

Chapter

8

Nonconformities

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8.1. PURPOSE

The purpose of this Chapter is to regulate and limit the continued existence of uses and structures established prior to the effective date of this Ordinance (or any subsequent amendment) that do not conform to this Ordinance. Many nonconformities may continue, but the provisions of this Section are designed to curtail substantial investment in nonconformities and to bring about their eventual elimination and/or lessen their impact upon surrounding conforming uses and to preserve the integrity of the Town in accordance with the intent of this Ordinance.

8.2. NONCONFORMING USES

A. Applicability

A nonconforming use may continue only in accordance with the provisions of this Section.

B. Exemptions

1. A place of assembly that was permitted by right and that existed prior to the date of this Ordinance may be continued, re-established, expanded, or enlarged within the lot of record on which it existed as of the date of this Ordinance notwithstanding any limitation on the creation continuation, expansion, or enlargement of such use set out in this Ordinance. The continued, expanded, or enlarged use within the lot of record shall be a conforming use and the continued, expanded, or enlarged building shall be a conforming structure. Any place of assembly that was permitted by right on the day prior to the adoption of this Ordinance and that existed prior to the adoption of this Ordinance and that existed prior to the date of this Ordinance may be continued, expanded, or enlarged within the lot of record on which it existed as of the date of this ordinance

notwithstanding any limitation on the creation, continuation, expansion or enlargement of such use set out in this ordinance. The continued, expanded, or enlarged use within the lot of record shall be a conforming use.

2. Required improvements to comply with building code and access requirements shall be permitted.
3. Any religious institution that was in existence and permitted by right immediately prior to the adoption of this Ordinance may be replaced, continued, expanded, or enlarged within the lot of record on which it existed as of the date of this Ordinance notwithstanding any limitation on the creation, continuation, expansion, or enlargement of such use set out in this Ordinance. The continued, expanded, or enlarged use within the lot of record shall be a conforming use. The person claiming a prior permitted right for a religious institution hereunder shall have the burden of proving such prior permitted right.
4. Repairs made as part of recovery efforts following a natural disaster that was declared an emergency by the appropriate state or federal agency shall be exempt from the requirements of this Chapter.

C. Repair and Maintenance

Normal repair and maintenance may be performed to allow the continuation of a non-conforming use.

D. Damage, Destruction, and Replacement

1. If a building in which a nonconforming use is located is damaged, to an extent greater than fifty (50) percent of the assessed value of the portion of the building in which the nonconforming use is situated, such nonconforming use shall not be continued or re-established.
2. A nonconforming use may be re-established in case of damage, to an extent to or less than fifty (50) percent of the assessed building value, to the structure in which it is located.
3. A nonconforming use not in a structure may be re-established in case of damage, to an extent equal to or less than fifty (50) percent of the assessed improvement value of the property on which it is located provided that the improvements are in accordance with the standards of this Ordinance.
4. An application must be filed for such building permit no later than one hundred eighty (180) days after the structure has been destroyed or damaged, otherwise the use will not be allowed to be rebuilt. The reconstruction must be diligently pursued.

E. Modification

1. A nonconforming use shall not be expanded, changed, or enlarged unless listed under the exemptions of Section 8.2.

2. A nonconforming, nonresidential use may expand within the existing building provided the Administrator determines the interior expansion will not have a negative impact upon surrounding, conforming uses.

F. Discontinuance

If a nonconforming use is abandoned for one hundred eighty (180) days or more, the use shall not be allowed to be re-established.

8.3. NONCONFORMING STRUCTURES

A. Applicability

A nonconforming structure may continue only in accordance with the provisions of this Section.

B. Conforming Structure

Any building or structure that was permitted by right on the day prior to the date of this Ordinance may be continued, expanded, or enlarged within the lot of record on which the building is situated as of the date of this Ordinance notwithstanding any limitation on the continuation, expansion, or enlargement of such building set out in this Ordinance. The continued, expanded, or enlarged building within the lot of record shall be a conforming structure.

C. Repair and Maintenance

Normal repair and maintenance may be performed to allow the continuation of a nonconforming structure.

D. Damage, Destruction, and Replacement

1. If a nonconforming structure is damaged to an extent greater than fifty (50) percent of its assessed value for tax purposes, it may be rebuilt only in conformance with the standards of this ordinance.
2. If a nonconforming structure is damaged to an extent equal to or less than fifty (50) percent of its assessed value for tax purposes, then the structure may be rebuilt in accordance with the following standards.
 - a. A building permit for reconstruction of such structure must be secured no later than one hundred eighty (180) days from the date of its destruction. The reconstruction must be diligently pursued.
 - b. A nonconforming structure shall not be rebuilt in a manner which increases its nonconformity.

