection with such *Legally Established Nonconforming Use* of land.

G. Discontinuation of Legally Established Nonconforming Use of Land.

If any *Legally Established Nonconforming Use* of land is:

1. abandoned for any period of time; or,
2. discontinued for more than six (6) months (except when government action impedes access to the premises),

any subsequent use of such land shall conform to the provisions of this Ordinance.

H. Legally Established Nonconforming Uses Within Legally Established Nonconforming Buildings or Structures.

If any *Legally Established Nonconforming Use* is located within a *Legally Established Nonconforming Building* or *Structure* and such *Legally Established Nonconforming Building* or *Structure* becomes unsafe or unlawful by reason of physical condition and is razed, the *Legally Established Nonconforming Use* previously being conducted in such *Legally Established Nonconforming Building* or *Structure* shall be extinguished and no longer permitted.

If any *Legally Established Nonconforming Use* is located within a *Legally Established Nonconforming Building* or *Structure* and such *Legally Established Nonconforming Building* or *Structure* is damaged or destroyed by any means to the extent of more than two-thirds (2/3) of the Fair Market Value of the *Building* or *Structure* immediately prior to the damage or destruction the *Legally Established Nonconforming Use* previously being conducted in such *Legally Established Nonconforming Building* or *Structure* shall be extinguished and no longer permitted unless application in compliance with the provisions of Article XI is made for an *Improvement Location Permit* within one-hundred and eighty (180) days of such damage or destruction and an *Improvement Location Permit* demonstrating compliance with the following regulations is issued pursuant to such application:

1. The proposed redevelopment shall, to the maximum extent practical, comply with the *Development Standards*, including but not limited to *Lot Coverage*, *Off-Street Parking*, *Off-Street Loading*, lighting, landscaping, *Minimum Yards* or *Bufferyards*, *Use of Minimum Yards* and *Bufferyards*, *Building Setbacks*, *Maximum Building Height*, *Main Floor Area*, and *Outside Storage* and Operations, applicable to the *Legally Established Nonconforming Use* in the *District* in which such use is first identified as a *Permitted Use*; and,
2. The *Gross Floor Area* and the *Maximum Building Height* devoted to the *Legally Established Nonconforming Use* shall not be increased, except as such increase is required to comply with other applicable Federal, State or Local regulations (i.e., minor enlargements to accommodate ADA Accessibility Guidelines or current Building Codes).

I. Repairs and Maintenance of Legally Established Nonconforming Buildings or Structures (Excluding Signs).

1. Ordinary Repairs – On any *Legally Established Nonconforming Building* or *Structure* (excluding *Signs*), or portion of a *Building* or *Structure* containing a *Legally Established Nonconforming Use*, work may be done on ordinary repairs or on the repair or replacement of non-bearing walls, fixtures, wiring or plumbing, provided that the cubic feet content existing when the *Building* or *Structure*, or portion of a *Building* or *Structure* containing a *Legally Established Nonconforming Use* became nonconforming shall not be increased. Nothing herein shall be deemed to prevent the strengthening, repairing or

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restoring to safe condition of any *Building* or *Structure* (excluding *Signs*), or part thereof, declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

2. Reconstruction Prohibited – If a *Legally Established Nonconforming Building* or *Structure* (excluding *Signs*) or portions of a *Building* or *Structure* containing a *Legally Established Nonconforming Use* becomes unsafe or unlawful by reason of physical condition and is razed, such *Building* or *Structure* (excluding *Signs*) shall not thereafter be rebuilt or used except in conformity with the provisions of this Ordinance.
3. Remodeling – The *Gross Floor Area* and the *Maximum Building Height* devoted to the *Legally Established Nonconforming Use* shall not be increased, except as such increase is required to comply with other applicable federal, state or local regulations (i.e., minor enlargements to accommodate ADA accessibility guidelines or current building codes).
4. Parking Area, Outside Storage Area or Outdoor Operations Area – A *Legally Established Nonconforming Parking Area*, *Outside Storage* area or outdoor operations area may be maintained, repaired or upgraded by hardsurfacing with asphalt or concrete provided that there is no increase in the total area occupied by the *Parking Area* or *Outside Storage* area and, if, in the discretion of the *Director*, the hardsurfacing would serve to reduce a potential negative impact of the existing *Parking Area* or *Outside Storage* area on surrounding properties. In case of disagreement with the determination of the *Director*, any aggrieved party may file and appeal with the *Board of Zoning Appeals* pursuant to the provision of Article X of this Ordinance. Such hardsurfacing shall require an *Improvement Location Permit* and shall also be subject to full review under and compliance with Plainfield Ordinance No. 17-97 - Drainage Ordinance.

