

ARTICLE 18. NONCONFORMING SITUATIONS

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18.1 Purpose and Intent

18.1.1. There exist uses of land, structures, lots of record, and signs that were lawfully established before this Ordinance was adopted or amended, that now do not conform to its terms and requirements. A nonconforming situation occurs when, on the effective date of this Ordinance, an existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matter as density and setback requirement) is not in conformity with this Ordinance, because signs do not meet the requirements of this Ordinance, or because land or buildings are used for purposes made unlawful by this Ordinance.

The purpose and intent of this article is to regulate and limit the continued existence of those uses, structures, lots of record, and signs that do not conform to the provisions of this Ordinance, or any subsequent amendments.

(Ord. 05/31/1977; 154.006)

18.2 Non-Conforming Situations - General

18.2.1. **Applicability** - This Article applies to any nonconformity. There are four categories of nonconformities as defined below:

- A. Nonconforming Lot(Land): A lot, parcel, or tract of land lawfully established prior to the adoption or amendment of the Zoning Ordinance that fails to meet all current requirements for area, width, and/or configuration of the zoning district in which it is located.
- B. Nonconforming Signs: A sign that was lawfully established before the adoption or amendment of the Zoning Ordinance.
- C. Nonconforming Structure: A structure lawfully established before the adoption or amendment of the Zoning Ordinance that no longer complies with all regulations applicable to the zoning district in which the structure is located.
- D. Nonconforming Use: A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable for the district in which the property is located. The term also refers to the activity that constitutes the use made of the property. The term includes any pre-existing structure, object of natural growth, or use of land or building that is inconsistent with the provisions of this Ordinance or an amendment thereto. Any use or structure not established legally at the time, it shall be considered a violation of this Ordinance and is not a nonconformity.

18.2.2. Minor Repairs and Maintenance

- A. Minor repairs and normal maintenance that are required to keep nonconforming uses, structures, lots of record, and signs in a safe condition are permitted, provided the minor repair or maintenance does not extend, expand, or enlarge the nonconforming aspect. For the purposes of this section, "minor repair or normal maintenance" shall mean:
 - 1) **Maintenance of Safe Condition** - Repairs that are necessary to maintain a nonconforming use, structure, lot of record, or sign in a safe condition; and
 - 2) **Maintenance of Land for Safety** - Maintenance of land areas to protect against health hazards and promote the safety of surrounding uses.

18.2.3. Changes in Ownership (Tenancy)

- A. No change of title, possession, or right to possession of property, whether that property is real estate or an improvement to the real estate, structure or use, involved shall be construed to prevent the continuance of a nonconforming use.

18.3 Non-Conforming Lots

18.3.1. No use or structure shall be established on a nonconforming lot of record except in accordance with the standards in this section.

18.3.2. Status of nonconforming lots.

- A. Conforming structures legally established on nonconforming lots of record prior to the effective date of this ordinance may be continued, enlarged, extended, reconstructed, or structurally altered in any way that is in conformance with the standards of this ordinance.

- B. Nonconforming structures legally established on a nonconforming lot prior to the effective date of this ordinance may be continued, enlarged, or redeveloped only in accordance with the standards in Section 18.4 Nonconforming Structures.

