

Nonconformities

13.1 PURPOSE AND APPLICABILITY

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 their eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the area in which a nonconformity is located.

13.1.1 APPLICABILITY MATRIX

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.

	2.2 Dimensional Standards	Ch. 5 Building Design Standards	6.11 Sidewalks	Ch. 8 Tree Protection & Landscaping	8.4 Buffers & Screening	8.5 Street Tree Planting	8.6-8 Parking Lot Landscaping	Ch. 10 Outdoor Lighting	Ch. 11 Signs
Existing Development									
Change of Use (From Residential to Non-Residential)		✓	✓	✓	✓	✓	✓	✓	✓
Parking Area Expansion									
Less than 12 spaces or <40% of Paved Area							✓(a)	✓(a)	
Expansion of ≥ 40% of Paved Area or 12 spaces or more			✓	✓	✓	✓	✓	✓	✓
Building Expansion/Reconstruction									
< 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

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 indicated intent, in writing to the Administrator, 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 365 days.

13.3 NONCONFORMING PLANS

13.3.1 APPROVED PLANS

- A. **Previously Approved Plans Grandfathered:** Any 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 Wake Forest for development and/or construction, but does not conform to this ordinance, may be developed and/or constructed in accordance with the rules and regulations, including any

conditions imposed upon approval, that were in place prior to the effective date of this ordinance. 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.

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 Wake 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 Wake Forest and which will remain in violation.

13.4.2 STANDARDS

- A. Lot May Be Developed:** Except as provided in Sections 13.4.2.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 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 that 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 & 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

- A. Continuation:** Any legally established nonconforming use may be continued subject to the standards listed in this section. However, once a nonconforming use is made conforming, it may not later be used for any nonconforming use or expanded in violation of this ordinance.
- B. Extension of Use:** Any non-conforming structure or non-conforming use of land or structure, shall not hereafter be enlarged or extended in any way which serves to increase the nature of non-conformity, except where the non-conforming use is a residential structure used exclusively for dwelling purposes, said structure is a permitted use and the proposed addition shall conform to all zoning requirements; and the total area of the addition shall be limited to 25% percent of the area of the original non-conforming structure; and shall be used solely for residential purposes.
- C. Discontinuance of 1 Year:** A nonconforming use of a structure that is discontinued for a continuous period of more than one 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.

13.5.3 STANDARDS FOR NONCONFORMING STRUCTURES

- A. Continuation:** Any legally established nonconforming use or structure may be continued subject to the standards listed in this section. However, once a nonconforming use or structure is made conforming, it may not later be used for any nonconforming use or expanded in violation of this ordinance. Should any non-conforming structure or use of land or structure be moved for any reason for any distance, whatever, it shall hereafter conform to the regulations for the district in which it is relocated.
- B. Repairs and Modernization:** Repairs and modernization of any nonconforming structure are permitted provided that such repairs or modernization shall in no way serve to augment the nature of non-conformity. Nothing in this ordinance shall be construed so as to prevent the strengthening or restoring to a safe condition any building or part thereof declared to be unsafe by any public official charged with protecting the public safety, health and welfare pursuant to orders of such official.
- C. Damage or Destruction**
1. Should a non-conforming structure or non-conforming portion of a structure be destroyed by any means to an extent of more than 50% of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.
 2. The above requirement does not apply to single-family dwellings and accessory buildings or structures located in any historic district, designated as a local landmark, or individually listed on the North Carolina study list or the National Register of Historic Places. Structures meeting these classifications may be reconstructed as long as such reconstruction does not increase the nonconformity of the original structure.
- D. Manufactured Homes:** No Class C manufactured home shall be removed for more than 48 hours and replaced unless its lot and stand conform to the requirements of this ordinance.
- E. Nonconforming Non-Residential Structures within a Floodway or Flood Fringe:** Nonconforming structures within a Floodway or Flood Fringe: any nonconforming structure wholly or partly within a Special Flood Hazard Area may be flood-proofed according to methods and specifications set for in the publication of the Office of the Corps of Engineers, U.S. Army, entitled Flood-proofing Regulations, a copy of which shall be kept on file in the Office of the Town Clerk.

13.5.4 STANDARDS FOR NONCONFORMING ACCESSORY USES AND STRUCTURES

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 structure is made to conform to the standards for the zoning district in which it is located. No nonconforming accessory use or structure shall become or replace any terminated principal nonconforming use or structure except as permitted in Section 13.5.3.C.2 above.

13.6 NONCONFORMING MANUFACTURED HOME PARKS

Manufactured home parks existing at the time of the adoption of this ordinance shall not be allowed to expand or increase in any manner unless such expansion meets fully the requirements set forth in this ordinance.

13.7 NONCONFORMING SIGNS

A non-conforming sign is one that was established prior to effective date of this ordinance or by subsequent amendment thereto, but does not conform to the sign regulations in Section 11.

13.7.1 REGULATIONS

- A. No enlargement, extension or structural alterations of any non-conforming sign or part thereof is permitted unless in conformance with the regulations found herein. Removal of a non-conforming sign, except for normal maintenance, will require that sign to conform if it is replaced.
- B. If the non-conforming sign is damaged 50% or more of its assessed value, such signs may be reconstructed only in compliance with the regulations found herein.
- C. Nothing in this ordinance shall prevent the normal maintenance of an existing non-conforming sign.

13.7.2 DISCONTINUANCE

All non-conforming signs created as a result of the passage of this ordinance shall be allowed to remain in place in accordance with this section. Signs erected after the passage of this ordinance shall conform to the standards set forth herein.