

**CHAPTER 6
NONCONFORMITIES**

Section 6.1 Purpose And Applicability

The purpose of this Article is to regulate and limit the continued existence of uses and structures established prior to the effective date of this Ordinance (or any amendment subsequent thereto) that do not conform to this Ordinance. Any nonconformity created by a change in the classification of property or the text of these regulations shall be regulated by the provisions of this Section. Many nonconformity's may continue, but the provisions of this Section are designed to curtail substantial investment in nonconformity's and to bring about eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of this Ordinance.

Section 6.2 Nonconforming Uses

6.2.1 Nonconforming uses of land or structures, and nonconforming structures that contain nonconforming uses, may continue only in accordance with the provisions of this Chapter.

6.2.2 Normal structural repair and maintenance may be performed to allow the continuation of a nonconforming use. Also, a nonconforming use may be re-established in case of damage or total destruction (to an extent of more than sixty (60) percent of its assessed value at the time of destruction) due to fire or other disaster event pursuant to the issuance of a permit by the Board of Adjustment as per **Section 12.8** of this Ordinance. This shall include, as well, the repair or reconstruction of any structure housing said nonconforming use or on-site utility, parking or street infrastructure in support of said nonconforming use. If said structure was also a nonconforming structure, the reconstruction shall meet the setback requirements of the applicable district or follow the procedures of **Section 6.3** when setback requirements cannot be met. An application must be filed for such building permit no later than thirty (30) days after the use has been destroyed or damaged, otherwise the use will not be allowed to be rebuilt.

6.2.3 A nonconforming non-residential use shall not be expanded, nor shall such a nonconforming use be enlarged by additions to the structure in which the nonconforming use is located (either attached or detached). However, if a non-conforming non-residential use can expand within the existing structure, it may do so as long as the Zoning Administrator determines that the interior expansion will not have a negative impact upon surrounding conforming uses. Any occupation of additional lands beyond the boundaries of the lot on which said nonconforming use is located is prohibited. An existing nonconforming residential use located in a non-residential district may, however, be enlarged or altered, provided that no additional dwelling units result therefrom. Any such enlargement or alteration shall be in compliance with all yard requirements of such structures as required in the Residential District.

6.2.4 A nonconforming use may be changed to another equal or less intense nonconforming use in accordance with **Section 12.8** of this Ordinance. The list of zoning districts in descending order of restrictiveness shall be:

1. R-A (most restrictive)
2. R-20
3. R-10
4. C-B
5. G-B
6. M-1

7. M-2 (least restrictive)

- 6.2.5 Once a nonconforming use has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
- 6.2.6 If a nonconforming use is abandoned (see definition) for ninety (90) days, the use shall not be allowed to re-establish. All new uses in said structure shall thereafter be conforming. If said use is located in a structure which is destroyed (i.e., received damage to an extent of more than sixty (60) percent of its assessed value at the time of destruction), a use may only be allowed to re-establish in accordance with the zoning regulations in effect in the district in which it is located. Assessed value shall be determined by using tax assessment records provided by the tax assessor's office for the year in which the structure was destroyed.
- 6.2.7 A nonconforming use of land may only be changed to a different location on the same property in accordance with **Section 12.8** of this Ordinance.
- 6.2.8 If a nonconforming manufactured home, located on the same lot as a principal structure, is occupied by a blood relative of the owner-occupant of the principal structure, such manufactured home shall be permitted, subject to **Section 12.8** of this Ordinance.

Section 6.3 Nonconforming Principal Structures

- 6.3.1 A nonconforming structure containing a use permitted in the zoning district in which it is located may continue only in accordance with the provisions of this Section.
- 6.3.2 Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.
- 6.3.3 A nonconforming structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity.
- 6.3.4 If a nonconforming non-residential structure is damaged to an extent greater than sixty (60) percent of its assessed value for tax purposes it shall be rebuilt only after the issuance of a permit from the Zoning Administrator. A building permit for reconstruction of such structure must be secured no later than ninety (90) days from the date of its destruction. In the issuance of said permit, the Zoning Administrator shall follow these standards:
 - a. If the structure can be rebuilt on the same lot and meet all setback requirements, it shall be.
 - b. If the structure cannot be rebuilt at the same size (ground floor area) in accordance with the minimum standards of the district in which it is located, then it shall be placed on the lot in as conforming a manner as possible.
 - c. A nonconforming structure shall not be rebuilt in a manner which increases its nonconformity.
 - d. A structure rebuilt in accordance with this Subsection shall not have a gross floor area larger than the structure it replaced unless all setback requirements are met for the zoning district in which it is located.
 - e. The reconstruction of a nonconforming structure (at the same or smaller size) shall require the installation of deficient parking, landscaping or buffering.

NOTE: Section 6.3.6 discusses replacement of nonconforming manufactured homes.

