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# 7: NONCONFORMITIES

## 7.1. GENERAL APPLICABILITY

### 7.1.1. PURPOSE AND INTENT

There are existing structures, uses of land, and lots of record that were lawfully established before the effective date of this Ordinance or a subsequent amendment thereto, that now do not conform to standards and requirements of this Ordinance. Such uses, structures, and lots are collectively referred to as “nonconformities.” The purpose and intent of this chapter is to allow nonconformities to continue to exist, but to regulate and limit their continued existence and expansion so as to bring them into conformity to the extent that is reasonably practicable.

### 7.1.2. DETERMINATION OF NONCONFORMITY STATUS

In all cases, the burden of establishing that a nonconformity lawfully exists shall be the responsibility of the landowner of the land on which the alleged nonconformity is located.

### 7.1.3. CONTINUATION, MINOR REPAIRS, AND MAINTENANCE ALLOWED

#### A. CONTINUATION

Nonconformities are allowed to continue in accordance with the requirements of this chapter.

#### B. COMPLETION

Nonconforming projects incomplete as of before January 1, 2020 shall only be completed in accordance with this chapter and [Section 1.10, Transitional Provisions](#). Nothing in these standards shall require a change in approved plans or approved uses for development upon which construction was lawfully commenced prior to before January 1, 2020. For the purposes of this section, commencement of construction shall mean excavation or demolition, permanent placement of construction materials on site, or the permanent fastening of building materials.

#### C. MAINTENANCE ALLOWED

Nonconformities are allowed and encouraged to receive minor repairs and routine maintenance that are necessary to maintain the nonconformity and its surroundings in a safe condition and to protect against health hazards.

#### D. STRENGTHENING ALLOWED

Nothing in this Ordinance shall prevent the strengthening or restoration to a safe or lawful condition of any part of any building or structure declared unsafe or unlawful by a duly authorized Town official.

### 7.1.4. CHANGE OF TENANCY OR OWNERSHIP

No change in tenancy or ownership of land shall limit the continuance of a lawfully established nonconformity.

## 7.2. NONCONFORMING LOTS OF RECORD

### 7.2.1. APPLICABILITY

Lawfully established nonconforming lots of record may be developed in accordance with the standards in this section.

### 7.2.2. NONCONFORMING LOT WIDTH OR AREA

#### A. LOTS WITH CONTIGUOUS FRONTAGE IN ONE OWNERSHIP

When two or more adjoining lots with contiguous frontage are under common ownership and one or more of the lots are nonconforming in terms of width or area, such lots shall be combined to create one or more lots, each of which conforms to the applicable dimensional requirements of the district prior to the commencement of development.

#### B. SINGLE LOT OF RECORD IN A RESIDENTIAL DISTRICT

When a lot in a residential zoning district has an area or width which does not conform to the dimensional requirements of the district where it is located, but was lawfully established on or before January 1, 2020, then a single-family detached dwelling may be built on the lot, subject to compliance with setback standards.

#### C. SINGLE LOT OF RECORD IN A NONRESIDENTIAL DISTRICT

When a lot in a nonresidential district has an area or width which does not conform to the dimensional requirements of the district where it is located, but was lawfully established on or before before January 1, 2020, then development on the lot may be permitted, subject to compliance with all required dimensional and development standards, and all other applicable development and design standards.

### 7.2.3. NONCONFORMITY AFFECTS REQUIRED SETBACKS

In cases where the size or shape of a nonconforming lot inhibits the ability of a use to comply with required setbacks, an applicant may apply to reduce the setback requirements the minimum amount necessary in accordance with the standards and requirements in [Section 2.2.1, Administrative Adjustment](#).

### 7.2.4. EXPANSION OR ENLARGEMENT

The boundaries, shape, or size of a nonconforming lot may be modified through a lot line adjustment, boundary adjustment, recombination, or consolidation, provided it reduces the extent of the nonconformity.

### 7.2.5. GOVERNMENTAL ACQUISITION OF LAND

Conforming lots subject to governmental acquisition of a portion of the lot for a public purpose that results in the lot becoming nonconforming because it no longer complies with lot area, width, or depth standards of the district shall be deemed conforming provided the development complies with the following:

#### A. COMPLIES WITH USE TABLE

The development proposed complies with the requirements in [Table 4.2.3, Principal Use Table](#); and

#### B. COMPLIES WITH DIMENSIONAL STANDARDS

With the exception of the lot area requirements for the district where located, the development proposed shall comply with all other dimensional standards and other requirements of the district where located.