J. Legally Established Nonconforming Signs.

1. Any *Legally Established Nonconforming Sign* within the Town of Plainfield may continue to exist, including the performance of normal and routine maintenance, so long as such *Sign* remains otherwise lawful.
2. *Legally Established Nonconforming Signs* may receive normal and routine repair and maintenance subject to the following provisions:
 - a. a *Legally Established Nonconforming Sign* may not be enlarged, expanded or altered in a way which increases its nonconformity;
 - b. a *Legally Established Nonconforming Sign* erected pursuant to the grant of a variance of either a previously enacted zoning regulation or this Ordinance for number of *Signs*, height of *Sign*, *Setback of Sign* or *Sign Surface Area* may be altered so as to decrease the extent of nonconformity authorized by such grant of variance;
 - c. except as provided for in sub-section 2., b., above, the removal of a *Sign Structure* or a *Sign Cabinet* shall be deemed conclusive evidence that such *Sign* requires work beyond normal and routine repair and maintenance, and such *Sign* shall not be repaired, maintained or reconstructed except in conformity with the provisions of this Ordinance;
 - d. should a *Legally Established Nonconforming Sign* be moved for any reason for any distance whatsoever, such *Legally Established Nonconforming Sign* shall thereafter conform to the provisions of this Ordinance;
 - e. should a *Legally Established Nonconforming Sign* remain unused by a business operating from an associated building for a period of 6 months or greater, the owner of the premises upon which it is located shall remove all poles, frames, supports, and any other structural, electrical, mechanical, elements of said *Sign*;

- f. if the cost of normal and routine repair and maintenance of a *Legally Established Nonconforming Sign* exceeds fifty (50) percent of the *sign's* replacement cost or current depreciated value, whichever is less, determined pursuant to sub-Section K., 2., below, said *Legally Established Nonconforming Sign* shall not be repaired, maintained or reconstructed except in conformity with the provisions of this Ordinance; and,
- g. if a *Legally Established Nonconforming Sign* is damaged or destroyed by any means to the extent that the repair or reconstruction of the *Sign* exceeds fifty (50) percent of the *Sign's* replacement cost or current depreciated value, whichever is less, determined pursuant to sub-Section K., 2., below, said *Legally Established Nonconforming Sign* shall not be reconstructed except in conformity with the provisions of this Ordinance, provided, however, in the case of a *Freestanding Identification Sign*, if due to the configuration of the property (i.e., location of *Building*, *Interior Access Drive* or other permanent *Improvement*) a new *Freestanding Identification Sign* cannot be located at the appropriate *Setback* pursuant to Article VII of this Ordinance, the *Director* may issue an *Improvement Location Permit* for a new *Freestanding Identification Sign* located at the same location as the damaged or destroyed *Freestanding Identification Sign* subject to the following regulations:
- (1) the Owner shall make application for an *Improvement Location Permit* within six (6) months of such damage or destruction;
 - (2) the *Director* shall determine that there are no locations on the subject *Lot* and oriented toward the same *Street*, where a new *Freestanding Identification Sign* may be located without significant site alterations;
 - (3) no portion of such *Freestanding Identification Sign* shall encroach into any *Street Right-of-Way*; and,
 - (4) the proposed *Sign* shall, in the determination of the *Director*, decrease the extent of nonconformity where possible and to the maximum extent feasible given site constraints in relation to:
 - (a) the type of *Sign* (from *Pole Sign* to *Pylon Sign* to *Ground Sign*, as permitted by this Ordinance);
 - (b) illumination of *Sign* (from external to internal to no illumination, as permitted by this Ordinance);
 - (c) height of *Sign* (from taller to shorter, to the maximum height permitted by this Ordinance);
 - (d) *Setback* of *Sign* (from 0' to the minimum *Setback* required by this Ordinance); and,
 - (e) *Sign Surface Area* (from larger to smaller, to the maximum *Sign Surface Area* permitted by this Ordinance),
 in comparison to the *Sign* which existed immediately prior to such damage or destruction, provided however, in no case shall the extent of any nonconformity be increased in any manner.

