

## ARTICLE 13 NONCONFORMING SITUATIONS

### Section 13.1 Nonconforming Uses and Buildings

#### Section 13.1 Purpose

The purpose of the Article is to avoid undue hardship by permitting the continued use of any building, structure, or property that was lawful at the time of the enactment of this Ordinance or any applicable amendment thereof even though such use, structure or property does not conform to the provisions of this Ordinance. However, this Article is also established to require that non-conforming situations be terminated under certain circumstances.

#### Section 13.2 Key Terms Defined

- A. **Nonconforming Situations** refers collectively or individually to any existing building, structure, use, lot, or sign that was lawful on the effective date of this Ordinance or any subsequent amendments and does not conform to one or more of the regulations related to that situation.
- B. **Nonconforming Lot of Record** is a lot of record (recorded in the Office of the Register of Deeds) at the effective date of this Ordinance or any subsequent amendments and does not conform to the area or lot width requirements of this Ordinance.
- C. **Nonconforming Structures/Buildings** is a lawfully existing structure or building at the time of the effective date of this Ordinance or any subsequent amendment that does not meet the one or more requirements of this Ordinance, such as, but not limited to: setbacks, height, or type of structure.
- D. **Nonconforming Use** is a lawfully existing use on a parcel of land or within a structure at the effective date of this Ordinance or any subsequent amendment that is no longer permitted.

#### Section 13.3 Continuation of Nonconforming Situations

A nonconforming situation occurs when, on the effective date of this Ordinance, an existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Unless otherwise specifically provided for in this Ordinance and subject to the restrictions and qualifications set forth in the remainder of this Division, nonconforming situations that were otherwise lawful on the effective date of this Ordinance may be continued. Whenever this Division refers to effective date of this Ordinance, the reference shall be deemed to include the effective date of any amendments to this

Ordinance, if the amendment, rather than this Ordinance as originally adopted, creates a nonconforming situation.

### **Section 13.4 Nonconforming Lots of Record**

#### **A. Single Lot of Record with Lot Area and/or Lot Width Nonconformity**

1. When an undeveloped lot has an area or width which does not conform to the dimensional requirements of the district where located, but such lot was approved and of record at the time of adoption of this Ordinance or any subsequent amendment which renders such lot nonconforming, then such lot may be used for a use permitted in the district where located, provided that the setback dimensions and other requirements, except area or width, are complied with.
2. In residential zones, only a single-family dwelling, which is conforming to permitted uses within the district the lot is located, shall be permitted on the nonconforming lot provided that the setback dimensions and other requirements, except area or width, are complied with.
3. Nothing contained herein exempts a lot from meeting the applicable provisions of the Wilson County Health Department regulations.

#### **B. Two or More Adjoining Lots of Record**

Notwithstanding the foregoing, whenever two or more adjoining lots of record are in single ownership at the time of the effective date of this Ordinance or amendment and at least one of the adjoining lots is undeveloped and such lots individually have less area or width than the minimum requirements of the district where such lots are located, said lots shall be considered combined for the purpose of and to the extent of complying with the minimum dimensional requirements.

#### **C. Reduction of a Lot of Record**

A lot of record reduced to less than the required area, width, or setback dimensions as the result of a condemnation or purchase by a local or state government agency shall become a nonconforming lot of record.

### **Section 13.5 Nonconforming Use of Land**

#### **A. Continuance of Nonconforming Use of Land**

Any nonconforming use legally existing at the time of adoption or amendment of this Ordinance may be continued so long as it remains otherwise lawful subject to conditions provided in this Section. Such nonconforming use of land shall be subject to the following conditions:

1. 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 Board of Adjustment shall consider:
  - a. Probable traffic of each use;
  - b. Parking requirements of each use;
  - c. Probable number of persons on the premises of each use at a time of peak demand;
  - d. off-site impacts of each use, such as noise, glare, dust, vibration or smoke and other impacts on surrounding properties or the public health or safety.
2. The number of dwelling units in a nonconforming residential use shall not be increased.
3. 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.
4. If any nonconforming use of land ceases (by vacancy and/or non-use) for any reason for a continuous period of more than 180 days, any subsequent use of such land shall be a conforming use in the district in which such land is located. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this subsection, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building or one space in a nonconforming mobile home park for one hundred and eighty (180) days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building or mobile home park as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, cessation of operation or occupancy of the nonconforming use for the required period shall terminate the right to maintain it thereafter.
5. The resumption of a nonconforming use of land shall not be permitted if such nonconforming use is superseded by a permitted use for any period of time.
6. No additional structure(s) not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.
7. If a non-conforming use and a conforming use, or any combination of non-conforming uses exists on one lot, then a change of use may be changed only to a conforming use, except as provided in subsection 1.above.

