



NONCONFORMITIES

ARTICLE

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ARTICLE 8. NONCONFORMITIES

8.1. PURPOSE AND APPLICABILITY

- A. The purpose of this Article is to avoid undue hardship by permitting the continued use of any building, structure, or property that was lawful at the time of the enactment of this Ordinance or any applicable amendment thereof even though such use, structure or property does not conform to the provisions of this Ordinance. However, this Article is also established to require that nonconforming situations be terminated under certain circumstances.
- B. Nonconforming situations that were otherwise lawful on the effective date of this Ordinance may be continued, subject to the restrictions and qualifications set forth in this Article.
- C. Many nonconformities may continue, but the provisions of this Article are designed to minimize substantial investment in nonconformities and to bring about eventual elimination and/or lessen their impact upon surrounding conforming properties in order to preserve the integrity of the area in which it is located and the intent of this Ordinance.
- D. Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. In no case, however, shall work costing more than 60% of the taxed value of the structure be done, singularly or cumulatively, within any five (5) year period.

8.2 NONCONFORMING LOTS

- A. In any district where a lot has been recorded on a plat filed with the Union County Office of the Register of Deeds, and is not in violation of the Development Ordinance prior to the Effective Date of this Ordinance, and such lot does not comply with the minimum lot area and width requirements for the zoning districts in which such lot is located, such lot may be used for any use permitted in that zoning district provided that the principal and accessory structures meet all applicable front, side and rear yard requirements of this Ordinance. In the case of lots subdivided and approved prior to the Effective Date of this Ordinance, the setbacks on the recorded plat may be used.

- B. Whenever this Ordinance deems a lot nonconforming and the owner of the nonconforming lot also owns land adjacent to it, and a portion of this other land can be combined with the nonconforming lot (without thereby creating other nonconformities), the owner of the nonconforming lot, or his successor in interest, may not take advantage of the provisions of paragraph (A) of this subsection.

8.3 NONCONFORMING USES

8.3.1 OPEN USES OF LAND

This category of nonconformity consists of lots used for storage yards, motor vehicle sales, auto wrecking, junkyards and similar open spaces where the only buildings on the lot are incidental and accessory to the open use of the lot and where such use of the land is not permitted to be established hereafter, under this Ordinance, in the district in which it is located. A legally established nonconforming open use of land may be continued except as follows:

- A. When a nonconforming use of land has been changed to a conforming use, it shall not thereafter revert to any nonconforming use.
- B. A nonconforming open use of land shall be changed only to conforming uses.
- C. A nonconforming open use of land shall not be enlarged to cover more land than was occupied by that use when it became nonconforming.
- D. When any nonconforming open use of land is discontinued for a period in excess of 180 days, any future use of the land shall be limited to those uses permitted in the district in which the land is located. Vacancy and/or non-use of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.

8.3.2 USES OF STRUCTURES

This category of nonconformity consists of buildings or structures used at the time of enactment of this Ordinance, or any amendment thereto, for purposes of use not permitted in the district in which they are located. Such uses may be continued as follows:

- A. When a nonconforming use has been changed to a conforming use, it shall not thereafter revert to any nonconforming use.
- B. A nonconforming use shall not be changed to another nonconforming use unless a Certificate of Nonconformity Adjustment is issued by the Board of Adjustment. The Board shall issue such a permit if it finds that the proposed use will be no less compatible with the neighborhood than the use in operation at the time the permit is applied for, and that the proposed use is of a same or higher classification as the existing nonconforming use. If a nonconforming

use is changed to any use other than a conforming use without obtaining a Certificate of Nonconformity Adjustment pursuant to this paragraph, that change shall constitute a discontinuance of the nonconforming use, and shall be subject to penalties as set forth in Section [2.7](#). The order of classification of uses from highest to lowest for the purpose of this section shall be as follows:

1. Agricultural uses
2. Single-family dwellings
3. Two-family dwellings
4. Multifamily dwellings
5. Civic, government and institutional uses
6. Office and service uses
7. Retail uses
8. Recreation and entertainment uses
9. Industrial, wholesale, transportation, utility uses

C. A nonconforming use may not be extended or enlarged, nor shall a structure containing a nonconforming use be altered except as follows:

1. Structural alterations as required by law or ordinance to secure the safety of the structure are permissible;
2. Minor repairs to and routine maintenance of property where a nonconforming use exists is permitted and encouraged. Major renovation (i.e., work estimated to cost more than 10% but less than 50% of the taxed value of the structure to be renovated) may be done provided that the work will not result in a violation of any other paragraphs of this Subsection. In no case, however, shall work costing more than 50% of the taxed value of the structure be done, singularly or cumulatively, within any five (5) year period; and

3. Expansion of a nonconforming use within a building or structure into portions of the structure which, at the time the use became nonconforming, were already erected and arranged or designed for such nonconforming use is permissible.
- D. When any nonconforming use of a building or structure is discontinued for a period in excess of 180 days, the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located. Vacancy and/or non-use of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.
 - E. Nothing herein shall prevent the maintenance, repair and extension of a single-family dwelling that is nonconforming as to use, provided it is done in conformance with the dimensional requirements of the R-20 zoning district, nor prevent the maintenance, repair, extension, or construction of a residential accessory building or swimming pool, provided done in conformance with the requirements of this Ordinance.

