

Chapter 13. 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. Many nonconformities may continue, but the provisions of this section are intended and designed 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 Nonconforming Lots

- A.** Except as provided in sections 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 the use meets all applicable yard and setback requirements for the District in which the lot is located.
- B.** 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 lot. If the combination results in the creation of a single lot that is more than one-and-a half (1½) times the minimum lot width or area required in the District, then the single lot may be divided into two (2) lots of equal width and area without being further classified as nonconforming. For the purposes of this section, "adjoining" shall be deemed to mean the sharing of one (1) or more common lot lines and access to both lots can be provided by the same street without crossing that street.
- C.** A nonconforming lot may be developed if, at the effective date of this Ordinance the lot is nonconforming, the lot is located in (i) a subdivision in which the lot was located had received preliminary plat approval; or (ii) a subdivision in which the lot was located had received final plat approval.
- D.** Such a lot may be used as a building site for a single-family residence in a district that allows single-family residential use, so long as the lot width and lot area are not more than 20 percent less than the required lot size, and provided that the Wake County Health Department approves the reduced lot area for water and sewer disposal systems if proposed to be on-site.
- E.** Where such lot has a lot area or lot width more than 20 percent less than the minimum requirements for the applicable zoning district, the lot may be used as a building site for a single-family residence in a district that allows single-family residential use provided that (i) the Wake County Health Department approves the reduced lot area for water and sewage disposal systems if proposed to be on-site, and (ii) the Land Use Review Board grants a variance from the lot area or lot width requirements if it finds that the property can be developed as proposed without any significant adverse impact on surrounding properties and the public health and safety, in addition to the other findings required for granting a variance.

13.3 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 these or such nonconformities fully and clearly meet the definition of “nonconforming use” in Chapter 19 of this Ordinance.
- B.** 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 Town Council 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 the nonconforming use is located is prohibited.
- C.** An existing nonconforming residential use may be enlarged or altered. Any such enlargement or alteration shall be in compliance with all yard requirements and other regulations of such structures as required in the specific District.
- D.** Once a nonconforming use has been changed to a conforming use, it shall not revert or be used for any nonconforming use.
- E.** If a nonconforming use is abandoned for 180 consecutive calendar days or more, the use shall not be allowed to be re-established. All new uses subsequently established shall be conforming.
- F.** No building or structure devoted to a nonconforming use shall be enlarged, extended, reconstructed, moved, or structurally altered except as provided for in Section 13.4(F) unless such building or structure is thereafter devoted to a conforming use.
- G.** Where a nonconforming use exists, the volume, intensity or frequency of the use may be increased and the equipment or processes used at the property may change, provided that these or similar changes amount only to a change in the degree of activity rather than the kind of activity.

13.4 Nonconforming Structures

- A.** A nonconforming principal structure containing a use permitted in the District may continue only in accordance with the provisions of this Chapter.
- 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 nonconformity.
- D.** If a nonconforming structure is damaged to an extent greater than 50 percent of its assessed value, it may be rebuilt only after the issuance of a permit from the Administrator. A building permit for reconstruction of such structure must be secured no later than 180 days from the date of its destruction. In the issuance of the permit, the following standards shall apply:

 - 1.** If the structure can be rebuilt on the same lot and meet all district and building type requirements, it shall be.

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 or building type, then it shall be placed on the lot in as conforming a manner as possible.
 3. A nonconforming structure shall not be rebuilt in a manner which increases its nonconformity.
 4. The reconstruction of a nonconforming non-residential structure (at the same or smaller size) shall require the installation of sufficient parking, landscaping or buffering in accordance with the provisions of this Ordinance.
- E.** If a nonconforming structure is moved on the lot upon which it is located, it shall, if possible, be moved so as to make the structure conforming. Otherwise, the moved structure shall be placed on the lot in as conforming a manner as possible.
- F.** 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 the structure in which it is located (to an extent of less than 50 percent of its assessed value) due to fire or other disaster event pursuant to the issuance of a permit by the Administrator. 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 requirements of the applicable District. An application must be filed for such building permit no later than 60 days after the structure has been destroyed or damaged, otherwise the use will not be allowed to be rebuilt. The building permit shall expire six (6) months after it is issued unless prior thereto a substantial beginning of the reconstruction shall have occurred and thereafter diligently pursued.