## 7.3. NONCONFORMING SIGNS

### 7.3.1. GENERAL

A sign that was legally in existence on before January 1, 2020, and was constructed in accordance with the applicable laws and ordinances in effect on the date of construction, but by reason of its size, height, location, design, or construction is no longer in compliance with the requirements of the Ordinance, shall be deemed a nonconforming sign subject to the standards in this section.

### 7.3.2. PROHIBITED ACTIONS

The following actions associated with a nonconforming sign shall be prohibited:

#### A. ENLARGEMENT OR ALTERATION

Structural alteration, enlargement, or extension of a nonconforming sign or sign structure shall not be permitted, however, nothing shall limit the ability to modernize a billboard in accordance with Section 136.131.2 of the North Carolina General Statutes.

#### B. RELOCATION

Relocation of a nonconforming sign upon the premises, unless the relocation meets the requirements of this Ordinance, however, nothing shall limit the ability to modernize a billboard in accordance with Section 136.131.2 of the North Carolina General Statutes.

### 7.3.3. MAINTENANCE OF NONCONFORMING SIGNAGE ALLOWED

A nonconforming sign may remain in place and be maintained, subject to the following standards:

#### A. MAINTENANCE ACTIONS

Normal maintenance of a nonconforming sign shall be allowed, and shall be limited to the following:

1. Nonstructural repairs, such as repainting or electrical repairs;
2. Incidental alterations which do not increase the degree or extent of the nonconformity; and
3. Changing of copy, as provided in this section.

#### B. CHANGE OF SIGN COPY

Nonconforming signs may change copy in the form of replacement panels or replacement lettering.

### 7.3.4. REPLACEMENT OF NONCONFORMING SIGNAGE

#### A. REMOVAL

Any nonconforming sign that is removed for any reason shall only be replaced with a sign that complies with the provisions of this Ordinance.

#### B. DAMAGE

1. If damage to a nonconforming sign from any cause is less than 50 percent of its replacement value, the sign may be rebuilt or repaired to its original condition in its original location and may continue to be displayed.
2. If damage from any cause to a nonconforming sign equals or exceeds 50 percent of its replacement value, the nonconforming sign, including sign supports and mounting hardware, may only be replaced with a sign that complies with the provisions of this Ordinance.

### 7.3.5. DISCONTINUANCE OF BUSINESS ACTIVITY

#### A. DISCONTINUED FOR LESS THAN 180 DAYS

If the business activity on the premises where a nonconforming sign is located is discontinued for a continuous period of less than 180 days, then the nonconforming sign may remain.

#### B. DISCONTINUED FOR 180 DAYS OR MORE

1. If the business activity on the premises where a nonconforming sign is located is discontinued for a continuous period of 180 days or more, then the nonconforming sign must be removed or replaced by a sign conforming to the standards of this Ordinance within 30 days of notice by the Planning Director.

## ARTICLE 7: NONCONFORMITIES

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### 7.3. Nonconforming Signs

### 7.3.5. Discontinuance of Business Activity

- 2.** In cases where the sign is nonconforming due to its height, face area, or location, then the sign, including the sign supports, shall be modified or removed as necessary in order to conform with the applicable requirements of this Ordinance.
- 3.** No nonconforming portion of a sign or portion of a sign that would result in replacement sign face area that is nonconforming shall be retained following discontinuance.

## 7.4. NONCONFORMING SITES

### 7.4.1. APPLICABILITY

- A.** For purposes of this section, the term “nonconforming site features” includes the following:
1. Nonconforming off-street parking;
  2. Nonconforming landscaping;
  3. Nonconforming screening;
  4. Nonconforming walls or fences; and
  5. Nonconforming exterior lighting.
- B.** If an application is filed for a building permit (including mechanical, electrical, HVAC, or other typical permit) for the expansion of a structure and the development site contains one or more nonconforming site features, and the value of the proposed improvements totals at least 25 percent of the assessed value of the existing structure, the applicant shall be required to address the nonconforming site feature as provided in this section.
- C.** Town staff may develop administrative guidelines to assist in the implementation of this section, including guidelines for the resolution of conflicts when it may not be possible for one or more types of nonconforming site features to be brought into compliance with the requirements of this Ordinance because of particular site constraints or impacts on adjacent sites.