8.3.3 DISCONTINUANCE OF NONCONFORMING USES

- A. When active operation or occupancy of a nonconforming use is discontinued regardless of the purpose or reason for a consecutive period of 180 days, the property involved may thereafter be used only for conforming uses.
- B. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this Subsection, all of the buildings, activities and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one (1) apartment in a nonconforming apartment building or one (1) space in a nonconforming manufactured home park for 180 days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building or manufactured home park as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, cessation of operation or occupancy of the nonconforming use for the required period shall terminate the right to maintain it thereafter.

8.4 NONCONFORMING STRUCTURES

This category includes any structure not in conformance with the restrictions of this Ordinance after the effective date of adoption. Such nonconformities shall include, but not be limited to, height, bulk and setback.

8.4.1 CONTINUATION OF NONCONFORMING STRUCTURES

Nonconforming structures shall be allowed to remain with the following conditions:

- A. A nonresidential nonconforming structure may not be enlarged or altered in any dimension that increases the nonconformity except where maintenance and repair are necessary to keep the structure in sound condition. A nonresidential nonconforming structure may be expanded up to 25% with the issuance of a Certificate of Nonconformity Adjustment by the Board of Adjustment, subject to Section [8.7](#). A residential structure may expand so long as there is no increase to the nonconformity (i.e., setbacks, height, dimensions, etc.) within the restrictions of Section [8.4.1](#) and Section [8.4.2](#).
- B. When any nonconforming structure is removed, it may not be replaced with another nonconforming structure.
- C. When any nonconforming nonresidential or residential structure is damaged, repair must follow the guidelines listed in Section [8.4.2](#).
- D. Structural alterations as required by law or ordinance to secure the safety of the structure are permissible.
- E. Conforming uses may be established or re-established in nonconforming buildings or structures provided that off street parking is provided as required by this Ordinance and provided no other provision of this Ordinance for the establishment of new uses is violated.

8.4.2 RECONSTRUCTION OF DAMAGED STRUCTURES

Any nonconforming structure, or any structure containing a nonconforming use, which has been damaged by fire, wind, flood or other causes, shall not be rebuilt, altered or repaired after damage exceeding 60% of its tax value immediately prior to damage with the exception of single family homes or manufactured homes used for residential purposes which may be rebuilt or replaced provided the provisions of the Flood Damage Prevention Ordinance, other Town of Mineral Springs ordinances and the conditions below are met:

- A. Repairs are initiated within one (1) year and completed within two (2) years of such damage;
- B. The total amount of space devoted to a nonconforming use may not be increased;
- C. Reconstructed nonconforming structures may not be made more nonconforming by the repairs; and
- D. Where possible, any nonconforming structure shall be repaired or reconstructed in such a manner so as to minimize the nonconformance(s).
- E. The reconstructed structure may not be more nonconforming with respect to dimensional restrictions such as yard requirements, height limitations, or density requirements, and such dimensional nonconformities must be eliminated if that can reasonably be accomplished without unduly burdening that reconstruction process or limiting the right to continue the nonconforming use of such building.
- F. The reconstructed structure may not enclose areas that were previously unenclosed, even though those areas were used in connection with the nonconforming activity.
- G. Nothing herein shall prevent the reconstruction of a nonconforming single-family dwelling that was destroyed by fire or natural disaster, provided such reconstruction does not expand the footprint in a dimension that is more nonconforming.

8.4.3 REPLACEMENT OF NONCONFORMING MANUFACTURED HOMES

A nonconforming manufactured home on an individual conforming lot outside of a zoning district in which it is permitted by right or conditionally may not be replaced except by a conforming dwelling or with an equivalent year model or newer manufactured home.