13.5 Nonconforming Wireless Telecommunication Towers: Towers existing at the time of the ordinance may be replaced with a taller tower and reviewed for approval by the Administrator, provided that the tower shall conform to the standards detailed in Section 3.3YY, as well as the following:

- A.** Subject to the provisions of Section 3.3YY(2), the height of the replacement tower may not exceed the height of the original tower by more than 50 feet, and the addition of up to 50 feet may occur only once.
- B.** The fall and debris radius requirement and setback requirement in Section 3.3YY(3) and Section 3.3YY(4) may be exempted provided that:
 1. a registered engineer certifies that the proposed replacement tower and debris would fall within the boundary lines of the property on which the tower is located; and
 2. this certification is reviewed and verified by a third-party engineer of the Town's choosing.
- C.** The replacement tower must be located in as close proximity to the base of the original tower as reasonably possible, but in no event more than 50 feet from the base of the original tower.
- D.** The owner of the replacement tower must provide the planning director with an affidavit stating that at least one (1) other wireless communications carrier needs a

wireless communications facility within 1,250 feet of the subject site and that such carrier has agreed to co-locate on the replacement tower.

13.6 Nonconforming Manufactured Homes/Mobile Homes & Mobile Home Parks

- A. A nonconforming manufactured home used as a principal residential structure may only be replaced in accordance with the design criteria found in Chapter 5 of this Ordinance.
- B. A manufactured home may continue to be placed or replaced within a nonconforming manufactured home subdivision on previously platted lots or previously approved spaces, as well as make any necessary improvements to the subdivision infrastructure, but shall not be permitted to expand the area or number of units contained within the boundary of the subdivision.

13.7 Nonconforming Accessory Uses and Structures

- A. A nonconforming accessory use or accessory structure may be expanded only if the expansion does not increase the nonconforming condition of the structure.
- 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 is made to conform to the standards for the District in which it is located. No nonconforming accessory use or structure shall become or replace any terminated principal nonconforming use or structure.

13.8 Nonconforming Landscaping, Screening, and Lighting

- A. If there is a change of use, or if there is an expansion to the heated square footage of an existing use by more than 25%, the lot shall fully comply with all street yard landscaping, and screening requirements.
- B. Expansions to the vehicle accommodation areas which increase the total area by more than 25% shall be required to comply with all applicable vehicle accommodation area screening and parking lot landscaping.
- C. Outdoor light fixtures installed prior to the effective date of this Ordinance are exempt from the provisions of Chapter 11, provided that no change in use, replacement, and structural alteration of outdoor light fixtures shall be made unless it conforms to the provisions of this Ordinance.

13.9 Nonconforming Street Frontages

- A. **Nonconforming Street Frontages and Site Plan Review:** In any of the three (3) situations below, projects shall be required to comply with all street improvement requirements of Chapter 17 along the fronting public streets including but not limited to: turning and storage lanes, access management, sidewalks, bike lanes, and curb and gutter. These projects shall submit site plans for review in accordance with Chapter 15:
 - 1. New developments, including new principal structures on a previously developed site;
 - 2. A change of use to the building or site that requires an expansion to the existing parking area by more than ten (10) percent of the maximum parking spaces permitted for the proposed use as determined by Section 10.3D “Motorized Vehicle Parking” or by more than ten (10) spaces, whichever is less; or

3. An expansion to the square footage of an existing non-residential or multi-family building that increases the total area by more than 25 percent.

B. Nonconforming Street Frontages and Redevelopment Site Plan Review:

In any of the two (2) situations below, projects shall be required to comply with the redevelopment site plan requirements found in Subsection C:

1. If there is a change of use to the building or site that requires an expansion to the existing parking area of no more than ten (10) percent of the maximum parking spaces permitted for the proposed use as determined by Section 10. 3D “Motorized Vehicle Parking” or ten (10) spaces, whichever is less; or
2. If there is an expansion to the square footage of an existing non-residential or multi-family building that increases the total area by no more than 25 percent.