### 7.4.2. CHANGES OF USE

Changes in use shall comply with the following requirements:

- A.** In cases where an existing use is replaced by another use type of the same or lesser intensity (as measured by number of vehicular trips generated, hours of operation, number of on-site visitors, or other metric as determined by the Planning Director), then compliance with site features requirements shall be in accordance with the standards in Section 7.4.4, Expansion of Buildings or Structures.
- B.** In cases where an existing use is replaced by a more intense use type (as measured by number of vehicular trips generated, hours of operation, number of on-site visitors, or other metric as determined by the Planning Director) full compliance with all applicable provisions in this Ordinance is required.

### 7.4.3. DETERMINATION OF COST AND ASSESSED VALUE

- A.** For purposes of determining if upgrading of nonconforming site features is required by this subsection, the cost of the expansion shall be as shown on the approved building permit application.
- B.** Assessed value shall be based on the most recently available tax records from the county where the development is located.

### 7.4.4. EXPANSION OF BUILDINGS OR STRUCTURES

If a building permit is required for expansion of the building or structure, the expansion shall require correction of existing on-site nonconforming off-street parking, landscaping, screening, wall or fencing, and exterior lighting in accordance with this section.

- A. 25 PERCENT OR LESS OF STRUCTURE VALUE**  
Expansions in any continuous one-year period that costs 25 percent or less of the current assessed value of the structure shall not require any correction to nonconforming site aspects.
- B. MORE THAN 25 PERCENT BUT LESS THAN 75 PERCENT OF STRUCTURE VALUE**  
Expansions in any continuous one-year period that costs more than 25 percent but less than 75 percent of the current assessed value of the structure shall require that a corresponding percentage of the off-street parking, landscaping, screening, wall or fencing, and exterior lighting standards of this Ordinance be installed or upgraded on the site, until the site achieves 100 percent compliance.

*Example: A hypothetical building is required to provide at least 40 off-street parking spaces, but the building site only includes 20 spaces. If the building is remodeled such that the cost of remodeling equals 30 percent of the building’s assessed value, the remodeling project must add 12 parking spaces (30% x 40 required*

## ARTICLE 7: NONCONFORMITIES

### 7.4. Nonconforming Sites

### 7.4.5. Physically Constrained Properties - Comply to Maximum Extent Practicable

spaces). This increases the development's degree of compliance with off-street parking standards from 50 percent (20 of 40 required spaces) to 80 percent (32 of 40 required spaces).

#### **C. 75 PERCENT OR MORE OF STRUCTURE VALUE**

Expansion projects that cost 75 percent or more of the current assessed value of the structure shall require 100 percent compliance with the off-street parking, landscaping, screening, wall or fencing, and exterior lighting standards of this Ordinance.

#### **D. TWO OR FEWER ADDITIONAL PARKING SPACES**

When two or fewer additional off-street parking spaces are required under this subsection as a result of an expansion project, such additional off-street parking is not required to be installed, but the applicant may install a comparable number of bicycle parking spaces.

#### **E. ADDITION OF OUTDOOR STORAGE AREA ONLY**

When only outdoor operations/storage/display areas are being added or increased on a site, the percentage increase in outdoor operations area shall require a corresponding percentage increase in perimeter buffers and screening. Perimeter buffer and screening augmentation shall be located so as to achieve the performance objectives in Section 5.6, Landscaping, with priority given to screening the impacts of outdoor operations.

### **7.4.5. PHYSICALLY CONSTRAINED PROPERTIES - COMPLY TO MAXIMUM EXTENT PRACTICABLE**

Lands that are physically constrained due to limited size, topography, or other environmental considerations may seek a reduction to these standards in accordance with Section 2.2.1, Administrative Adjustment, or Section 2.2.21, Variance.



**7.5. NONCONFORMING STRUCTURES**

**7.5.1. APPLICABILITY**

Nonconforming principal and accessory structures shall be subject to the standards in this section.

**7.5.2. CONTINUATION AND REPLACEMENT**

**A. CONTINUATION**

A nonconforming structure may be continued in accordance with Section 7.1.3, Continuation, Minor Repairs, and Maintenance Allowed.

**B. REPLACEMENT**

1. Nonconforming manufactured or mobile homes may be replaced in accordance with the standards in Section 7.6.3.B, Manufactured or Mobile Homes.
2. Nothing shall limit activities that increase habitable space of a nonconforming residential structure to a height above the regulatory flood elevation.