8.5 NONCONFORMING DEVELOPMENT SITES

8.5.1 NONCONFORMING LANDSCAPING AND SCREENING

- A. Any substantial change of use or change in zoning classification or expansion of 25% or greater of an existing use, structure, or parking area shall not occur without the requirements of Section [5.4](#) having been met to the greatest extent possible as determined by the Administrator.
- B. All solid waste containers shall be screened from view meeting the requirements of Section [5.4.10](#).
- C. Nonconforming fences shall be allowed to remain in place. If a portion of a fence needs to be repaired or replaced, then fencing that matches the existing fencing may be used. If a fenced area with nonconforming fencing is enlarged or fencing extended, then fence material matching the existing fencing may be used except in the front yard, where only conforming fencing may be installed if the fence is being extended.

8.5.2 NONCONFORMING PARKING AND ACCESS

Any substantial change of use or change in zoning classification or expansion of 25% or greater of an existing use, structure, or parking area, which is deficient in the minimum number of parking spaces, parking lot paving, or curb and gutter as set forth in Section [5.5](#), shall not occur without the requirements of Section [5.5](#) having been met. The Administrator may approve a new use within an existing structure if the number of off-street parking spaces required for the new use (per Section [5.5](#) of this Ordinance) is within 10% or 10 spaces, whichever is less, of the number of off-street parking spaces actually provided. Such relief may be granted on a one-time only basis per lot or planned development. The requirements of Section [5.5](#) shall be met to the greatest extent possible as determined by the Administrator.

8.5.3 NONCONFORMING INFRASTRUCTURE

Any substantial change of use or change in zoning classification or expansion of 25% or greater of an existing use, structure, or parking area shall not occur without the requirements of Section [5.6](#) having been met. Sidewalks shall be installed along all new and existing streets for any such change or development as set forth in Section [5.6.4](#). The requirements of Section [5.6](#) shall be met to the greatest extent possible as determined by the Administrator.

8.5.4 NONCONFORMING NON-RESIDENTIAL BUILDING DESIGN

If a nonconforming non-residential building is being expanded by greater than 25%, then the standards of Section [6.1.2](#) (C) shall be met and all unscreened mechanical or utility equipment shall be screened per Section [6.4.12](#).

8.6 NONCONFORMING SIGNS

Signs that were legally erected and were in place prior to the adoption of this Ordinance but which do not conform to the provisions of this Ordinance are declared nonconforming signs. Signs that were legally erected and that are in place and which conformed to the provisions of this Ordinance at the time erected, but which do not conform to an amendment of this Ordinance enacted subsequent to the erection of said signs also are declared nonconforming signs.

8.6.1 CONTINUATION OF A NONCONFORMING SIGN

Nonconforming signs may continue to be utilized in good repair in connection with any use or building permitted in this Ordinance only on the following special conditions, limitations, and restrictions.

- A. Only normal maintenance and repair may be performed on a nonconforming sign. Normal maintenance and repair, as used herein, means repainting, changing lights, replacing broken glass or other routine work necessary to keep the sign safe, in good repair or neat in appearance. Normal maintenance shall not include structural alterations.
- B. A nonconforming sign shall not be enlarged, raised, relocated, or have illumination added.
- C. If damaged, destroyed or permitted to deteriorate to an extent of more than 50% of the appraised replacement cost, a nonconforming sign shall not be repaired or replaced, and shall be immediately removed.
- D. Additional signs shall not be allowed nor shall existing signs be enlarged or raised for any business which displays a nonconforming sign.
- E. A nonconforming sign shall not be re-established once the sign structure has been removed.
- F. A nonconforming sign shall not be re-established after the use has been discontinued regardless of reason or intent for 180 days or more.

- G. If a nonconforming sign is blank or 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 90 days after the use has ceased operation or the service or commodity has ceased being offered. Any nonconforming sign on a lot where the principal structure is vacant for a period of 90 days shall be removed or altered to conform to the regulations of this article.
- H. Nonconforming portable and temporary signs shall be removed within 60 days of the effective date of this Ordinance.

8.6.2 ALTERATION OF A NONCONFORMING SIGN

- A. Except as provided herein, any structural change, or change in sign height or area shall result in the sign being brought into conformity with the regulations of Article 7. Changes to the sign panel or face of a nonconforming sign are permitted as long as it does not result in a change in structure, height, or area.
- B. The structural components of a nonconforming sign, including the supports and sign frame, shall not be altered without bringing the sign into conformity with the requirements of Article 7.

8.7 CERTIFICATE OF NONCONFORMITY ADJUSTMENT

A Certificate of Nonconformity Adjustment may be granted by the Board of Adjustment to enlarge, expand, or otherwise alter a nonconforming use or structure.

- A. Application for a Certificate of Nonconformity Adjustment shall be submitted to the Administrator in accordance with Section [3.7](#).
- B. The Board of Adjustment shall conduct an evidentiary hearing on the application in accordance with the requirements of Section [3.7](#) in the manner prescribed in NCGS 160D-406.