18.3.3. Development of unimproved lots.

- A. **Residential districts.** In the residential zoning districts, notwithstanding limitations imposed by other provisions of this ordinance, a single-family detached dwelling and customary accessory structures may be developed on any single lot of record existing on the date this Ordinance became effective. This provision applies even if the lot of record fails to comply with the standards for area or width in the Dimensional Standards of the district. Development of a single-family detached dwelling on the lot of record shall comply with the other standards in Dimensional Standards of the district, to the maximum extent practicable.
- B. **Nonresidential districts.** In the nonresidential zoning districts, notwithstanding limitations imposed by other provisions of this ordinance, a permitted use may be developed on any single nonconforming lot of record existing on the date this Ordinance becomes effective, or the date the lot of record became nonconforming, subject to review and approval of a special use permit. This provision shall apply even though the lot of record fails to comply with the standards for lot area that are applicable in the zoning district. In considering the application for a special use permit, the Board of Adjustment shall ensure the design and location of the proposed use is compatible with surrounding uses. Development of the permitted use on the lot of record shall comply with the other standards in Dimensional Standards of the district, to the maximum extent practicable.
- C. **Recombination required.** In the event that a vacant nonconforming lot is located adjacent to a lot under common ownership, and the adjacent lot has sufficient size to allow for a lot line adjustment as a means of bringing the vacant lot closer into conformity with the requirements of the zoning district where its located, then such lot line adjustment shall be required as a condition of approval for development on the vacant nonconforming lot.
- D. **Redevelopment of improved lots in residential districts after casualty.** If a legally established single-family attached or detached use is destroyed by casualty on a nonconforming lot in a residential zoning district that was part of a subdivision or division of land evidenced by plat or deed, or both, recorded prior to the effective date of this Ordinance, an identical replacement structure may be reconstructed within the same footprint as the use destroyed by casualty even though the lot does not meet the minimum lot area or lot width requirements.
- E. **Government acquisition of land in a residential district.** Governmental acquisition of a portion of a lot for a public purpose that results in a reduction in lot width and/or lot area below that required in the Dimensional Standards of the district, shall not render the lot nonconforming.

- F. ***Change of nonconforming lots.*** A nonconforming lot may be increased in area, width, or both, through a lot line adjustment in accordance with the requirements of the recombination plat procedures, to make the lot less nonconforming.

18.4 Non-Conforming Structures

- 18.4.1. ***Continuation.*** Normal repair and maintenance may be performed to allow the continued use of nonconforming structures.
- 18.4.2. ***Enlargement.*** A nonconforming structure shall not be enlarged or expanded in any way that increases the degree of nonconformity. (For example, a structure that has a five-foot side yard setback where the ordinance requires a ten-foot side yard setback cannot be enlarged so as to further encroach into the side yard setback.) Expansion of the structure in a way that complies with applicable dimensional standards or that decreases the degree of nonconformity is permitted.
- 18.4.3. ***Relocation.*** A nonconforming structure shall not be moved, in whole or in part, to another location within the town's jurisdiction, on or off the parcel of land on which it is presently located, unless upon relocation it conforms to the requirements of this ordinance.
- 18.4.4. ***Replacement of Manufactured Homes in Non-Conforming Parks.*** Manufactured homes within a nonconforming manufactured home park may be replaced with a conforming manufactured home and only with the appropriate permits.
- 18.4.5. ***Replacement of Manufactured Homes in Individual Lots.*** A nonconforming manufactured home can only be replaced by another manufactured home pursuant to the issuance a Special Use Permit in accordance with Article 6. Nonconforming Class B or C manufactured homes may be replaced by a Class A manufactured home, or another nonconforming Class B manufactured home, provided:
- A. The replacement nonconforming Class B manufactured home has a larger habitable floor area or newer construction date than the nonconforming manufactured home being replaced.
- 18.4.6. ***Reconstruction after casualty damage.***
- A. ***Destruction or damage over 50% of value.***
 - 1) In the event a nonconforming structure (or portion of a structure) is damaged or destroyed, by any means, to an extent *more than 50%* of its structural replacement cost at the time of damage or destruction, it shall not be restored.
 - 2) New construction (including the establishment of off-street parking, landscaping, signage, and other site features) shall be in accordance with the requirements of this ordinance.

(Ord. 05/31/1977; 154.007)

B. *Damage of 50% or less of value.*

- 1) In the event a nonconforming structure is damaged, by any means, to an extent of *50% or less* of its structural replacement cost at the time of damage or destruction, it may be rebuilt to its previous form if a building permit for such repair or restoration is obtained within 180 days of the casualty damage, and repair or restoration is completed within one year of obtaining the building permit.
- 2) In no event shall the repair or restoration increase the degree of nonconformity.