- 6.3.5** Should a nonconforming structure be moved for any distance on the lot upon which it is located, if possible, it shall be moved so as to make the structure conforming. Otherwise the structure, if moved shall be placed on the lot in as conforming a manner as possible.
- 6.3.6** A nonconforming manufactured home used as a principal residential structure may be replaced with another manufactured home only if 1) the replacement is located on an individual lot and not in a manufactured home park; 2) the replacement manufactured home bears a valid seal indicating conformance with the 1976 National Manufactured Housing Construction and Safety Standards Act, and 3) the replacement manufactured home is newer in age than the one it is replacing. The replacement manufactured home must receive a Certificate of Occupancy within sixty days of the removal of the original manufactured home. In addition, the replacement manufactured home must meet all the requirements of Section 5.21 and must be in compliance with all applicable yard requirements.

Section 6.4 Nonconforming Accessory Structures or Uses

- 6.4.1** A nonconforming accessory use or accessory structure may be expanded only if the nonconforming features of that use or structure are not expanded so as to increase the degree of nonconformity.
- 6.4.2** No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, damage, or destruction unless such accessory use or accessory structure thereafter is made to conform to the standards for the zoning district in which it is located.

Section 6.5 Nonconforming Lots

- 6.5.1** Except as provided in Sections 6.5.2 and 6.5.3, 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 use meets all applicable yard, setback requirements for the zoning district in which the lot is located.
- 6.5.2** A nonconforming vacant lot shall not be developed if it could be combined with an adjoining lot, (said lot being owned by the same person and any or all future assigns) on or after the effective date of these regulations in order to create a single lot. If said combination, however, results in the creation of a single lot that is more than one and one-half (1-1/2) times the minimum lot width or area required in the zoning district, then the single lot may be divided into two lots of equal width and area without being further classified as nonconforming. For 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.
- 6.5.3** Notwithstanding Section 6.5.2, a nonconforming lot may be developed if, at the effective date of this Ordinance or any subsequent date upon which the lot became nonconforming, the lot **(i)** had an area of twenty-thousand (20,000) square feet or greater; or **(ii)** the subdivision in which the lot was located had received preliminary plat approval; or, **(iii)** the subdivision in which the lot was located had received final plat approval, or **(iv)** the lot was in a subdivision where the preliminary plat was accepted for review prior to the effective date of this Ordinance or a vested right had been granted as per **Section 11.9**.

Section 6.6 Nonconforming Screening and Landscaping

In accordance with Section 5.4 of this Ordinance, certain uses are required to provide screening and/or landscaping on-site. Except as herein provided, any expansion of an existing use which is deficient in screening and/or landscaping or any change in principal use cannot occur without the required screening and/or landscaping having first been provided on-site. See also Section 5.4.8. The Central Business (C-B) District is exempt from this requirement.

In cases when the nonconformity is a result of an adjoining lot having been rezoned to a Residential (R-A, R-20, R-10) District from a Business (C-B, G-B) or Industrial (M-1, M-2) District, screening shall be provided as in Section 5.4, along the adjoining lot line separating different zoning districts.

An example of this is as follows: **Lot Line**

Location Of Required Screen Area

Lot A and Lot B are both initially in a G-B Zoning District. Lot B is subsequently rezoned to a R-10 District. Lot A currently contains an otherwise conforming commercial structure. The owner of Lot A would like to expand said structure. Currently, no screening lies between Lot A and Lot B. In order to meet the screening requirements as herein stated, buffer/screen must be placed on Lot A along the side yard separating it from Lot B. Screening requirements are found in Section 5.4

Section 6.7 Nonconforming Off Street Parking and/or Loading

On any lot in any zoning district except the Central-Business (C-B) district, which contains a use which does not comply with the off-street parking and loading regulations contained in Chapter 7 of this Ordinance, a certificate of occupancy shall not be issued for any expansion (except as provided in **Section 7.1.2**) or any change of use which would result in a need to increase the number of off-street parking and/or loading spaces required (except as herein provided), until the requisite number of off-street parking spaces and all paving requirements have been met.

A certificate of occupancy may be issued when there has been a change in a principal use and the number of off-street parking spaces required for the new use (Per Chapter 7 of this Ordinance) is within ten (10) percent or ten (10) spaces, whichever is less, of the number of off-street parking spaces actually provided. An example of this is as follows:

A principal use (Use "A") is located on a lot with two-hundred (200) off-street parking spaces. Use "A" goes out-of-business and is replaced with Use "B". Chapter 7 of this Ordinance requires that Use "B" have 208 spaces. A certificate of occupancy can be issued for Use "B" (so long as

the use is otherwise in accordance with all applicable requirements of this Ordinance) as the number of deficient spaces, 8 (208-200) is less than the prescribed maximum either 20 (10% of 200) or 10 spaces, whichever is less. In this example, 8 is less than either 20 or 10.

Such relief may be granted on a one-time only basis per lot or planned development. In such instances where relief is provided, the additional parking spaces need not be paved (but shall have a graded gravel, crushed-stone or similar dust-reducing surface) if the parking lot prior to said expansion was not paved.