E. Modification

1. A nonconforming structure may not be enlarged or altered in a way which increases its nonconformity.
2. Should a nonconforming structure be moved for any distance on the lot upon which it is located, it shall be moved to make the structure conforming to setbacks.
3. A nonconforming accessory structure may be expanded only if the expansion conforms to the requirements of this Ordinance and the nonconforming features of that structure are not expanded.
4. A nonconforming accessory structure shall not continue after the principal structure is terminated by abandonment, damage, or destruction unless such accessory structure is made to conform to the standards for a principal structure.

8.4. NONCONFORMING LOTS

A. Applicability

Except as specifically stated otherwise in this Chapter, a nonconforming vacant lot may be developed for any of the uses permitted by these regulations in the zoning district in which it is located, provided that the improvements meet all design regulations and setback requirements.

B. Adjoining Lots

A nonconforming vacant lot shall not be developed if it could be combined with an adjoining lot (owned by the same person) on or after the effective date of these regulations to create a single lot. For the purposes of this Section, “adjoining” shall be deemed to mean the sharing of one or more common lot lines and access to both lots can be provided by the same street without crossing that street.

C. Subdivision Approvals

A nonconforming lot may be developed if, at the effective date of this Ordinance or any subsequent date upon which the lot became nonconforming:

1. The subdivision in which the lot was located had received preliminary plat approval.
2. The subdivision in which the lot was located had received final plat approval.

8.5. NONCONFORMING SIGNS

A. Applicability

Except as herein provided, nonconforming signs that were otherwise lawful on the effective date of this Ordinance may be continued.

Non-conforming Billboards or Outdoor Advertising signs are subject to the requirements contained within N.C.G.S. 160D-912 and where there is a conflict between the provisions of this section and the provisions of N.C.G.S. 160D-912, the later shall take precedent.

B. Maintenance

Minor repairs and maintenance of a nonconforming sign which are necessary to keep such sign in sound condition, are permitted so long as the nonconformity is not increased.

C. Modification

1. No sign may be enlarged or altered in such a way that increases the extent of nonconformity of a nonconforming sign or causes a previously conforming sign to become nonconforming.
2. A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this Ordinance.
3. Any nonconforming changeable copy sign may be changed so long as it does not create any new nonconformities.

D. Damage or Destruction

If a nonconforming sign is damaged to an extent more than fifty (50) percent of the sign's value immediately prior to such damage it shall be repaired, reconstructed, or replaced to conform with this Ordinance or be removed in its entirety.

E. Discontinuance

1. Once a nonconforming sign is discontinued, it may only be replaced with a sign which is in conformance with this Ordinance.
2. A nonconforming sign which advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that has for a period of at least one hundred and eighty (180) days not been operated, conducted, or offered shall be removed or brought into compliance within thirty (30) days after such abandonment.
3. If a nonconforming sign remains blank for a continuous period of one hundred twenty (120) days, that sign shall be deemed abandoned and shall, within thirty (30) days after such abandonment, be altered to comply with this Ordinance or be removed. For purposes of this Ordinance, a sign shall be deemed "blank" if any of the following are true.

- a. The advertising message it displays becomes illegible in whole or substantial part.
- b. It does not contain an advertising or identification message. (For such purposes, the terms “Building for Rent,” “Building for Lease,” “Building for Sale,” etc. shall not be deemed to be an advertising or identification message).

8.6. NONCONFORMING PLANS

A. Applicability

Any site specific plan which has received first approval by the applicable authority but does not conform to this Ordinance may be developed and/or constructed in accordance with the Ordinance rules and regulations (including any conditions imposed by the approving authority), and the details of the site specific plan, pursuant to which such plan was approved. Site specific plans include but are not limited to, site plans, preliminary plats, final plats, and conditional district plans for the development of property and/or construction of a building. Any plan approved prior to the adoption of this Ordinance, but which conforms to its provisions, shall be administered, interpreted, amended, and implemented in accordance with the provisions of this Ordinance.

B. Option to Make Conforming

The owner of the property which contains an approved site specific plan may elect to develop such property and/or construct such building in accordance with the terms and provisions of this Ordinance in lieu of the rules and regulations under which the plan was approved. An owner who wishes to make this choice shall notify the Administrator, who shall approve the plan and notify the property owner in writing of the additional approvals or modifications, if any, which may be necessary for the plan to conform to this Ordinance. In making such finding, the Administrator shall require additional approvals and/or modifications only if such are necessary to avoid a result which would not occur under the original approved plan or under a new review process under this Ordinance.

C. Amendments and Modifications

Any amendment or modification to an approved site specific plan shall be reviewed and acted upon in accordance with the terms and provisions of this Ordinance as if it were an amendment or modification to a plan originally approved under this Ordinance.

D. Vested Rights

Nothing herein is intended to prohibit the exercise of any vested right established by common law, ordinance or statute.

8.7. APPEALS

The Board of Adjustment shall hear and decide appeals from any landowner:

- A.** To make a change in use of a nonconforming use to a less intense nonconforming use;
- B.** To appeal the Planning Director or Administrator's determination of a nonconformity;
- C.** To make a change in location of a nonconforming use of land to another location on the same property; or
- D.** To allow the replacement of a nonconforming use.