**C. RELOCATION**

A nonconforming structure shall not be moved, in whole or in part, to another location on the parcel of land on which it is located, unless the relocation removes the nonconformity.

**7.5.3. ALTERATION AND EXPANSION**

No nonconforming structure may be altered in any way which increases the nonconformity; however, any nonconforming structure or portion thereof may be altered to decrease the degree of nonconformity. Nothing shall limit the elevation of a residential structure as necessary to ensure habitable floor area is outside the regulatory flood elevation.

**7.5.4. CESSATION**

A nonconforming structure shall not be modified or altered in any way that increases the amount of nonconformity.

## ARTICLE 7: NONCONFORMITIES

7.6. Nonconforming Uses

7.6.1. Declared Incompatible

### 7.6. NONCONFORMING USES

The lawful nonconforming use of a structure, land, or water existing as of January 1, 2020, may only be continued in accordance with the following standards:

#### 7.6.1. DECLARED INCOMPATIBLE

All nonconforming uses are hereby declared generally incompatible with the permitted uses in the district in which they are located and with the provisions of this Ordinance.

#### 7.6.2. INCREASING ELEVATION

Nothing in this section shall limit the increase in elevation of an existing or damaged building or structure in the FHO to a height above the regulatory flood elevation.

#### 7.6.3. EXTENSION OR EXPANSION

A nonconforming use shall not be extended or expanded to occupy more space or altered in any way that increases the degree of nonconformity, except in accordance with the following standards:

##### A. SINGLE-FAMILY DETACHED DWELLINGS

Except for manufactured or mobile homes, a nonconforming residential use may not be extended, expanded, enlarged, or altered in any way that increases the degree of nonconformity.

##### B. MANUFACTURED OR MOBILE HOMES

An existing nonconforming manufactured or mobile home may be replaced with another nonconforming manufactured or mobile home provided the replacement mobile or manufactured home:

1. Is sixteen feet wide or wider;
2. Is in place within 60 days of the removal of the prior nonconforming mobile or manufactured home;
3. Is connected to the public sewer system, or has all the necessary permits from the county health department pertaining to wastewater treatment; and
4. Is surrounded by underpinning comprised of an all-weather base material.

##### C. ALL OTHER USES

A nonconforming use may not be extended, expanded, enlarged, or altered in any way that increases the degree of nonconformity.

#### 7.6.4. RENOVATION

Except for manufactured or mobile homes, a nonconforming use may be renovated provided the renovation does not extend, expand, or enlarge the nonconformity or create a new nonconforming use. Nonconforming manufactured or mobile homes may be renovated in accordance with [Section 7.6.3.B, Manufactured or Mobile Homes](#).

#### 7.6.5. CONVERSION TO ANOTHER NONCONFORMING USE

No nonconforming use shall be converted to another nonconforming use.

#### 7.6.6. RESTORATION FOLLOWING CASUALTY DAMAGE

##### A. SIGNIFICANT DAMAGE

1. Except for manufactured or mobile homes, a nonconforming use that is damaged by fire, explosion, flood, or other calamity in an amount equal to 51 percent or more of the use's current assessed value or square footage may not be restored or reconstructed except as a conforming use.
2. Nonconforming manufactured or mobile homes damaged by fire, explosion, flood, or other calamity in an amount equal to 51 percent or more of the use's current assessed value or square footage may be restored or reconstructed only in accordance with the standards in [Section 7.6.3.B, Manufactured or Mobile Homes](#).

##### B. INSIGNIFICANT DAMAGE

If a nonconforming use is damaged by fire, explosion, flood, or other calamity to an extent less than 51 percent of its current assessed value or square footage, it may be restored to its pre-damage condition,

## ARTICLE 7: NONCONFORMITIES

### 7.6. Nonconforming Uses

### 7.6.7. Cessation

provided the degree of nonconformity is not extended, expanded, enlarged, or altered in any way that increases the degree of nonconformity.

#### 7.6.7. CESSATION

- A.** In the event a nonconforming use is discontinued or abandoned for a period of more than 180 consecutive days, the nonconforming use may only be replaced by a use permitted in the district where located.
- B.** Cessation shall specifically include the completion or termination of site activity by the prime tenant of a nonconforming use, site, or structure.
- C.** Any time a nonconforming use is converted to a conforming use, the conforming use shall not revert to the former nonconforming use or any other nonconforming use.



