

## ARTICLE 18 – NON-CONFORMING SITUATIONS

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### 18.1 PURPOSE OF ORDINANCE ON NON-CONFORMING SITUATIONS

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.

### 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 Site Feature**: A feature, or absence of a feature, of a development site 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.

(Ord. 7/7/2003, Section 22)

#### 18.2.2. Continuation of Nonconformities

- (a) On or after the effective date of this Ordinance, a nonconformity that was lawfully operated, established, or commenced in accordance with the provisions of all ordinances, statutes, or regulations in effect at that time may continue subject to this Article.
- (b) For the purpose of determining whether a right to continue nonconformity is lost pursuant to this subsection, all of the structures, activities and operations maintained on a lot are generally to be considered as a whole. For instance, the discontinuance of a small portion of a nonconforming use for a reasonable or limited period of time, such as the temporary vacancy of a single manufactured home in a nonconforming manufactured home park, would not require the entire park to be discontinued.

(Ord. 7/7/2003, Section 22)

#### 18.2.3. 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:
  - (i) **Maintenance of Safe Condition** - Repairs that are necessary to maintain a nonconforming use, structure, lot of record, or sign in a safe condition; and

- (ii) **Maintenance of Land for Safety** - Maintenance of land areas to protect against health hazards and promote the safety of surrounding uses.

**18.2.4. Changes in 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. Nonconforming lots may be used for any permitted use allowed in the zoning district in which they are located.
- 18.3.2. The Zoning Administrator may relax setback requirements up to thirty percent (30%) for permitted structures on a nonconforming lot.
- 18.3.3. A lot of record reduced to less than the required area, width, and/or setback dimensions of the zoning district in which it is located as the result of a condemnation or purchase by a Local, County, State, or Federal Government Agency becomes a nonconforming lot of record.

*(Ord. 7/7/2003, Section 22)*

**18.4 NON-CONFORMING STRUCTURES**

**18.4.1. Continuance of Nonconforming Structures**

- (a) Nonconforming structures may be occupied, operated and maintained in a state of good repair subject to all limitations in this Section and the provisions of Section 18.4.4. (Exception for Repairs Pursuant to Public Order), but no nonconforming structure may be enlarged or extended except as allowed by this

**18.4.2. Enlargement, Expansion, And Replacement**

- (a) A nonconforming structure may be enlarged, expanded, or replaced provided it can be made in compliance with all of the provisions of this Ordinance. The enlargement, expansion, or replacement of a nonconforming structure is permitted provided it does not increase the degree of nonconformity. For example, a back porch or addition could be added when the non-conformity is failing to meet the front setback.
- (b) Manufactured homes within a nonconforming manufactured home park may be replaced with the appropriate permits.
- (c) 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.

*(Ord. 7/7/2003, Section 22)*

**18.4.3. 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:
  - (i) 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
  - (ii) Becomes obsolete or substandard under any applicable County Ordinances or North Carolina State Law as determined by the proper County official, and where the cost of bringing the structure into compliance exceeds fifty percent (50%) of the current assessed tax value of structure.
- (b) 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.

**18.4.4. 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.
- (b) **Replacement of Manufactured Homes.** Nonconforming Class B or C manufactured homes may be replaced by a Class A manufactured home, or another nonconforming Class B manufactured home, provided:
  - (i) The replacement nonconforming Class B manufactured home has a larger habitable floor area or newer construction date than the nonconforming manufactured home being replaced.

**18.5 RECONSTRUCTION AFTER CASUALTY DAMAGES**

**18.5.1. Destruction or Damage Beyond 50 Percent of Value**

- (a) In the event any nonconforming use is damaged or destroyed, by any means, to an extent more than 50 percent of its replacement value at the time of damage or destruction, it shall only be restored in a manner that conforms with the provisions of this Ordinance except as outlined in subsections (d) and (e) below.
- (b) New construction (including the establishment of off-street parking, landscaping, signs, and other site features) shall be in accordance with the requirements of this Ordinance.

