

# ARTICLE 7      NONCONFORMITIES

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## **7.01      General Regulations**

**7.01.01      Scope:** The regulations of this Article govern lots, uses, structures, signs and other aspects of development that came into existence lawfully but do not conform to one or more requirements of this Ordinance. A “nonconformity” as used herein, must always have been legally created or as result of an acquisition pursuant to Section 7.02.

**7.01.02      Continuance:** A nonconformity may be continued, enlarged or modified only in accordance with the provisions of this Article.

**7.01.03      Classification of Nonconformities:** Nonconformities are divided into the following categories:

- A. Nonconforming Use
- B. Nonconforming Lot
- C. Nonconforming Sign
- D. Nonconforming Situation

**7.01.04      Determination of Nonconforming Status:** The burden of establishing a legal nonconformity shall be solely upon the owner of such nonconformity.

**7.01.05      Duration:** Except as provided hereafter, a nonconformity runs with the land.

**7.01.06      Variance:** Where a variance or an insignificant deviation has been granted for a development standard or feature that does not otherwise conform to the requirements of this Ordinance, that development standard or feature shall be deemed conforming.

**7.01.07      Financial Hardship:** Financial hardship shall not be a basis for finding that compliance with this Article is not reasonably practicable or impossible.

**7.01.08      Determination of Practicability or Impossibility:** The Administrator shall make the final determination as to the extent compliance with the Ordinance is practicable and to the extent which it is impossible.

**7.01.09      Contiguous Ownership:** When possible, nonconforming lots must be combined with other undeveloped lots to create conforming lots. If full compliance can be achieved with the combination of contiguous lots in single ownership or control, no reduction in any standard authorized under this Article may be applied.

**7.01.10**      **Extent:** The extent or boundary of any nonconformity shall be based upon its condition, extent or location at the time it became nonconforming.

- A. With respect to uses of open land, such as mining, in which a permit has been obtained from the State of North Carolina and the activity pursuant thereto has commenced prior to the time the use became nonconforming, the extent or boundary or the nonconformity shall be considered the limits of land authorized for mining pursuant to the permit.

**7.02**            **Nonconformities Created by Public Acquisition**

**7.02.01**      A structure, situation or lot of record that is rendered nonconforming as a result of acquisition of a portion of the lot by an entity authorized and for the purposes described N.C. Gen. Stat. § 40A-3 shall be considered conforming only through a receipt of a Certificate of Conformity.

**7.02.02**      An application for a Certificate of Conformity shall be processed pursuant to Article 4 and shall include:

- A. A legal description of the land subject to the public acquisition; and
- B. The name and address of the owner of the land; and
- C. The name and address of the acquiring entity and its representative; and
- D. Proof of the public acquisition proceeding; and
- E. A certified as-built survey, no greater than one-year-old, of the development subject to the acquisition proceeding. The survey must demonstrate:
  - 1. The boundaries of the acquisition, and
  - 2. All structures, including parking, and any other relevant development features.and
- F. A site plan, in compliance with Appendix A, indicating the post-acquisition development.

**7.02.03**      The Certificate of Conformity shall be issued if the following standards are met:

- A. The site plan is designed for the development, consistent with the use requirements, which minimizes to the greatest degree practicable any nonconformities including but not limited to: lot dimensions, parking, landscaping, stormwater infrastructure, lighting, and pedestrian infrastructure.
- B. The development can function adequately for the use.
- C. If a change of use is proposed, it is approved by the appropriate permit-issuing authority; provided, a new nonconforming use may not be allowed.

**7.03 Nonconforming Use**

**7.03.01** A nonconforming use may continue indefinitely unless discontinued as described in Section 7.03.05.

**7.03.02 Extension or Enlargement of a Nonconforming Use:**

- A. No increase in the volume, frequency or intensity of a nonconforming use is allowed.
- B. A nonconforming use may not be expanded, enlarged, or extended to occupy a greater area of land or floor area.
  - 1. A single-family dwelling (Use 1.01) may expand floor area of a principal structure but may not expand the footprint.
- C. A nonconforming use may not be relocated, in whole or in part, to another portion of the subject lot.

**7.03.03 Repair, Maintenance, and Change in Equipment:**

- A. Normal repair and maintenance may be performed to allow the continuation of a nonconforming use.
- B. A change in equipment may be allowed as long as it does not result in an increase or expansion of activity.

**7.03.04 Change of Use:**

- A. Any change of use may only be to a permissible use.
- B. For an existing development, a change of use from one that does not trigger transitional zone standards to one that does trigger transitional zone standards may only be authorized pursuant to approval of a special use permit or a Conditional District zoning map amendment.
- C. All other changes of use that do not involve any new development do not require increased compliance with current Ordinance standards.
- D. All changes of use that involve new development are governed by Section 7.05.

**7.03.05 Discontinuance of Nonconforming Use:**

- A. A nonconforming use that ceases operations for any reason for a period of 180 days within any twelve (12) month time period may not be reestablished. Any subsequent use of such land must be a permitted use. However, when a use is involuntarily discontinued because an essential structure is destroyed or damaged by fire, flood, wind, other act of God, the use shall not be considered discontinued so long as a building permit for the repair or restoration is issued within six (6) months and the use is resumed within twelve (12) months of the date the development permit is issued. For nonconforming structures see Section 7.05.

1. Exception: When a use made non-conforming by a Town-initiated rezoning has an essential structure destroyed or damaged by fire, flood, wind, other act of God, the use shall not be considered discontinued so long as a building permit for the repair or restoration is issued within twelve (12) months and the use is resumed within twenty-four (24) months of the date the development permit is issued. This exception expires five (5) years after the effective date of the rezoning, after which the standard rule provided in the preceding paragraph shall apply.
- B. Discontinuance of one nonconforming use in a development containing multiple principal nonconforming uses does not affect the right to maintain remaining nonconforming uses.
- C. A use that is accessory to a principal nonconforming use may not be continued after the principal use has been discontinued, unless the use is also permissible as a principal use.

