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## **CHAPTER 13 - NONCONFORMITIES**

### **13.1 Purpose and Intent.**

The purpose of this section is to regulate and limit the continued existence of uses and structures established prior to the effective date of this Ordinance (or any subsequent amendment) 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 also be regulated by the provisions of this section. The provisions of this chapter are intended to limit substantial investment in nonconformities and to bring about eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the area in which it is located.

### **13.2 General Provisions.**

#### **13.2.1 Appeals and Modifications.**

- A. The Board of Adjustment shall hear and decide appeals from any land owner (i) to make a change in use of a nonconforming use to a different, less-intense nonconforming use; (ii) to make a change in location of a nonconforming use of land to another location on the same property; or (iii) allow the replacement of a nonconforming use.
- B. The Board of Adjustment may only grant a change for a nonconforming use or replacement of a nonconforming structure which has been destroyed after having first held a public hearing and having determined that:
  1. Said change will be more suitable and appropriate for the lot(s) on which it is located than the existing situation; and,
  2. The proposed change will have a less harmful effect than the existing situation on the properties surrounding the lot(s) in question; and,
  3. The decision to grant the change will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise be detrimental to the public welfare.
- C. The Board of Adjustment, in granting such changes, may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards when made a part of the terms upon which the change was granted, shall be deemed a violation of this Ordinance and shall be subject to enforcement provisions as prescribed per Chapter 16, Violations and Penalties.

#### **13.2.2 Discontinuance.**

A nonconforming use shall be presumed discontinued when any of the following has occurred:

- A. The owner has in writing or by public statement indicated intent to abandon the use.
- B. A conforming use has replaced the original nonconforming use.
- C. The building or structure housing the nonconforming use has been removed.
- D. The owner has physically changed the building or structure or its permanent equipment in such a way as to indicate clearly a change in use or activity to something other than the nonconforming use.
- E. The property, structure or use has been vacant or completely inactive for three hundred sixty-five (365) days.

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### 13.3 Nonconforming Plans.

#### 13.3.1 Approved Site Specific Plans.

- A. **Previously Approved Plans Grandfathered:** Any site specific plan (including but not limited to master plans, preliminary plats, final plats, conditional district plans, special use permit plans) for the development of property and/or construction of a building which has received final approval by the Town of Waynesville for development and/or construction, but does not conform to this Ordinance, may be developed and/or constructed in accordance with the Ordinance, rules, and regulations, including any conditions imposed upon approval. Any plan approved prior to the adoption of this Ordinance, but which conforms to its provisions, shall be administered, interpreted, amended and implemented in accordance with the provisions of this Ordinance.
- B. **May Choose New Ordinance:** A property owner with an approved site specific plan as identified above may elect to develop such property and/or construct such building in accordance with the terms and provisions of this Ordinance in lieu of the rules and regulations upon which the plan was approved. The Administrator shall notify the property owner in writing of any additional required procedures or modifications which may be necessary in order for the plan to conform to the Ordinance.
- C. **Amendments or Modifications of Previously Approved Plans:** Any amendment or modification to an approved site specific plan, which would have required approval pursuant to the Ordinance, the rule or regulation by which the plan was originally approved, shall be reviewed and considered in accordance with the terms and provisions of this Ordinance as if it were an amendment or modification to a plan originally approved under this Ordinance.
- D. **Maximum 24 Month Build-Out:** If an approved, non-conforming development is not built-out within 24 months of preliminary plat approval, it must be redesigned to meet current ordinance standards.

#### 13.3.2 Vested Rights.

This section does not prohibit the exercise of any vested right established by common law ordinance or statute.

### 13.4 Nonconforming Lots.

#### 13.4.1 Definition and Applicability.

A nonconforming lot is a lot of record that does not meet the dimensional requirements of Chapter 2 for the land development district in which it is located. A nonconforming vacant lot of record is one that was recorded by plat or description in the Office of the Register of Deeds of Haywood County prior to the adoption of this chapter or prior to the time that the lot was brought into the town's jurisdiction. This definition shall not be interpreted to include recorded lots that were in violation of any prior subdivision regulations of the Town of Waynesville and which will remain in violation.