K. Determination of Fair Market Value or Replacement Cost.

In determining the Fair Market Value of the *Building* or *Structure* (excluding *Signs*) or the replacement cost of a *Sign*, immediately prior to the damage or destruction, the *Director* may consider the following items:

1. *Building* or *Structure* – Documentation prepared by and provided by the applicable insurance company responsible for adjusting the loss;
2. *Building*, *Structure* or *Sign* – Documentation prepared by and provided by an appraiser licensed by the State of Indiana to appraise the type of property involved; or,
3. Other documentary evidence deemed appropriate by the *Director*.

L. Reconstruction, Remodeling or Enlargement of a Legally Established Nonconforming Single Family Dwelling or Two Family Dwelling.

Notwithstanding any provision of this Article to the contrary, any *Legally Established Nonconforming Single Family Dwelling* or *Two Family Dwelling* may be:

1. reconstructed if damaged or destroyed by fire, natural disaster or for any other reasons; or,
2. remodeled or enlarged,

provided that such remodeling or additions comply with the *Development Standards* related to maximum *Lot Coverage*, *Minimum Yards* and *Building Setbacks*, *Maximum Building Height*, and *Off-Street Parking* of the R-3 *District* for a *Single Family Dwelling* or the R-5 *District* for a *Two Family Dwelling*.

M. Additions Along a Legally Established Nonconforming Setback for a Single Family Dwelling Located in the Town Center Neighborhood.

Notwithstanding any provision of this Article to the contrary, the *Minimum Front Yard*, *Minimum Side Yard* or *Minimum Rear Yard* for any *Legally Established Nonconforming Building* used as a *Single Family Dwelling* and located in the "Town Center Neighborhood" as designated in The Town of Plainfield, IN, Town Center Plan and having a *Setback* which is less than that which is required by this Ordinance shall be allowed to expand one (1) or more times along such *Legally Established Nonconforming Setback*.

N. Legally Established Building, Structure, Freestanding Identification Sign or Outdoor Operations After Acquisition by a Governmental Agency.

The provisions of this sub-section shall apply to any *Lot* affected by the acquisition of land for *Right-of-Way* or other purposes by a governmental agency.

1. *Setback* - Notwithstanding any provisions of this Article to the contrary, any *Legally Established Buildings, Structures, Freestanding Identification Signs* or outdoor operations, or portions thereof, which either becomes *Nonconforming* or increases the extent of *Nonconformity* as to *Setback* a result of the acquisition of land for *Right-of-Way* or other purposes by a governmental agency, shall be subject to the following provisions:
 - a. *Building* or *Structure* – Any *Building* or *Structure* which becomes *Nonconforming* or increases the extent of *Nonconformity* as to *Setback* as a result of a governmental acquisition may continue to be used or occupied provided the *Buildings* or *Structures* maintain compliance with all applicable health, safety and *Building* codes.
 - b. *Building* or *Structure* – Any *Building* or *Structure* (excluding outdoor operations) which becomes *Nonconforming* or increases the extent of *Nonconformity* as to *Setback* as a result of a governmental acquisition shall be permitted a one-time only exception to remodeled or add-on to such *Building* or *Structure* subject to the following regulations:
 - (1) the Owner shall make application for an *Improvement Location Permit* within six (6) months of the acquisition of land by a governmental agency;
 - (2) the *Gross Floor Area* devoted of such *Building* or *Structure* shall not be enlarged beyond that which existed prior to the governmental acquisition;
 - (3) *Setbacks* for all *Yards* not affected by the governmental acquisition shall comply with the applicable *Development Standards* of this Ordinance; and,
 - (4) if compliance with all applicable *Development Standards* cannot be achieved for any *Yard* which is affected by the governmental acquisition, the *Director* may approve an *Improvement Location Permit* for a remodeling or addition that demonstrates compliance with a *Development Incentive* applicable to the specific *Development Standard* which cannot be met, if such a *Development Incentive* exists, as set forth in Article 5.4 of this Ordinance and subject to compliance with all applicable requirements thereof.