8. Conforming uses may be established or re-established in non-conforming buildings or structures provided that off-street parking is provided as required by this Ordinance and provided no other provision of this Ordinance for the establishment of new uses is violated.

#### B. Extension, Enlargement or Replacement of a Nonconforming Use

Except as provided for in this Division, no nonconforming use shall be extended, enlarged, or replaced.

1. Any single-family residential nonconforming use (which may be a manufactured home) may be enlarged or replaced with a similar single-family residential structure of the same size or of a larger size, so long as the enlargement or replacement does not create new nonconformity's or increase the extent of existing nonconformity's with respect to setback requirements.
2. Any other nonconforming use may be extended, enlarged, or replaced only upon the issuance of a special use permit by the Board of Adjustment. In issuing a special use permit, the Board of Adjustment may affix other reasonable and appropriate conditions such as, but not limited to, landscaping and buffering to separate dissimilar uses or to screen parking and loading areas. In its consideration of a request, the Board of Adjustment must find that, in completing the extension, enlargement, or replacement work, there is:
  - a. No increase in the total amount of lot area devoted to the nonconforming use;
  - b. No greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, or density requirements or other requirements such as parking, loading and landscaping requirements; and,
  - c. No significant adverse impact on surrounding properties or the public health or safety.
3. A nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this Ordinance, was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building unless specifically authorized in accordance with the foregoing subsection 2.
4. A nonconforming use of open land, such as: storage yards, car sales, auto repair storage. Junkyards, etc., may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., a sand pit) may be expanded to the limits of the site plan upon which the mining permit was granted if ten percent or more of the natural materials had already been removed on the effective date of this Ordinance.

5. The volume, intensity, or frequency of use of property where a nonconforming use exists may be increased and the equipment or processes used at a location where a nonconforming use exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind or use and no violations of other Sections of this Division or Article occur.

### **Section 13.6 Nonconforming Structures**

#### **A. Continuance of Nonconforming Structure**

Any nonconforming structure legally existing at the time of adoption or amendment of this Ordinance may be continued so long as it remains otherwise lawful. The continuance of such nonconforming structures shall be subject to the following conditions:

1. No nonconforming structure may be enlarged or altered in any way, which increases its dimensional deficiencies. Any enlargement of the structure shall conform to the current dimensional requirements.
2. In the event of major repair, reconstruction, or damage by fire or other causes to the extent exceeding sixty percent of its tax value at the time of such damage as established by the Zoning Administrator with the assistance of the County Building Inspector and/or Tax Assessor, reconstruction of a nonconforming structure shall be permitted only in compliance with the dimensional provisions of this Ordinance and provided repairs begin within 12 months and is completed within two years of such damage. See subsection 5. below regarding the exception of single or two-family residences.
3. In the event of major repair, reconstruction, or damage by fire or other causes to the extent causing less than sixty percent of its tax value at the time of such damage as established by the Zoning Administrator with the assistance of the County Building Inspector and/or Tax Assessor, reconstruction of a nonconforming structure shall be permitted provided repairs begin in 12 months and is completed within two years of such damage and it is constructed:
  - a. In the same manner in which it originally existed subject to compliance with the requirements of the North Carolina State Building Code; or
  - b. In compliance with the dimensional requirements.
4. 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 and with the requirements of the North Carolina State Building Code.
5. In the event that an existing and occupied nonconforming single or two-family residence is damaged by fire or other causes to the extent of sixty percent or

more of its tax value at the time of such damage, the Board of Adjustment is authorized to approve the restoration of the structure provided that repairs begin within 12 months and is completed within two-year period and provided that it comply with all other applicable provisions of the district in which it is located. If said structure is located on a nonconforming lot of record, the Board of Adjustment is authorized to approve the restoration or reconstruction of the structure provided it is rebuilt upon the same "footprint" or, in any case, does not exceed the nonconformity that existed prior to such damage.

6. When any nonconforming use of structure is discontinued (by vacancy and/or non-use) for a period exceeding 180 days, the building or structure shall not hereafter be used except in conformance with the regulations of the district where it is located.

#### B. 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 County Building Inspector or other duly authorized official.