#### 13.4.2 Standards.

- A. **Lot May Be Developed:** Except as provided in subsections B and C below, a nonconforming vacant lot may be developed for any of the uses permitted by these regulations in the District in which it is located, provided that any use and/or structure meets all applicable yard and setback requirements for the District in which the lot is located. A variance shall not be required for substandard lot width or lot size for such lots of record.
- B. **Lots to Be Combined, If Possible:** A nonconforming vacant lot shall not be developed if it can be combined with an adjoining lot owned by the same person on or after the effective date of these

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regulations in order to create a single conforming or substantially conforming lot. For the 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. All other minimum requirements for the particular land development district and proposed use must be met or a variance obtained from these requirements through an action of the Board of Adjustment. This shall include meeting the requirements for additional lot size for increased densities of residential development (duplexes, multi-family dwellings, etc.).

- C. **Exceptions for Previously Approved Plats:** A nonconforming lot may be developed if, at the effective date of this Ordinance, the lot is located in (i) a subdivision that had received preliminary plat approval; or (ii) a subdivision in which had received final plat approval.
- D. **Existing Structures on Non-Conforming Lots:** Any structure on a nonconforming occupied lot may be occupied, without expansion, by a conforming use or may be improved or expanded in accordance with the standards listed in this section. Structural alterations or remodeling of structures on nonconforming lots required by an authorized public official shall be permitted. Routine maintenance shall also be permitted so long as no expansion of the nonconformity occurs as a result of the maintenance.
- E. **Expansion of Structures:** Any improvement or expansion of any structure on a nonconforming occupied lot must comply with all other minimum requirements of this Ordinance or a variance must be obtained from these requirements through an action of the Board of Adjustment. This shall include meeting the requirements for additional lot size for increased densities of residential development (duplexes, multi-family dwellings, etc.).

## 13.5 Nonconforming Uses and Structures.

### 13.5.1 Definition and Applicability.

- A. **Nonconforming Use:** A nonconforming use is a use which was once a permitted use on a parcel of land or within a structure, or which precedes any Ordinances, but which is now not a permitted use of that parcel according to Chapter 2 of this Ordinance. This definition includes open uses of land (e.g., storage yards and golf driving ranges) as well as the structures that contain nonconforming uses. The nonconformity may result from the adoption of this Ordinance or any subsequent amendment.
- B. **Nonconforming Structure:** A nonconforming structure does not conform to dimensional, design, locational, or other requirements of this Ordinance. The nonconformity may result from adoption of this Ordinance or any subsequent amendment.

### 13.5.2 Standards for Nonconforming Uses and Accessory Uses.

- A. **Continuation Permitted:** Any legally established nonconforming use or accessory use may be continued subject to the standards listed in this section. However, once a nonconforming use or accessory use is made conforming, it may not later be used for any nonconforming use or expanded in violation of this Ordinance.
- B. **Expansion of Use Prohibited:** A nonconforming use or accessory use may be enlarged or extended only into portions of the structure that existed at the time that the use became nonconforming. No external improvements which would extend or enlarge the nonconforming use or accessory use of the land area that it covers are permitted. However, routine maintenance of any structure containing a nonconforming use or accessory use is permitted.

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- C. **Discontinuance of 1 Year:** A nonconforming use or accessory use of a structure that is discontinued for a continuous period of more than one (1) year may not be reestablished. All subsequent uses of the structure and site must be in conformance with the particular regulations for the land development district in which the property is located.
  - D. **Damage or Destruction:** Any structure containing a nonconforming use or accessory use that has been damaged by fire or natural causes, regardless of the extent of the damage, may be repaired or re-established and continued in accordance with this Ordinance, provided that any such repair or re-establishment does not increase the degree of any nonconformance. Such repair or re-establishment must occur within one (1) year of the date the damage occurred.
  - E. No nonconforming accessory use, once discontinued, may be re-established or moved to another structure on the lot.