- c. *Freestanding Identification Signs* – Any *Freestanding Identification Sign* which either becomes *Nonconforming* or increases the extent of *Nonconformity* as to *Setback* as a result of by a governmental acquisition shall be subject to the following provisions:
- (1) such *Freestanding Identification Sign* may continue to be maintained at the original location of such *Freestanding Identification Sign* provided that no portion of such *Freestanding Identification Sign* (i) encroaches into any *Public Right-of-Way*, (ii) interferes with the stated purpose of the governmental agencies acquisition, or (iii) interferes with the Vision Clearance Area set forth in Article 4.14 of this Ordinance; or,
 - (2) if any portion of such *Freestanding Identification Sign* would (i) encroach into any *Public Right-of-Way*, (ii) interfere with the stated purpose of the governmental agencies acquisition, or (iii) interfere with the Vision Clearance Area set forth in Article 4.14 of this Ordinance, the *Director* may issue an *Improvement Location Permit* to provide for:
 - (a) the relocation of such *Freestanding Identification Sign* to a location on the subject site which is in full compliance with all *Setback* provisions of this Ordinance; or,
 - (b) the relocation of such *Freestanding Identification Sign* to a location on the subject site that does not comply with all *Setback* provisions of this Ordinance subject to the following regulations:
 - (i) the Owner shall make application for an *Improvement Location Permit* within six (6) months of the acquisition of land by a governmental agency;
 - (ii) the *Director* shall determine that due to the configuration of the remaining property (i.e., location of *Building*, *Interior Access Drive* or other permanent *Improvement*) the *Freestanding Identification Sign* cannot be located at the appropriate *Setback* pursuant to Article VII of this Ordinance;
 - (iii) the *Director* shall determine that there are no locations on the subject *Lot* and oriented toward the same *Street* to which such *Freestanding Identification Sign* may be relocated at the appropriate *Setback* without significant site alterations;
 - (iv) no portion of such *Freestanding Identification Sign* shall encroach into any *Street Right-of-Way*;
 - (v) no portion of such *Freestanding Identification Sign* shall interfere with the Vision Clearance Area set forth in Article 4.14 of this Ordinance; and,
 - (vi) the relocated *Freestanding Identification Sign* shall not result in an increase in the extent of any nonconformity, other than *Setback*, than that which existed prior to the governmental acquisition.
 - (c) The issuance of an *Improvement Location Permit* for the relocation of a *Freestanding Identification Sign* under the special provisions of this sub-section shall not be deemed or construed to have removed the *Nonconforming* status of any element of such *Freestanding Identification Sign*.
 - (3) *Outdoor Operations* – In the case of any outdoor operations, including but not limited to *Off-Street Parking Areas*, *Off-Street Loading Areas*, outdoor display, outdoor seating, or *Outside Storage*, which either becomes *Nonconforming* or increases the extent of *Nonconformity* as to *Setback* as a result of a governmental acquisition and which cannot be reasonably redesigned to achieve compliance with all applicable *Development Standards*, the *Director* may approve an *Improvement Location Permit* for such outdoor operations, which encroach into a required *Yard*, provided:
 - (a) the Owner shall make application for an *Improvement Location Permit* within six (6) months of the acquisition of land by a governmental agency;

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- (b) the *Director* shall have determined that such outdoor operations cannot reasonably be redesigned to be brought into full compliance with applicable *Development Standards* regarding *Setback*; and,
 - (c) the *Director* shall have determined that such outdoor operations have been redesigned, to the extent feasible, to achieve maximum compliance with the applicable *Development Standards* of this Ordinance (including but not limited to: *Setback*; design and construction standards; minimum number; and, landscaping).
2. *Lot Area for Single Family Dwellings or Two-Family Dwellings* – In addition to the above provision, if a *Single Family Dwelling Lot* or *Two-Family Dwelling Lot* either becomes *Nonconforming* or increases the extent of *Nonconformity* as to *Lot Area* as a result of a governmental acquisition, a *Single Family Dwelling* or *Two-Family Dwelling* located on such *Lot* may be reconstructed, remodeled or enlarged provided that such remodeling or additions comply with the *Development Standards* related to maximum *Lot Coverage*, *Minimum Yards* and *Building Setbacks*, *Maximum Building Height*, and *Off-Street Parking* of the *R-5 District*.

O. *Legally Established Nonconforming Buildings or Structures within 600' of a Gateway Corridor or Residential District.*

Where a *Legally Established Nonconforming Building or Structure* located within 600' of a *Gateway Corridor* or *Residential District* exists on the effective date of this Ordinance that was not constructed in compliance with the terms of this Ordinance with regards to *Development Requirements* of Article V, the use of the *Building* or *Structure* may continue to exist so long as it remains otherwise lawful, subject to compliance with the following provisions:

- 1. the use was not discontinued or abandoned for a period of six (6) months or more; and,
- 2. in the event the *Building* or *Structure* has lost its *Legally Established Nonconforming* status based on the above provisions, prior to the reuse of the *Building* or *Structure*, the Owner shall make application for an *Improvement Location Permit* (ILP) for compliance with the *Development Requirements* of Article V of this Ordinance.