#### C. Replacement of Nonconforming Manufactured/Mobile Homes

1. A nonconforming manufactured/mobile home on an individual lot outside of a mobile home park may be replaced (including those destroyed by fire or other causes) with a manufactured home provided that the Board of Adjustment finds that the replacement is closer to a permitted manufactured home within the district in which it is located or at least improves the appearance standards in accordance to those of the district in which it is located or, if none in said district, then those of the nearest (in location) less restrictive district.
2. A nonconforming manufactured/mobile home may be enlarged or altered externally in compliance with subsection B.1 of Section 13.5 above.
3. If the nonconforming manufactured/mobile home is located on an individual lot/tract and is abandoned, vacant, and not used for a period of more than 180 days, it cannot be continued as a nonconforming use and must be replaced with a conforming dwelling or use. The owners of said manufactured homes using them for seasonal or secondary residency must explain or confirm in writing that continued use of at least once per year will be made by the owner or immediate family.
4. Existing mobile home parks, which provide mobile home spaces having a width or area less than that herein described in this Ordinance, may continue to operate with spaces of existing width or area. Existing mobile home parks shall conform to the following replacement rules:

- a. No Class "E" mobile homes may be brought into the jurisdiction as a replacement or moved from one space to another space or location within the jurisdiction. (See "Manufactured Home, Built before July 1, 1976" definition.)
- b. No mobile home shall be replaced with a mobile home with a width less than twelve (12) feet.
- c. Installation shall be in accordance with North Carolina Department of Insurance Standards.
- d. A continuous curtain or foundation wall or vinyl, aluminum, block, brick or masonite, unpierced except for ventilation and access to crawl space, shall be installed.
- e. Attachment apparatus (hitch) shall be skirted with vinyl, block, brick, aluminum or masonite.

### **Section 13.7 Miscellaneous Nonconforming Situations**

#### **A. Nonconforming Situation Resulting From Governmental Acquisition**

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

#### **B. Nonconforming Parking Created By Change of Use**

Whenever a change of use that does not involve the enlargement of an existing structure is proposed for a lot on which the parking requirements of this Ordinance for the proposed new use can not be met to insufficient lot area, the proposed change of use shall not be regarded as an impermissible extension or enlargement of a nonconforming situation. However, the permit-issuing authority shall require that the parking requirements be satisfied to the extent possible utilizing the lot area that is available and may require that satellite parking space be obtained.

### **Section 13.8 Nonconforming Projects**

All nonconforming projects on which construction was begun at least 180 days before the effective date of this Ordinance as well as all nonconforming projects that are at least ten percent completed in terms of the total expected cost of the project on the effective date of this Ordinance may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this Section shall apply only to the particular phase under construction. In addition, as provided in NCGS 160A-385(b), neither this Ordinance nor any amendment to it shall, without the consent

of the property owner, affect any lot with respect to which a building permit has been issued pursuant to NCGS 160A-417 prior to the enactment of the Ordinance making the change so long as the building permit remains valid, unexpired, and unrevoked.

### **Section 13.9 Nonconforming Signs**

#### **A. Continuance of Nonconforming Signs**

Signs in existence on the effective date of this Ordinance which do not conform to the provisions of this Ordinance, but which were constructed, erected, affixed or maintained in compliance with all previous regulations, shall be regarded as nonconforming signs shall be allowed to continue and a decision as to the continued existence and use or removal of such signs shall be controlled as follows:

1. No nonconforming sign shall be changed to another nonconforming sign.
  2. No nonconforming sign shall have any changes made in the words or symbols used or the message displayed on the sign unless the sign is specifically designed for periodic change of message.
  3. No nonconforming sign shall be structurally altered so as to change the shape, size, type or design of the sign other than to make the sign a conforming sign.
  4. No nonconforming sign shall be re-established after the activity, business or use to which it relates has been discontinued and such sign shall be removed.
  5. No nonconforming sign shall be re-established and all remains of the sign must be removed after damage or destruction, if the estimated expense of repairs exceeds fifty percent of the estimated total value of the sign at the time of destruction, as determined by the Building Inspector. If damaged by less than fifty percent, but repairs are not made within three months of the time such damage occurred, the nonconforming sign shall not be allowed to continue and must be removed.
  6. No nonconforming sign shall be relocated unless it is brought into conformance with the requirements of this Ordinance.
  7. Normal maintenance and repair of a nonconforming sign is permitted providing the shape, size, type or design of the sign is not altered.
- B. Any nonconforming sign which is structurally altered, relocated or replaced shall immediately be brought into compliance with all the provisions of this Ordinance.
- C. Any nonconforming sign which (i) is a menace to the public safety, (ii) has been abandoned, or (iii) which has not been properly maintained, including cleaning and

painting of painted surface areas and replacement of damaged parts, shall be removed after due notice has been given by the Zoning Administrator.

### **Section 13.10 Violations of Nonconforming Sign Provisions**

The Zoning Administrator shall order the removal of any sign maintained in violation of the provisions of this Section for which removal procedures are herein prescribed, accordingly: The Zoning Administrator shall give ninety days written notice to the owner or lessee to remove the sign or to bring it into compliance with this Ordinance. If the owner or lessee fails to remove the sign within ninety days after the ninety-day written notice has been given, the Zoning Administrator or his duly authorized representative may institute penalty and/or removal proceedings according to the procedures specified in NCGS 160A-175.