#### 13.5.3 Standards for Nonconforming Structures.

- A. **Continuation Permitted:** Any legally established nonconforming structure may be continued subject to the standards listed in this section. However, once a nonconforming structure is made conforming, it may not later be used for any nonconforming use or expanded in violation of this Ordinance.
- B. **Legal Expansions Permitted:** A nonconforming structure may be enlarged, maintained, repaired or altered; provided, however, that no such enlargement, maintenance, repair, or alteration shall either create an additional nonconformity or increase the degree of the existing nonconformity of all or any part of the structure. However, this provision is not intended to permit substantial reconstruction or new construction on the same building footprint.
- C. **Damage or Destruction:** Any nonconforming structure that has been damaged by fire or natural causes, regardless of the extent of the damage, may be repaired or re-established and continued in accordance with this section, provided that any such repair or re-establishment does not increase the degree of any nonconformance and should comply with the building design requirements of Chapter 5 to the extent practical as determined by the Administrator. Such repair or re-establishment must occur within one (1) year of the date the damage occurred.

#### 13.5.4 Standards for Nonconforming Accessory Structures.

- A. **Legal Expansions Permitted:** A nonconforming accessory structure may be expanded only if the expansion does not increase the nonconforming condition of the structure.
- B. **Must Terminate When Principal Structure is Terminated:** No nonconforming accessory structure shall continue if structure is abandoned, damaged, or destroyed unless such structure is made to conform to the standards for the zoning district in which it is located.

(Ord. No. O-18-20 , § 1, 10-27-2020)

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## 13.6 Nonconforming Manufactured Homes and Mobile Home Parks.

### 13.6.1 Nonconforming Manufactured Housing on Individual Lots.

#### A. Replacement Home:

1. A nonconforming manufactured home on an individual lot outside of a manufactured home park may only be replaced with a unit no less conforming to the dimensional standards of the respective district.
2. Double wide units may only be replaced with equivalently sized units or larger (no single wide units permitted).
3. Replacement units shall meet all applicable standards of Section 12.3 Flood Damage Prevention.

B. **Expansions Prohibited:** A nonconforming manufactured home on an individual lot may not be enlarged or altered externally in any way except where such alteration is required by law or an order from the Building Inspector, Fire Chief or the Administrator to ensure the safety of the structure, or where such alteration increases the degree of conformance of the home.

C. **Routine Maintenance Permitted:** Routine maintenance of such manufactured housing is permitted so long as no expansion of the nonconformity occurs as a result of the maintenance.

### 13.6.2 Nonconforming Manufactured Home Parks and Housing within Parks.

A. **Continuation Permitted:** Manufactured home parks which are nonconforming, either as to use or development standards, may continue to operate provided that number of manufactured homes on the property does not drop to less than two (2) for more than six (6) months.

B. **Replacement of Units:** Replacement of manufactured housing units is permitted as follows:

1. Only existing spaces as of the effective date of this Ordinance may be used. No additional spaces may be created or occupied.
2. Replacement units may not increase the degree of nonconformity of setbacks from streets, property lines, structures, or watercourses.
3. Replacement units shall meet all applicable standards of Section 12.3 Flood Damage Prevention.

### 13.7 Nonconforming Design Elements and Site Features.

The following table summarizes the primary requirements that shall be met when there are changes to existing development and/or to nonconforming structures or uses. A ✓ indicates that compliance with all applicable standards is required. For the purpose of this section the size of projects involving parking area expansion and building expansion or building reconstruction shall include all such projects undertaken on the site within the preceding twenty-four (24) month period.

	2.4	Ch. 5	6.11	Ch. 8	8.4	8.5	8.6-8	Ch. 11	Ch. 11
	Dimensional Standards	Building Design Standards	Sidewalks	Tree Protection and Landscaping	Buffers and Screening	Street Tree Planting	Parking Lot Landscaping	Outdoor Lighting	Signs
<b>Existing Development</b>									
Change of Use (From Residential to Non-Residential)			✓	✓	✓	✓	✓	✓	✓
<b>Parking Area Expansion</b>									
Less than 12 spaces or <40% of Paved Area							✓(a)	✓(a)	
Expansion of ≥40% of Paved Area or 12 space or more			✓	✓	✓	✓	✓	✓	✓
<b>Building Expansion/Reconstruction</b>									
<50% of Existing Floor Area	✓(a,b)	✓(a)						✓(a)	
≥50% of Existing Floor Area	✓(a,b)	✓(c)	✓	✓	✓	✓	✓	✓	✓

(a) For expanded/reconstructed portion only.

(b) Exception: Maximum front setbacks should be met to the extent practical as determined by the Administrator.

(c) For expansions, reconstruction areas and all other walls facing public streets.