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# ARTICLE 8: NONCONFORMITIES

## A. GENERAL APPLICABILITY

### 1. PURPOSE AND SCOPE

There exist uses of land, structures, lots of record, and other properties that were lawfully established before this Ordinance was adopted or amended, that now do not conform to its terms and requirements. The purpose and intent of this article is to regulate and limit the continued existence of those uses, structures, lots of record, and sites that do not conform to the provisions of this Ordinance, or any subsequent amendments.

### 2. AUTHORITY TO CONTINUE A NONCONFORMITY

Nonconformities are allowed to continue, and are encouraged to receive routine maintenance in accordance with the requirements of this article as a means of preserving safety and appearance.

### 3. DETERMINATION OF NONCONFORMITY STATUS

The Administrator may discover nonconformities upon submittal of development or permit requests and notify the property owner of the nonconformity and associated implications and remedies in a timely manner.

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

### 4. REPAIRS AND MAINTENANCE TO NONCONFORMITIES

(a) Repairs and normal maintenance that are required to keep nonconforming uses, structures, lots of record, and other properties in a safe condition are permitted, provided the repair or maintenance does not extend, expand, or enlarge the nonconforming aspect. For the purposes of this section, "repair or normal maintenance" shall mean:

(1) **Maintenance of Safe Condition**

repairs that are necessary to maintain a nonconforming use, structure, lot of record, or sign in a safe condition; and

(2) **Maintenance of Land for Safety**

maintenance of land areas to protect against health hazards and promote the safety of surrounding uses.

### 5. CHANGE OF TENANCY OR OWNERSHIP OF NONCONFORMING PROPERTY

No change of title or possession or right to possession of property involved shall be construed to prevent the continuance of such nonconforming use.

## B. NONCONFORMING LOTS OF RECORD

No use or structure shall be established on a nonconforming lot of record except in accordance with the standards in this section.

### 1. STATUS OF STRUCTURES ON NONCONFORMING LOTS

(a) Conforming structures legally established on a nonconforming lot prior to the effective date of this Ordinance (or any amendment thereto) may be continued, enlarged, extended, reconstructed, or structurally altered in any way that is in conformance with the standards of this Ordinance.

(b) Nonconforming structures legally established on a nonconforming lot prior to the effective date of this Ordinance (or any amendment thereto) may be continued, enlarged, or redeveloped only in accordance with the standards in Article 8.D *Nonconforming Structures*.

## 2. DEVELOPMENT OF UNIMPROVED NONCONFORMING LOTS IN RESIDENTIAL DISTRICTS

In the residential zoning districts, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family detached dwelling and customary accessory structures may be developed on any single lot of record existing prior to the effective date of this Ordinance. This provision applies even if the lot of record fails to comply with the district's dimensional standards for area or width. Development of a single-family detached dwelling on the lot of record shall comply with the other dimensional standards of the district, to the maximum extent practicable. This provision does not exempt a lot from meeting the applicable provisions of the Guilford County Board of Health regulations.

## 3. LOTS WITH CONTIGUOUS FRONTAGE IN ONE OWNERSHIP

- (a) When two (2) or more adjoining and vacant lots with contiguous frontage are in one ownership and said lots individually have area or width which does not conform to the dimensional requirements of the district where located, but such lots were of record at the time of adoption of this Ordinance or any subsequent amendment which renders such lots nonconforming, such lots shall be considered as a single buildable lot or several buildable lots for any use permitted in the district where located provided the setback and all other requirements, not involving area or width, are complied with.
- (b) Nothing contained herein exempts the contiguous lots considered as a single buildable lot or lots from meeting the applicable provisions of the Guilford County Environmental Health regulations.

## 4. DEVELOPMENT OF IMPROVED NONCONFORMING LOTS IN RESIDENTIAL DISTRICTS AFTER CASUALTY

If a legally established single-family attached or detached structure or dwelling is destroyed by casualty on a nonconforming lot in a residential zoning district that was part of a subdivision or division of land evidenced by plat or deed, recorded prior to the effective date of this Ordinance, an identical replacement use may be reconstructed within the same footprint as the use destroyed by casualty even though the lot does not meet the minimum lot area or lot width requirements.

# C. NONCONFORMING USES

## 1. CONTINUANCE OF NONCONFORMING USE

Any nonconforming use legally existing at the time of adoption or amendment of this Ordinance, or any nonconforming use created by the extension of the jurisdiction, may be continued so long as it remains otherwise lawful subject to conditions provided in Article 8.C.2 below.