Section 6.8 Nonconforming Signs

- 6.8.1.** Subject to the restrictions of this Section, nonconforming signs that were otherwise lawful on the effective date of this Ordinance may be continued.
- 6.8.2.** No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign or causes a previously conforming sign to become nonconforming.
- 6.8.3.** 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, said sign may only be replaced with a sign which is in conformance with the terms of this Ordinance.
- 6.8.4.** Minor repairs and maintenance of nonconforming signs necessary to keep a nonconforming sign in sound condition are permitted. If repair or maintenance of a nonconforming sign results in the removal of the sign frame structure for any length of time, the replaced sign frame structure and any copy placed on it shall be in conformance with this Ordinance.
- 6.8.5.** If a nonconforming sign is destroyed by natural causes, it may not thereafter be repaired, reconstructed, or replaced except in conformity with all the provisions of this Ordinance, and the remnants of the former sign structure shall be cleared from the land. For purposes of this Section, a nonconforming sign shall be considered "destroyed" if it receives damage to an extent of more than sixty (60) percent of the cost of replacing the sign copy. A special exception could be sought for a particular historic sign as contained in Section 6.11.
- 6.8.6.** Notwithstanding other provisions contained in this Section, the message of a nonconforming sign may be changed so long as this does not create any new nonconformities.
- 6.8.7.** If a nonconforming sign which advertises a business, service, commodity, accommodation, attraction or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be deemed abandoned and shall be removed or brought into compliance by the sign owner, property owner, or other party having control over such sign within thirty (30) days after the use has ceased operation or the service or commodity has ceased being offered.

If there is a change of use or name of business on a particular piece of property, and there were one or more on-premise signs which advertised the business, any new signs placed for the new use or business name must meet all sign requirements for the underlying zoning district. An example of this is as follows:

A restaurant has an on-premise free-standing sign having an area of one-hundred forty (140) square feet. The maximum allowable area for said sign in that particular zoning district is one-hundred (100) square feet. If said restaurant ceases operation and is replaced by another

principal use or by another restaurant (either of which uses new sign structures), any new free-standing sign advertising the new principal use or business name shall have a maximum area of one-hundred (100) square feet. If the same sign structure used to advertise the former restaurant is used to advertise the new use, said sign structure may remain.

6.8.8. If a nonconforming sign remains blank for a continuous period of six (6) months, 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 by the sign owner, owner of the property where the sign is located, or other person having control over such sign. For purposes of this Ordinance, a sign shall be deemed "blank" if:

- a. It advertises a business, service, commodity, accommodations, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or
- b. The advertising message it displays becomes illegible in whole or substantial part; or
- c. It does not contain an advertising message. (For such purposes, the terms "Sign For Rent", "Sign For Lease", "Sign For Sale", etc. shall not be deemed to be an advertising message).

6.8.9. Any nonconforming advertising sign which is located in a Residential (R-A, R-20, R-10) Zoning District shall be removed within seven (7) years following the effective date of this Ordinance, except as provided in Section 6.8.10. Any such sign which becomes nonconforming due to its location within a particular Residential (R-A, R-20, R-10) District after the effective date of this Ordinance (due to a subsequent change in the Zoning map) shall be removed within seven (7) years following the date the sign becomes nonconforming, except as provided in Section 6.8.10.

All other advertising signs which are nonconforming by virtue of their height, setback, spacing (i.e., distance between two advertising signs, or location in a zoning district other than a Residential (R-A, R-20, R-10) District, shall not be required to be removed and may continue subject to all other applicable portions of this Section.

6.8.10. North Carolina General Statute 136-131.1 requires that "just compensation" be paid upon removal of certain outdoor advertising signs adjacent to the highway on the national system of interstate and defense highways or a highway on the Federal-aid primary highway system for which a valid permit has been issued. Section 6.8.9 shall not require that any sign be removed if compensation must be paid upon removal of such sign due to any State or Federal law that mandates such form of "just compensation" upon removal. Should any such State or Federal requirement become inoperative or otherwise fail to apply to a given sign, then such sign shall be removed within five and one-half (5-1/2) years of such State or Federal requirement becoming inoperative or otherwise failing to apply to such sign.

6.8.11 Special exceptions may be sought for a specific sign having historic, significant social value, or other justifiable reason from the Board of Adjustment as contained in **Section 12.9.3 and 12.10 of this Ordinance.**

Section 6.9 Nonconforming Junkyards

6.9.1 Any junkyard less than one (1) acre in area and located in a district not permitting junkyards shall be removed entirely within four (4) years from the effective date of this

Ordinance.

- 6.9.2** Any junkyard one (1) acre or more in area and located in a district not permitting junkyards may remain in accordance with the provisions of this Part, provided however, **Section 12.8** shall not apply to junkyards.
- 6.9.3** Any junkyard which does not meet the setback requirements for outdoor storage upon the effective date of this Ordinance shall meet such requirements within two (2) years of such effective date. For the purpose of this Section the area of a junkyard shall be the area within the continuous external boundary formed by the limits of the ground surface covered by junk materials.