

## CHAPTER 15: NONCONFORMITIES

### SECTION 15.1: PURPOSE AND APPLICABILITY

The purpose of this Chapter is to regulate and limit the continued existence of uses and structures established prior to the effective date of this Code (or any amendment subsequent thereto) that do not conform to this Code. 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 Chapter. Many nonconformities may continue, but the provisions of this Chapter are designed to curtail 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 and the intent of this Code.

### SECTION 15.2: NONCONFORMING USES

- A. Nonconforming uses of land or structures, and nonconforming structures that contain nonconforming uses, may continue only in accordance with the provisions of this Section, but this Section shall only apply to the extent said nonconformities fully and clearly meet the definition of “non-conforming use” in Chapter 2 of this Code.
- B. 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 (to an extent of less than sixty percent (60%) of its assessed value) due to fire or other disaster event pursuant to the issuance of a Special Use Permit by the Planning Board. This shall include, as well, the repair or reconstruction of any structure or on-site utility, parking or street infrastructure in support of said nonconforming use. If said structure was also nonconforming, the reconstruction shall meet the current setback requirements of the applicable district. An application must be filed for such Special Use 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.
- C. A nonconforming non-residential use shall not be expanded, changed or enlarged, 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 nonconforming 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. Any such enlargement or alteration shall be in compliance with all yard requirements of such structures as required in the specific district.
- D. Once a nonconforming use has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
- E. If a nonconforming use is abandoned for one hundred eighty (180) days or more, 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 percent (60%) 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



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shall be determined by using tax assessment records provided by the tax assessor's office for the year in which the structure was destroyed.

- F. 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 15.3 (F) of this Code.
- G. Notwithstanding Section 15.2.C, if a nonconforming automotive sales use within the Highway Commercial (HC) zoning district is currently active, expansion and/or improvement of the use and structures associated with the use either on the existing lot or adjoining lot may be permitted by the Town Board of Commissioners with approval of a conditional zoning application for such expanded/improved use. The use must be improved to meet current standards of the Land Development Code, including, but not limited to screening and landscaping, parking, architectural standards, etc. For purposes of this Section, "adjoining lot" shall include an immediately adjacent lot or lot that is separated from the existing lot by a tract of land that is of such size and configuration that it is only suitable for the following uses: utilities, driveway(s), or pedestrian ingress and egress (excluding public or private streets).
- H. Notwithstanding Section 15.2.C, if a nonconforming boat service and/or repair use within the Village Center (VC) zoning district is currently active, expansion and/or improvement of the use and structures associated with the use on the lot may be permitted by the Town Board of Commissioners with approval of a conditional zoning application for such expanded/improved use. The use must be improved to meet current standards of the Land Development Code, including, but not limited to screening and landscaping, parking, architectural standards, etc.

### SECTION 15.3: NONCONFORMING PRINCIPAL STRUCTURES

- A. 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.
- B. Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.
- C. A nonconforming structure may not, under any circumstances, be enlarged or altered in a way which increases its nonconformity.
- D. If a nonconforming non-residential structure is damaged to an extent greater than sixty percent (60%) of its assessed value for tax purposes it shall be rebuilt only after the issuance of a Special Use Permit. A building permit for reconstruction of such structure must be secured no later than one hundred eighty (180) days from the date of its destruction. In the issuance of said permit, the Zoning Administrator shall follow these standards:
  - 1. If the structure can be rebuilt on the same lot and meet all setback requirements, it shall be.



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2. 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 a conforming manner as possible.
  3. A nonconforming structure shall not be rebuilt in a manner, which increases its nonconformity.
  4. The reconstruction of a nonconforming structure (at the same or smaller size) shall require the installation of sufficient parking, landscaping or buffering.
- E. A principal dwelling unit that does not meet the standards specified in the definition of Principal Building but has maintained compliance with the requirements of a previously issued building permit ninety (90) days prior to the adoption of Ordinance No. 2015-00606 on October 19, 2015, which amends such definition, shall be deemed a non-conforming structure.
- F. A nonconforming manufactured home used as a principal residential structure may be replaced with another manufactured home only if 1) the replacement is a manufactured home which bears a valid seal indicating conformance with the 1976 National Manufactured Housing Construction and Safety Standards Act, and 2) 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 six months of the removal of the original manufactured home. The manufactured home must meet all district requirements.

### SECTION 15.4 NONCONFORMING ACCESSORY USES AND STRUCTURES

- A. 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.
- B. 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. No non-conforming accessory use or structure shall become or replace any terminated principal non-conforming use or structure.

### SECTION 15.5 NONCONFORMING LOTS

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 and setback requirements for the zoning district in which the lot is located.

### SECTION 15.6 NONCONFORMING SIGNS

- A. Except as herein provided, nonconforming signs that were otherwise lawful on the effective date of this Code may be continued.
- B. 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.
- C. A nonconforming sign may not be moved or replaced (including but not limited to replacing copy or changing names or symbols) except to bring the sign into complete conformity with this Code. 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 Code. (However: non-



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conforming signage in a multi-tenant or mixed-use building may be permitted to change a tenant name to maintain consistency within the overall project and uniformity with this ordinance as approved by the Planning Director or designee.)

- D. Minor repairs and maintenance of nonconforming signs necessary to keep a nonconforming sign for a particular use in sound condition are permitted so long as the nonconformity is not in any means increased.
- E. 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 Code, 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 fifty percent (50%) of the sign's value immediately prior to the sign having received said damage.
- F. The message of a nonconforming multi-tenant identification sign may be changed so long as it does not create any new nonconformities.
- G. **Nonconforming On-premises signs:** If a nonconforming on-premise sign which advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that has not been operated, conducted or offered for a period of at least one hundred eighty (180) days, , 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 one hundred eighty (180) day period has expired.