## 2. CONDITIONS FOR CONTINUANCE

Such nonconforming use of land shall be subject to the following conditions:

- (a) No nonconforming use shall be changed to another nonconforming use unless such use is determined to be of equal or less intensity. In determining whether a nonconforming use is of equal or less intensity, the Administrator shall consider each of the following:
  - (1) predicted vehicle trips per day generated by each use;
  - (2) parking requirements of each use;
  - (3) probable number of persons on the premises of each use at a time of peak demand;
  - (4) off-site impacts of each use, such as noise, glare, dust, vibration or smoke; and,
  - (5) that the proposed use does not materially endanger public health or safety.
- (b) No such nonconforming use shall be enlarged, increased, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance. The number of dwelling units in a nonconforming residential use shall not be increased.

- (c) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance.
- (d) No additional structure(s) not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.
- (e) The value of any reconstruction or renovation associated with the use change shall not exceed fifty (50%) percent of the structure's tax value prior to the reconstruction or renovation. (In cases where the reconstruction or renovation value exceeds fifty (50%) percent of the structure's tax value, then the use and structure must conform to the requirements of the district where located.)

### 3. DISCONTINUANCE, ABANDONMENT OR CHANGE IN USE

Subject to any vested right or variance having been previously established or granted, if any nonconforming use of land ceases for any reason for a continuous period of more than one hundred eighty (180) days subsequent use of such land is limited to uses expressly permitted in the district in which such land is located.

- (a) Once a nonconforming use is superseded by a permitted use for any period of time, resumption of a nonconforming use of land is prohibited.
- (b) Suspension of use for renovations or repairs of a nonconforming use are not considered a vacancy, abandonment, or discontinuance, provided all of the following:
  - (1) all appropriate development approvals are obtained;
  - (2) the renovation or repair is completed within 365 days from commencement of repair or renovation;
  - (3) the use is re-established (i.e. a certificate of occupancy is issued) within thirty (30) days from the time the renovation or repairs are completed; and,
  - (4) failure to complete the repairs or renovation within 365 days or re-establish the use within thirty (30) days following repairs or renovation shall constitute discontinuance, and a nonconforming use shall not be re-established.

### 4. USES ACCESSORY TO A NONCONFORMING USE

Once a nonconforming principal use is discontinued, all associated accessory uses shall cease operations within thirty (30) days.

### 5. RECONSTRUCTION OF DAMAGED STRUCTURE HOUSING A NONCONFORMING USE

#### (a) Destruction or Casualty Damage Beyond 50 Percent of Value

- (1) In the event a structure housing a nonconforming use is damaged or destroyed, by any means, to an extent more than fifty percent (50%) of the structure's tax value immediately prior to the damage or destruction, the structure shall only be restored in a manner that conforms to the provisions of this Ordinance.
- (2) New construction (including the establishment of off-street parking, landscaping, signage, and other site features) shall be in accordance with the requirements of this Ordinance.

#### (b) Damage of 50 Percent or Less of Value

- (1) In the event a structure housing a nonconforming use is damaged or destroyed, by any means, to an extent of fifty percent (50%) or less of the structure's tax value at the time of damage or destruction, the structure may be re-built to its previous form if a Building Permit for such repair or restoration is obtained and repair or restoration is begun within one year after the date of such partial damage or destruction and is diligently pursued to completion.
- (2) In no event shall repair or restoration increase, expand, or enlarge the degree of nonconformity.

## **D. NONCONFORMING STRUCTURES**

### **1. RELATIONSHIP WITH NONCONFORMING USES**

A nonconforming principal structure containing a conforming use may only continue in accordance with the provisions of this subsection. Nonconforming structures housing nonconforming uses may only continue in accordance with the standards in Article 8.C *Nonconforming Uses*.

### **2. CONTINUANCE OF NONCONFORMING STRUCTURE**

Any nonconforming structure legally existing at the time of adoption or amendment of this Ordinance or any nonconforming structure created by extension of jurisdiction may be continued so long as it remains otherwise lawful, subject to the conditions contained in Article 8.D.3 *Conditions for Continuance*.

### **3. CONDITIONS FOR CONTINUANCE**

Nonconforming structures shall be subject to the following conditions.

