

# CHAPTER 9. NONCONFORMING SITUATIONS

## SECTION 9.1. PURPOSE

The purpose of this Chapter is to allow nonconformities to continue to exist, but to regulate and limit their expansion so as to bring them into conformity with these standards to the extent that is reasonably practicable.

## SECTION 9.2. APPLICABILITY

- A. The regulations of this Chapter govern nonconformities, which are lots, uses, buildings, structures, or signs there were lawfully established but because of the adoption of new or amended regulations no longer comply with one or more requirements of this Ordinance.
- B. The burden of proving that a lawfully nonconformity exists (as opposed to a violation of this Ordinance) rests with the subject landowner.
- C. Nonconforming status runs with the land and is not affected by changes of tenancy, ownership, or management.

## SECTION 9.3. CONTINUATION

- A. Unless otherwise specified by statute, legal nonconforming uses, buildings, structures, and signs may be continued until they are intentionally and voluntarily discontinued, for a period of two years.
- B. If a legal nonconformity is intentionally and voluntarily discontinued, as evidenced by the disconnection of electrical or utility service for a period of two years, the nonconformity shall expire and any future use of the building, structure, sign, or land shall comply with the provisions of this Ordinance.
- C. Any time a nonconformity is converted to a conforming situation, the former nonconformity shall not revert to its prior nonconforming status.

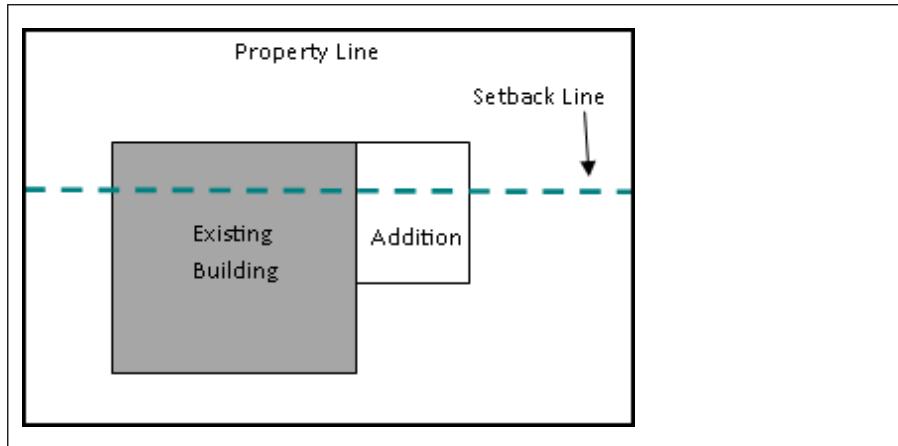
## SECTION 9.4. REPAIRS AND MAINTENANCE

- A. Incidental repairs and normal maintenance necessary to keep a nonconformity in sound condition are permitted unless otherwise expressly prohibited by this Ordinance.
- B. A nonconformity may be strengthened or upgraded in cases where such improvement is necessary to protect public safety, in the sole discretion of the Administrator.

## SECTION 9.5. EXPANSION

- A. Expansions to nonconforming buildings or structures shall meet the requirements of this Ordinance; however the built upon area of existing development built prior to December 31, 1993 is not required to be included in the density / built-upon area calculations.
- B. Nothing in this section shall limit the increase in elevation of an existing or damaged residential building or structure in the special flood hazard area to a height above the regulatory flood elevation.
- C. Nonconforming uses of buildings may be extended throughout the building provided no structural alterations (except those required by law or ordinance or ordered by an authorized officer to secure the safety of the building) are made therein but no such use shall be extended to occupy any land outside the building.
- D. Nonconforming signs cannot be physically expanded, enlarged, or extended in any manner though the sign may be relocated or reconstructed or its message may be changed in accordance with Section 9.7, Replacement..
- E. Minor expansions are allowed as long as the following is satisfied:
  1. The expansion is not greater than 15% of the nonconforming structure and does not extend into a setback.

### EXTENSION OF NONCONFORMING BUILDING OR STRUCTURE

**SECTION 9.6. CONVERSION**

No nonconforming use shall be converted to another nonconforming use.

**SECTION 9.7. REPLACEMENT****A. DAMAGED OR DESTROYED**

1. Except as authorized by 9.5 (Expansion), nonconforming structure (s)/ building (s) which are damaged by fire, explosion, flood, or other calamity may be reconstructed provided the nature or degree of the nonconformity will not be changed or increased from that which existed prior to the damage or destruction.

**B. INSIGNIFICANT DAMAGE**

If a nonconforming use or structure is damaged by fire, explosion, flood, or other calamity to an extent less than 51 percent of its current assessed value or square footage, it may be restored to its pre-damage condition, provided the degree of nonconformity is not extended, expanded, enlarged, or the use is altered in any way that increases the degree of nonconformity.

**C. SIGNAGE**

1. The copy, content, or message of the sign may be changed so long as the shape, size, or height of the sign is not increased. The copy, content, or message of a nonconforming sign may not be changed in cases when the sign or the use it advertises has been discontinued for a period of two years or more.
2. Lawfully erected on -premises signs may be relocated or reconstructed on the same parcel in accordance with G.S. 160D-912.1, if the following circumstances exist:
  - i. The sign complies with the local development rules that applied when it was originally constructed.
  - ii. The square footage of the total advertising surface area of the sign does not increase, and
  - iii. Any relocation construction work begins within twenty-four months of the date of the sign's removal. If the parties disagree as to whether a sign was lawfully erected, the local government has the burden of proving that the sign was not lawfully erected.