(Ord. 20150028, 11-19-2015; Ord. PL01265-011618, 03-22-2018; Ord. PL04727-050721, 07-01-2021; Ord. PL03370-112019, 10-21-2021)

#### **7.04 Nonconforming Lot of Record**

- 7.04.01** A nonconforming lot of record can generally be used as proposed as if it were conforming.
- A. When a use is proposed which requires a greater lot size than the minimum established for the district the use may not be approved.
- 7.04.02** The site plan for a nonconforming lot of record must be consistent with all use requirements, and must minimize the impacts of any existing nonconformity to the greatest degree practicable. No new nonconformity may be created.
- 7.04.03** **Setbacks:** Notwithstanding Subsection 7.03.02, no required setback may be reduced without the following findings by the permit-issuing authority:
- A. The lot cannot be developed for a permissible use without such deviation.
  - B. No significant adverse impact on surrounding properties or the public health or safety will result from the proposed development.
  - C. A proposed single-family dwelling (Use 1.01), conforming in all other respects except for area or width, which cannot meet the applicable minimum setbacks, may be approved with the following limitation: Absent a variance, there may be no reduction greater than fifty percent (50%) of a setback and the dwelling must be at least ten feet (10') from all other structures on an adjacent lot.
  - D. For all other developments which cannot meet the applicable minimum setbacks, absent a variance, there may no reduction greater than twenty percent (20%).
- 7.04.04** This Section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structure upon it.

(Ord. PL04727-050721, 07-01-2021)

**7.05 Nonconforming Situation**

**7.05.01 Alteration of a Nonconforming Situation:**

- A. Subject to Subsection 7.05.06, a nonconforming structure may be altered so long as no new nonconformity is created nor existing nonconformity increased.

**7.05.02 Development which requires compliance with UDO:**

- A. Cost of development as referenced herein shall be measured by adding together the costs which will be incurred in all development activity as proposed, together with the development activity other than normal maintenance and repair that has been permitted within the prior thirty-six (36) months.
- B. All new structures or portions of structures must comply with all Ordinance requirements. However, when a nonconforming structure is destroyed or damaged by fire, flood, wind, other act of God, the structure may be repaired or restored to its original dimensions and conditions as long as the structure is not located in a Floodway or Special Flood Hazard Area, a building permit for the repair or restoration is issued within one (1) year and the structure is occupied within two (2) years of the date the building permit is issued.
  - 1. A nonconforming structure damaged by other cause to such extent that repair, reconstruction or restoration is expected to cost more than fifty percent (50%) of the total value of the structure, must be removed.
- C. Compliance of existing development with the requirements of the Ordinance shall be triggered by the costs of proposed new development (excluding any costs associated with improvements made due to compliance with this Section) in accordance with the following tiers. The Administrator may require certification of the new development by a competent professional. The following tiers are cumulative in effect:
  - 1. **Tier 1:** Reconstruction, modification and alteration of a structure or development in which the cost is certified to exceed ten percent (10%) of the value of the development shall comply with the following, to the extent practicable:
    - a. Bicycle parking in accordance with Section 24.09.
    - b. Landscape improvements pursuant to Section 31.09 Screening Along Streets with a priority given to large deciduous trees.
  - 2. **Tier 2:** Reconstruction, modification and alteration of a structure or development in which the cost is certified to exceed twenty-five percent (25%) of the value of the development shall comply with the following, to the extent practicable:
    - a. Solid waste and recycling containers pursuant to Section 22.13.
    - b. Signs pursuant to Article 26.

- c. Color requirements in accordance with Subsection 25.02.05.
  - d. Lighting in accordance with Section 25.05.
  - e. Landscape improvements pursuant to Section 31.06 Buffer and Screen Requirements with a priority given to large deciduous trees.
3. **Tier 3:** Reconstruction, modification and alteration of a structure or development in which the cost is certified to exceed fifty percent (50%) of the value of the development shall require compliance with the following, to the extent practicable:
- a. Drainage and stormwater requirements pursuant to Article 21.
  - b. Pedestrian circulation and sidewalk requirements pursuant to Section 23.08.
  - c. Parking requirements pursuant to Article 24.
  - d. All other requirements of Article 25 Community Appearance Standards.
  - e. All other requirements of Article 31 Landscape Standards.
  - f. Corridor District requirements pursuant to Article 14.
4. **Tier 4:** Reconstruction, modification and alteration of a structure or development in which the cost is certified to exceed seventy-five (75%) of the value of the development shall require compliance with all requirements of the UDO unless compliance is impossible, provided this section shall not require replacement of or substantial change to a façade that is in good condition.

(Ord. PL04727-050721, 07-01-2021)

**7.06 Discontinuance of Nonconforming Structure**

- A.** A nonconforming building that is unused for any reason other than destruction by an act of God (which is governed by Subsection 7.05.02(B)), for a continuous period of twenty-four (24) months may no longer be used unless in compliance with all Ordinance requirements to the extent practicable.
- B.** A nonconforming structure, other than a building, which is the principal structure on a lot, which is unused for a continuous period of six (6) months, may no longer be used except in compliance with all Ordinance requirements to the extent practicable.
- C.** A nonconforming structure which is in such a state of disrepair or neglect so as to no longer function as intended may no longer be used and must be removed.
- D.** Discontinuance of one nonconforming structure in a development containing multiple principal nonconforming structures does not affect the right to maintain remaining nonconforming structures.