Notwithstanding the above, If there is an expansion to the heated square footage of an existing business, or a change in use to an existing building (except multi-tenant buildings), a change in the name of the business, replacing copy, changing names or symbols and there is one or more on-premises nonconforming signs which advertised the former or current business or use, any new signs used, and all new sign faces for the new use or business must meet all sign requirements for the underlying district.

- H. If a nonconforming sign remains blank for a continuous period of one hundred eighty (180) days, that sign shall be deemed abandoned and shall, 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:
  - 1. It advertises a business, service, commodity, accommodations, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or
  - 2. The advertising message it displays becomes illegible in whole or substantial part; or
  - 3. It does not contain an advertising message. (For such purposes, the terms "Sign For Rent", "Sign For Lease", "Building For Rent", "Building For Lease", "Building for Sale", etc. shall not be deemed to be an advertising message).



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- I. All off-premise advertising signs which are currently illegal shall be removed as a result of and in accordance with the five and one half (5 ½) year amortization period in the October 17, 1988 Zoning Ordinance, except as provided in subsection J.
- J. 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. This subsection 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 ½) years of such State or Federal requirement becoming inoperative or otherwise failing to apply to such sign.

### **SECTION 15.7 NONCONFORMING PARKING, LIGHTING, LANDSCAPING, SCREENING, AND OTHER EXTERIOR FEATURES**

Any increase in building square footage or modification to any exterior feature(s) on the site (parking, lighting, landscaping, screening, sidewalk, buffers, curbing, storm water, drainage, etc.) shall require conformance with the current requirements of this Code to the greatest extent possible.

### **SECTION 15.8 NON-CONFORMING TRANSIENT OCCUPANCY**

Time Periods for Abatement in Residential Districts. Nonconforming uses located in Residential Districts (GR and NR) shall be abated and terminated upon the expiration of the periods of times set forth within this section. The nonconforming use shall be discontinued within 36 months of the adoption of this ordinance (February 2, 2009). Only existing units with valid Transient Occupancy permit at the time of adoption of this Ordinance (February 2, 2009) may utilize this abatement period.

#### Eligibility for Transient Occupancy Use Amortization

- A. The following Transient Occupancy uses in the prohibited districts shall be eligible for the amortization period provided herein:
  1. Transient Occupancy uses with valid permits (formerly Vacation Rental permits) in effect on the date of the adoption of this ordinance
  2. Transient Occupancy uses with permit applications pending, but no permit issued due to the moratorium, as of the date of adoption of this ordinance. Permits shall be issued within 30 days of the adoption of this ordinance
  3. Transient Occupancy uses that do not have a permit or pending application which can conclusively establish that they had a Transient Occupancy use in existence on or before the date of the adoption of this ordinance. Such Transient Occupancy uses must submit a complete application for permit on or by 30 days after the adoption of this ordinance.
- B. No new Transient Occupancy use coming into existence in the prohibited districts after the adoption of this ordinance shall be eligible to be issued a permit or be eligible for the amortization period herein.



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- C. Any Transient Occupancy use eligible for the amortization period shall be subject to all regulatory requirements as amended and expanded by the adoption of this ordinance during the amortization period.
- D. Any Transient Occupancy use eligible for this amortization period shall lose such eligibility on revocation or denial of reissuance of its permit based on lack of conformance with applicable regulations, or upon the owner's failure to apply for and obtain a renewal of the permit.

### Extension of Abatement Period for Nonconforming Uses.

- A. Purpose. A property owner may request an extension of the abatement period to amortize the property owner's investment to avoid an unconstitutional taking of property. The City will evaluate evidence of economic hardship arising from abatement, the nonconformity's impact on the community, and other factors that may affect the length of the abatement period required to avoid an unconstitutional taking.
- B. Application Requirements. Except as otherwise provided herein, the owner of property subject to an abatement period, or his authorized agent, may file an application for extension of the abatement period pursuant to this Section no later than 90 days prior to the expiration of the abatement period set forth in this chapter. The application shall include the following additional information:
  - 1. The length of the requested extension of the abatement period.
  - 2. Evidence in support of the findings below
- C. Notice and Hearing: The Town Board of Commissioners will review the application for an extension at a public hearing. Notice of the hearing shall be as specified in Chapter 12.7.3 of this ordinance. Notice shall be provided to all owners and occupants of property within 300 feet of the property. The Town Board of Commissioners, by resolution, shall approve, conditionally approve, or deny the request for an extension to the abatement period. The resolution shall include findings of fact pertinent to the criteria set forth in this Chapter.
- D. Findings. In reviewing an application for an extension to the abatement period, the Town Board of Commissioners shall grant an extension only as required to avoid an unconstitutional taking of property. The Town Board of Commissioners shall consider:
  - 1. The length of the abatement period in relation to the owner's investment in the use;
  - 2. The length of time the use was operating prior to the date of nonconformity;
  - 3. The suitability of the structure for an alternative use;
  - 4. Harm to the public if the use remains beyond the abatement period;
  - 5. The cost and feasibility of relocating the use to another site; and
  - 6. Other evidence relevant to the determination of whether an extension of the abatement period is required to avoid an unconstitutional taking of property.
- E. Notice to Owner. The Planning Director shall formally notify the owner of nonconforming property of the action of the Town Board of Commissioners by mailing the owner a copy of the resolution not later than ten (10) days following the date of its adoption by the Town Board of Commissioners.