(Ord. 05/31/1977; 154.007)

18.4.7. Termination of Legal Nonconforming Status of Structures

- A. The right to occupy and maintain a nonconforming structure terminates and ceases to exist whenever the structure:
- 1) Is damaged in any manner and from any cause, except natural disasters, where the cost of repairing the damage exceeds fifty percent (50%) of the current assessed tax value of structure; or
 - 2) Becomes obsolete or substandard under any applicable Town Ordinances or North Carolina State Law as determined by the proper Town official, and where the cost of bringing the structure into compliance exceeds fifty percent (50%) of the current assessed tax value of structure.
 - 3) The Applicant shall engage a qualified professional to estimate the cost of repairs or otherwise bringing a structure into compliance with applicable codes and this report shall be provided to the Zoning Administrator in writing. The cost of land or any other factors other than the nonconforming structure itself will not be included in determining the replacement cost.

18.4.8. Exception for Repairs Pursuant to Public Order

- A. Nothing in this Section will be deemed to prevent the strengthening or restoration of a structure to a safe condition in accordance with an order of a public official charged with protecting the public safety, provided the restoration is not otherwise in violation of the various provisions of this Section prohibiting the repair, restoration of partially damaged or destroyed structures.

18.5 Non-Conforming Uses

18.5.1. Nonconforming uses are declared generally incompatible with the permitted uses in the district in which they are located and with the provisions of this ordinance. Nonconforming uses shall be subject to the standards in this section.

18.5.2. Change of use. A nonconforming use shall not be changed to any other nonconforming use. Once a nonconforming use has ceased operation or has been discontinued for a period of 180 days or longer, it shall only be replaced with a conforming use.

(Ord. 05/31/1977; 154.007)

18.5.3. Expansion and enlargement. An existing nonconforming use may be enlarged into any portion of the structure where it is located, provided the area proposed for expansion was designed and intended for such use prior to the date the use became a nonconformity and provided that it enlarges only in compliance with this Article.

18.5.4. Discontinuance. A nonconforming use shall not be reestablished after discontinuance for a period of 180 consecutive calendar days or more. An effort to renovate the structure housing the use is not considered a vacancy, abandonment, or discontinuance, provided all appropriate development approvals are obtained, and provided the renovation is completed within 180 days from its commencement, and the use is re-established within 30 days from the time the renovation is completed. Failure to complete the renovation within 180 days or reestablish the use within 30 days following renovation shall constitute discontinuance, and a nonconforming use shall not be reestablished in the structure.

(Ord. 05/31/1977; 154.007)

18.5.5. Accessory uses. Once a nonconforming principal use is discontinued, all associated accessory uses shall cease operation within 30 days.

18.5.6. Reconstruction after casualty damage.

A. Destruction or damage beyond 50% of value.

- 1) In the event a structure housing a nonconforming use is damaged or destroyed, by any means, to an extent of more than 50% of its structural replacement cost at the time of damage or destruction, the nonconforming use may not be reestablished following reconstruction.

B. Damage of 50% or less of value.

- 1) In the event a structure housing a nonconforming use is damaged, by any means, to an extent of 50% or less of its structural replacement cost at the time of damage, it may be repaired to its previous form, and the nonconforming use reestablished, if a building permit for such repair or restoration is obtained within 180 days of the casualty damage, and the repair or restoration is completed within one year of obtaining the building permit.

- 2) In no case shall a different nonconforming use be established in the place of the nonconforming use that was housed in the structure at the time of casualty damage.

18.6 Non-Conforming Signs

18.6.1. General standards. No nonconforming sign shall be used, erected, altered, repaired, or relocated except in accordance with the standards of this section.

18.6.2. Nonconforming signs protected.

- A. Any sign that was lawfully erected prior to the effective date of this ordinance, but that does not conform in one or more respects with the requirements of this ordinance may remain in use, subject to the requirements of this section and other applicable requirements of this ordinance. No activity that increases the amount of nonconformity shall be permitted.
- B. A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this ordinance. Once a nonconforming sign is removed from the premises or otherwise taken down or moved, the sign may only be replaced with a sign which is in conformance with this ordinance.