C. Administrative Review of a Redevelopment Site Plan

1. The Planning Director may approve a redevelopment plan subject to all of the following standards:
 - a. For change of uses, the proposed use is permitted within the zoning district and for an expansion to an existing use, the existing use is permitted within the zoning district;
 - b. The proposed use will occupy existing building(s) on the site;
 - c. Any proposed expansions or additions are no more than 25 percent of the floor area of the existing building to which the expansion or addition is being made;
 - d. The proposed use or expansion does not expand existing encroachments into required setbacks, buffers, easements, rights-of-way or other similar features;
 - e. The existing structure is not a manufactured home;
 - f. A residential structure which is converted to a non-residential structure complies with all applicable Federal, State and local standards;
 - g. The applicant submits a Redevelopment Site Plan that complies with all the requirements in this section. If the Planning Director determines that a request for a change of use or expansion warrants a full TRC review in order to address community concerns or potential project impacts, he/she may require the request to go through the full site plan review process as described in Chapter 15.5 of this Ordinance.
2. Property owners shall submit a site plan signed and sealed by an engineer or landscape architect licensed in North Carolina. At a minimum, this plan shall comply with the applicable requirements in the Knightdale Unified Development Ordinance for the following:
 - a. Rights-of-way dedication to meet the applicable specifications in the Town’s Transportation Plan;
 - b. Sidewalk installation, if the sidewalk can be placed in the final location for the applicable road section, as specified in the Town’s Transportation Plan or a fee-in-lieu of the sidewalk installation if the sidewalk cannot be located in its final location;

- c. Access roads, entrance drives, and/or exit drives added and/or removed to ensure vehicular and pedestrian safety and traffic flow;
- d. ADA accessible route(s);
- e. Off-street parking location and design;
- f. Vehicle accommodation area surface;
- g. At a minimum, all portions of a building façade within 100 feet of a public or private street shall avoid long, monotonous, uninterrupted walls of 20 feet or more on any floor by utilizing wall offsets, windows, doors, stairwells, pilasters, spandrel glass, awnings or other architectural elements.
- h. Any additional, voluntary exterior building improvements proposed by the property owner shall comply with the Chapter 5 UDO requirements or be heard before the TRC if alternative exterior improvements are proposed and meet the spirit and intent of the UDO requirements;
- i. Street Trees, parking and loading area landscaping and vehicle accommodation screening and/or fencing;
- j. Screening for dumpsters, storage areas, mechanical equipment, and other similar equipment; and
- k. Lighting (parking lot, building and streets)

13.10 Nonconforming Plans

- A. Any site specific plan (including but not limited to: master plans, preliminary plats, final plats, conditional district plans, conditional use permit plans) for the development of property and/or construction of a building which has received final approval by the Town of Knightdale 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. 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 and the rules and regulations upon which the plan was approved. The property owner shall notify the Administrator assigned to approve such plan. A property owner shall be notified in writing of additional required approvals or modifications which may be necessary in order for the plan to conform to the Ordinance.
- C. 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. This section does not prohibit the exercise of any vested right established by common law, ordinance or statute.

- E.** Except as provided above, all work on any nonconforming project shall cease on the effective date of this Chapter, and all permits previously issued for work on nonconforming projects shall be revoked as of that date. Thereafter, work on nonconforming projects may begin or may be continued only pursuant to a Zoning Compliance Permit, Special Use Permit, or Sign Permit issued in accordance with this Chapter by the permit issuing authority for the type of development proposed. The permit issuing authority shall issue such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his/her position in some substantial way in reasonable reliance on the land use law as it previously existed at the time in which good faith reliance occurred and thereby would be unreasonably prejudiced if not allowed to complete his/her project as proposed. In considering whether these findings may be made, the permit issuing authority shall be guided by the following, as well as other relevant considerations:
1. All expenditures made to obtain or pursuant to a building, Zoning Compliance Permit, Sign Permit, or Special Use Permit that was validly issued shall be considered as evidence of reasonable reliance. Furthermore, a person shall be considered to have acted in good faith if his/her action precedes a setting of a public hearing at which the change in the land use law was proposed.
 2. To the extent that expenditures are recoverable with a reasonable effort, a party shall not be considered prejudiced by having made the expenditures.
 3. To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a party shall not be considered prejudiced by having made the expenditures.
 4. An expenditure shall be considered substantial if it is significant both in dollar amount and in terms of the total estimated costs of the proposed project.

13.11 Appeals And Modifications

- A.** The Town Council 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 Town Council may only grant a change in 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 (ii) that the proposed change will have a less harmful effect than the existing situation on the properties surrounding the lot(s) in question, and
 2. 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 Town Council 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 in Chapter 18.

- D.** The Town Council in granting a change in nonconformity pursuant to this section may prescribe appropriate conditions and safeguards in conformity with this Ordinance in order to conform with this Section. 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 in Chapter 18.