**SECTION 9.8. MOVEMENT**

Should a nonconforming building, structure, or sign be moved for any reason for any distance it shall hereafter conform to the regulations for the district in which it is located after it is moved. Nonconforming signs may be moved in accordance with Section 9.7.

**SECTION 9.9. NONCONFORMING LOTS OF RECORD**

## CHAPTER 9. NONCONFORMING SITUATIONS

### SECTION 9.10. NONCONFORMING SITES

- A.** Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements for the zoning district where located, as established by this Ordinance.
- B.** Any lawfully established lot of record that does not conform to the current minimum lot size or minimum lot width, may be used as a building site with related accessory buildings, provided:
  - 1.** The required setbacks for the lot are not reduced by more than 30 percent in accordance with Chapter 14, Appeals and Variances; and
  - 2.** Reductions to minimum required setbacks, lot width, or other dimensional standards may only be permitted with a variance granted by the Board of Adjustment in accordance with Chapter 14.
- C.** Whenever two or more contiguous vacant lots are in single ownership, and the lots individually or together have less area than minimum requirement for the zoning district, such lots may be combined to create one lot in order to reduce the nonconformity.
- D.** Conforming lots subject to governmental acquisition of a portion of the lot for a public purpose that results in the lot becoming nonconforming because it no longer complies with lot area, width, or depth standards of the zoning district where located shall be deemed conforming, provided the development complies with the following:

#### **1. COMPLIES WITH USE TABLE**

The development proposed complies with the requirements in Chapter 6, Table of Uses; and

#### **2. COMPLIES WITH DIMENSIONAL STANDARDS**

With the exception of the lot area requirements for the district where located, the development proposed shall comply with all other dimensional standards and other requirements of the district where located.

## SECTION 9.10. NONCONFORMING SITES

### **A. APPLICABILITY**

- 1.** For purposes of this section, the term "nonconforming site features" includes the following:
  - i.** Nonconforming off-street parking;
  - ii.** Nonconforming non-residential screening;
  - iii.** Nonconforming walls or fences; and
  - iv.** Nonconforming exterior illumination.
- 2.** Changes of use and expansion of existing buildings or structures on nonconforming sites shall comply with the standards in this section.

### **B. CHANGES OF USE**

Changes in use shall comply with the following requirements:

- 1.** In cases where an existing use is replaced by another use type of the same or lesser intensity (as measured by number of vehicular trips generated, hours of operation, or number of on-site visitors), then compliance with site features requirements shall be in accordance with the standards in Section 9.10.D, Expansion of Buildings or Structures.
- 2.** In cases where an existing use is replaced by a more intense use type (as measured by number of vehicular trips generated, hours of operation, or number of on-site visitors) full compliance with all applicable provisions in this Ordinance is required.

### **C. DETERMINATION OF COST AND ASSESSED VALUE**

- 1.** For purposes of determining if upgrading of nonconforming site features is required by this subsection, the cost of the expansion shall be as shown on the approved building permit application.
- 2.** Assessed value shall be based on the most recently available tax records from Moore County.

**D. EXPANSION OF BUILDINGS OR STRUCTURES**

If a building permit is required for expansion of the building or structure, the expansion shall require correction of existing on-site nonconforming off-street parking, landscaping, screening, wall or fencing, and exterior lighting in accordance with this section.

**1. 25 PERCENT OR LESS OF STRUCTURE VALUE**

Expansions in any continuous one-year period that costs 25 percent or less of the current assessed value of the structure shall not require any correction to nonconforming site aspects.

**2. MORE THAN 25 PERCENT BUT LESS THAN 75 PERCENT OF STRUCTURE VALUE**

Expansions in any continuous one-year period that costs more than 25 percent but less than 75 percent of the current assessed value of the structure shall require that a corresponding percentage of the off-street parking, screening, wall or fencing, and exterior illumination standards of this Ordinance be installed or upgraded on the site, until the site achieves 100 percent compliance.

*Example: A hypothetical building is required to provide at least 40 off-street parking spaces, but the building site only includes 20 spaces. If the building is remodeled such that the cost of remodeling equals 30 percent of the building's assessed value, the remodeling project must add 12 parking spaces (30% x 40 required spaces). This increases the development's degree of compliance with off-street parking standards from 50 percent (20 of 40 required spaces) to 80 percent (32 of 40 required spaces).*

**3. 75 PERCENT OR MORE OF ASSESSED VALUE**

Expansion projects that cost 75 percent or more of the current assessed value of the structure shall require 100 percent compliance with the off-street parking, screening, wall or fencing, and exterior illumination standards of this Ordinance.

**4. TWO OR FEWER ADDITIONAL PARKING SPACES**

When two or fewer additional off-street parking spaces are required under this subsection as a result of an expansion project, such additional off-street parking is not required to be installed, but the applicant may install a comparable number of bicycle parking spaces.

**5. ADDITION OF OUTDOOR STORAGE AREA ONLY**

When only outdoor operations/storage/display areas are being added or increased on a site, the percentage increase in outdoor operations area shall require a corresponding percentage increase in non-residential screening. Screening augmentation shall be located so as to achieve the performance objectives in this Ordinance, with priority given to screening the impacts of outdoor operations.

**E. PHYSICALLY CONSTRAINED PROPERTIES - COMPLY TO MAXIMUM EXTENT PRACTICABLE**

Lands that are physically constrained due to limited size, topography, or other environmental considerations may seek a reduction to these standards in accordance with Chapter 14, Appeals and Variances.