18.6.3. Routine repairs and maintenance.

- A. Repairs and maintenance of nonconforming signs, such as repainting and electrical repairs, shall be permitted, provided such activities are completed in accordance with the requirements in Article 10, Sign Regulations, and provided that the cost of repairs do not exceed 50% of the replacement value of the sign.
- B. Nonconforming signs representing a danger to the public health or safety as determined by the Ordinance Administrator shall be immediately replaced or removed, and replacement signage shall comply with all requirements of this ordinance.

18.6.4. Replacement required.

- A. *Single tenant buildings.* In the event there is a change in use to an existing single tenant building, and there are one or more on-premises nonconforming signs which advertised the business or use which changed, the owner or new occupant shall replace all existing nonconforming signs with new signs or new sign faces that meet all sign requirements for the district as set forth in Article 10, Sign Regulations.
- B. *Multi-tenant buildings.* In the event there is a change in use to an existing multi-tenant building, and there are one or more on-premises nonconforming signs which advertised the business or use which changed, the owner or new tenant shall replace all nonconforming signs which pertain specifically to the new tenant with new signs or new sign faces that meet all sign requirements for the district as set forth in Article 10, Sign Regulations. Common signage on the property (those signs advertising more than one tenant) may not be changed or altered when a change in use occurs, except in order to bring the sign(s) into conformance with the requirements of Article 10.

18.6.5. Damage or destruction beyond 50% of value. In the event that a nonconforming sign is damaged or destroyed from natural causes to an extent that exceeds 50% of the sign's value, then the sign shall only be restored, repaired, or reconstructed in accordance with the standards of Article 10, Sign Regulations. In no instance shall any remnants of the former nonconforming sign structure remain on the site. In the event a nonconforming sign is damaged to an extent less than 50% of the sign's value, the sign may be repaired in accordance with section 18.6.3. Routine Repairs and Maintenance.

18.6.6. Abandonment.

- A. If a nonconforming on-premises sign which advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that has for a period of at least 180 days not been operated, conducted, or offered, that sign shall be deemed abandoned and shall be removed or brought into compliance by the sign owner, landowner, or other person having control over the sign within 30 days.
- B. If a nonconforming sign remains blank for a continuous period of 180 days, that sign shall be deemed abandoned and shall, within 30 days after such abandonment, be brought into compliance with this ordinance or be removed by the sign owner, owner of the land where the sign is located, or other person having control over the sign. For purposes of this ordinance, a sign shall be deemed "blank" if:
 - 1) It advertises a business, commodity, accommodation, attraction, service, or other enterprise or activity that is no longer operating or being offered or conducted in that location;
 - 2) The advertising message it displays becomes illegible in whole or substantial part; or
 - 3) It does not contain an advertising message. (For such purposes, the terms "Sign For Rent", "Sign For Lease", "Building For Rent", "Building For Lease", "Building for Sale", and the like shall not be deemed to be an advertising message.)
- C. Signs advertising a use or structure that has been demolished or moved to another site shall be removed within 60 days following demolition or relocation. In the event an existing use or structure has been demolished or moved to facilitate new construction, all signage associated with the new construction shall comply with the standards in Article 10, Sign Regulations.
- D. The spaces within a nonconforming manufactured homes park may not be increased except by a Special Use Permit. Manufactured homes within a nonconforming manufactured home park may be replaced with appropriate permits.

18.7 Board of Adjustment and Non-Conformities

18.7.1. Except as allowed elsewhere in this Article, no person may engage in any activity causing an increase in the extent of a nonconformity.

- 18.7.2. Property owners seeking approval to expand or enlarge a nonconforming use or structure shall make application to the Board of Adjustment for such expansion or enlargement.
- 18.7.3. The Board of Adjustment shall hear and consider such requests in the same manner as a Special Use Permit application.
- 18.7.4. The Board of Adjustment in approving an application shall, in addition to those findings necessary for the issuance of a Special Use Permit, find whether the proposed alteration, expansion, change, or rebuilding of the non-conforming use will have a substantial adverse impact upon adjacent properties, the neighborhood, or the public.
- 18.7.5. The Board of Adjustment may impose any reasonable conditions, standards, or safeguards to mitigate any potential hazards or problems of the application.