- (c) A lawfully nonconforming multifamily residential structure located in a residential zoning district, if damaged or destroyed, by any means, to an extent more than 50 percent of its replacement value at the time of damage or destruction, shall be eligible for reconstruction to its prior level of density if a Building Permit for such restoration is obtained within six months of the casualty damage, and repair is actually begun within 12 months after the date of such damage or destruction and is diligently pursued to completion.
- (d) Such structures may be reconstructed to their previous form and location under the following circumstances, as applicable:
  - (i) A single multifamily structure has been damaged or destroyed.
  - (ii) The structures are duplex, triplex or quadraplex housing types.
  - (iii) The structures contain five or more units, are part of a larger complex of similar structures and not more than 50 percent of the total number of principal structures within the complex have been damaged or destroyed to an extent more than 50 percent of their replacement value.
  - (iv) Conforming buffers are established prior to issuance of the Building Permit(s).
- (e) Manufactured Homes Class A, B, or C which are damaged or destroyed by any means to an extent more than 50% of the replacement value of the homes at the time of damage may only be replaced if the manufactured home is a conforming use on a conforming lot. No Class C manufactured homes shall be replaced by another Class C home. Class B manufactured homes shall be replaced by a Class A home or a Class B home with a larger habitable floor space or newer construction date than the nonconforming manufactured home being replaced.

**18.5.2. Damage of 49 Percent or Less of Value.**

- (a) In the event a structure housing a nonconforming use is damaged or destroyed, by any means, to an extent of 49 percent or less of its replacement value at the time of damage or destruction, it may be re-built 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 actually begun within one year after the date of such partial damage or destruction and is diligently pursued to completion.
- (b) In no event shall repair or restoration increase, expand, or enlarge the degree of nonconformity.

**18.6 NON-CONFORMING USES**

**18.6.1. Expansion or Enlargement**

- (a) Conforming structures in which a nonconforming use is operated may not be enlarged or extended except as required by law or this Ordinance.
  - (b) A nonconforming use may be extended throughout any portion of a current existing structure. A nonconforming use may not be extended to additional structures or land outside the original structure.
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- (c) The volume, intensity, or frequency of use of the property where a nonconforming use exists may be increased, and the equipment or processes used at the location may be changed, if these amount only to changes in the degree of activity rather than changes of use, and no violations of this Ordinance occur.
- (d) Nonconforming uses of open land may not be extended to cover more area than was occupied by the use when it became nonconforming. A use involving removal of natural material from the lot (e.g., a sand pit) may be expanded to the boundaries outlined by their permit from the State of North Carolina.
- (e) 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.

**18.6.2. Change of Use**

- (a) Any nonconforming use may be changed to a conforming use provided the site shall comply with all other development standards for the use.

**18.6.3. Abandonment and Termination of Nonconformities**

- (a) Any future use of a property where a nonconformity exists must be brought into compliance with the provisions of this Ordinance if the nonconformity is abandoned or terminated for twenty-four (24) or more consecutive months.
- (b) Any of the following specific acts immediately terminates nonconformity:
  - (i) Changing a nonconformity to conform to the requirements of this Ordinance. This type of termination applies only to the nonconforming use existing prior to the change;
  - (ii) Abandonment of a nonconformity for a period of twenty-four (24) or more consecutive calendar months, or more; or
  - (iii) A violation of this Ordinance.

**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.

**18.8 NONCONFORMING SIGNS**

18.8.1. **Conformance Required.** Any sign legally in use prior to the effective date of this Ordinance which does not satisfy the requirements of this Ordinance is declared nonconforming and such sign shall either be brought into conformity with the provisions of this Ordinance or amortized under Section 18.7.2 The eventual elimination, as expeditiously and fairly as possible, of nonconforming signs is as much a subject of health, safety, and welfare as is the regulation of new signs.

18.8.2. **Nonconforming and Prohibited Sign Removal Schedule.** All nonconforming and prohibited signs not found in compliance with the requirements of this Ordinance shall be brought into compliance with the requirements of this Ordinance or removed entirely, including the entire sign and any associated components or equipment, no later than the compliance date shown in the Table 18-1 below.

**Table 18-1  
Nonconforming Sign Compliance Schedule**

SIGN TYPE	TIMEFRAME
Signs allowed without a permit in all zoning districts	6 months
Permanent signs that exceed the maximum copy area and/or maximum height requirements of this article	2 years
Permanent signs not permitted in the zoning district in which they are located	2 years

18.8.3. **Nonconforming Off-Premises Advertising Signs.** Off-Premises advertising signs (such as billboards) shall be subject to the regulations contained in Article 10.

**18.9. – 18.15. RESERVED.**