- (a) No nonconforming structure may be enlarged or altered in any way which increases its dimensional deficiencies; however, any nonconforming structure or portion thereof may be altered to decrease the structure's dimensional deficiencies. Any enlargement of the structure shall conform to the current dimensional requirements.
- (b) In the event of damage by fire or other causes to the extent exceeding fifty (50%) percent of the structure's tax value immediately prior to such damage as established by the Guilford County Tax Department, the damaged structure must be removed, and the reconstruction of the nonconforming structure shall be permitted only in compliance with the provisions of this Ordinance.
- (c) In the event of damage by fire or other causes to the extent causing less than fifty (50%) percent of its tax value immediately prior to such damage as established by the Guilford County Tax Department, reconstruction of a nonconforming structure shall only be permitted subject to all of the following conditions:
  - (1) the nonconforming structure must be reconstructed in the same manner in which it originally existed; or in compliance with the requirements of this ordinance and;
  - (2) the structure must not be located in a floodway or special flood hazard area and;
  - (3) a building permit for the repair or restoration must be issued within six months of the damage; and,
  - (4) the structure must be occupied within twelve (12) months of the date the permit is issued.
- (d) Nonconforming structures more than fifty (50) years old or with significant historical value (as determined by the Town's Historic Committee) as of the effective date of this ordinance may be reconstructed regardless of the extent of damage provided that:
  - (1) the structure is rebuilt in the same manner in which it originally existed; and,
  - (2) the reconstruction does not represent a threat to the public health, safety and welfare of the community.
- (e) No nonconforming structure shall be moved or relocated unless it is made to comply with the dimensional and use requirements of the district in which it is relocated.

### **4. PRESERVATION OF SAFE OR LAWFUL CONDITIONS**

Nothing in this Ordinance shall prevent the strengthening or restoration to a safe or lawful condition any part of any building declared unsafe or unlawful, by the Building Inspector or other duty authorized official.

## E. NONCONFORMING SITES

### 1. RELATIONSHIPS WITH NONCONFORMING USES AND STRUCTURES

Nonconforming lots or sites are those that do not meet current Development Standards found in Article 5 of this Ordinance. Nonconforming sites may only continue in accordance with the provisions of this subsection. Individual nonconforming structures or nonconforming uses may only continue in accordance with the standards in Article 8.C *Nonconforming Uses* or Section 8.D *Nonconforming Structures*.

### 2. ADDITIONS AND EXPANSIONS TO STRUCTURES ON NONCONFORMING SITES

Interior or exterior remodeling, expansion of uses or structures, or change of use on a lot or site that does not comply with the standards of this Ordinance shall be brought into a degree of compliance commensurate with the cost of new development. The degree of compliance required is triggered by the cost of development in accordance with the following tiers. The Administrator may require certification of the new development by a state licensed professional. The following tiers are cumulative in effect.

#### (a) Tier 1

Repair, 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 require compliance with the following, to the extent practicable:

- (1) bicycle parking in accordance with Article 5; and,
- (2) lighting in accordance with Article 5.

#### (b) Tier 2

Repair, 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 also require compliance with the following, to the extent practicable:

- (1) solid waste and recycling containers pursuant to Article 5;
- (2) signs pursuant to Article 5;
- (3) color requirements in accordance with Article 5; and,
- (4) landscape Standards pursuant to, with a priority given to shade tree installation.

#### (c) Tier 3

Repair, 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, or in the case of a structure located in a floodway or special flood hazard area in which the cost exceeds fifty percent (50%) of the value of the structure, shall also require compliance with the following, to the extent practicable:

- (1) drainage and stormwater requirements pursuant to Article 5;
- (2) pedestrian circulation and sidewalk requirements pursuant to Article 5;
- (3) parking requirements pursuant to Article 5;
- (4) all other Community Appearance requirements of Article 5;
- (5) corridor District requirements pursuant to Article 5; and,
- (6) special Flood Hazard Area compliance pursuant to Article 5.

**(d) Tier 4**

Repair, reconstruction, modification and alteration of a structure or development in which the cost is certified to exceed seventy-five percent (75%) of the value of the development shall require compliance with all requirements of the UDO unless compliance is impossible

**F. NONCONFORMING SITUATION CAUSED BY GOVERNMENTAL ACTION**

Any lot reduced in size by municipal, county or state condemnation or purchase of land shall obtain from the Administrator written evidence of nonconforming lot or building status to the extent that said condemnation or purchase causes noncompliance with any provision of this Ordinance.