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# Chapter 13. Nonconformities

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## 13.1. Purpose, Intent, and Applicability

- A. **Purpose and Intent.** 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 Ordinance (or any subsequent amendment) that do not conform to this Ordinance. Many nonconformities may continue, but the provisions of this Chapter 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.
- B. **Applicability.** 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 Chapter.

## 13.2. Nonconforming Lots

- A. Except as provided in Section 13.3(B), a nonconforming vacant lot may be developed for any of the uses permitted by these regulations in the District in which it is located (Section 3.1), provided that the use meets all applicable yard and setback requirements for the District in which the lot is located.
- B. A nonconforming lot may be developed if, at the effective date of this Ordinance, the lot is located in a subdivision that at a minimum had received preliminary plat approval prior to the adoption of this Ordinance.

### 13.3. Nonconforming Principal Structures

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- A. A nonconforming principal structure containing a use permitted in the District is allowed to remain subject to the following provisions:
1. Normal repair and maintenance of nonconforming principal structures is permitted.
  2. Nonconforming principal structures may be enlarged or altered; however, the enlargement or alteration must not increase the structure's nonconformity.
  3. If a nonconforming principal structure is damaged to an extent greater than fifty (50) percent of its assessed value, it may be rebuilt only after the issuance of a building permit from the Land Use Administrator. A building permit for reconstruction of such structure must be secured no later than sixty (60) days after the date the structure sustained the damage. The building permit shall expire six (6) months after issuance unless substantial progress shall have occurred and thereafter diligently pursued. In the issuance of the building permit, the following standards shall apply:
    - a. **All Uses.**
      - i. If the principal structure can be reconstructed on the same lot and meet all District and building type requirements, it shall be.
      - ii. If the principal structure cannot be reconstructed 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.
      - iii. The reconstructed nonconforming principal structure shall not be rebuilt in a manner which increases its nonconformity.
    - b. **Non-Residential Uses.** In all circumstances, the reconstruction of a nonconforming non-residential principal structure (at the same or smaller size) shall be required to meet the standards of Chapters 6 and 7 of this Ordinance.
- B. If a nonconforming structure is moved on the lot upon which it is located, it shall be placed on the lot in as conforming a manner as possible.
- C. 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 fifty [50] percent of its assessed value) due to fire or other disaster event pursuant to the issuance of a permit by the Land Use 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.

## 13.4. Nonconforming Principal Uses

Nonconforming principal uses of land or structures may continue only in accordance with the following provisions:

### A. All Uses.

1. Normal structural repair and maintenance may be performed to allow the continuation of a nonconforming principal use.
2. A nonconforming principal use may be re-established within a structure damaged to an extent of more than fifty (50) percent of its assessed value, subject to the issuance of a building permit by the Land Use Administrator. In the case of a non-conforming structure, refer to Section 13.5. An application must be filed for such building permit no later than sixty (60) days after the date the structure sustained the damage, otherwise, the use shall not be re-established. The building permit shall expire six (6) months after issuance unless substantial progress shall have occurred and thereafter diligently pursued.
3. Where a nonconforming use exists, the intensity of the use may be altered 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 or change of use (Section 3.1(C)).

### B. Non-Residential Uses.

1. A nonconforming non-residential use may only be expanded, changed or enlarged if the expansion, change or enlargement can be accomplished within the existing structure, and the Land Use Administrator determines that the interior expansion, change or enlargement will not have a negative impact upon surrounding conforming uses.
2. A nonconforming non-residential use shall not be enlarged by additions to the structure in which the nonconforming non-residential use is located (either attached or detached).
3. Any occupation of additional lands beyond the boundaries of the lot on which the nonconforming non-residential use is located is prohibited.

C. **Residential Uses.** An existing nonconforming residential use may be enlarged or altered as long as the enlargement or alteration complies with all yard requirements and other applicable District regulations.

D. Once a nonconforming principal use of land or a structure has been changed to a conforming use, a nonconforming use shall not be re-established upon said land or within said structure.

E. If a nonconforming principal use of land or a structure has been terminated for one-hundred eighty (180) consecutive calendar days or more, the use shall not be allowed to be re-established. All new uses subsequently established on said land or within said structure shall be conforming.

### 13.5. Nonconforming Accessory Uses and Structures

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- 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 abandoned, damaged, destroyed or otherwise terminated unless such accessory use or accessory structure is made to conform to the accessory standards for the District in which it is located.
- C. A nonconforming accessory use or structure shall not become or replace any abandoned, damaged, destroyed, or otherwise terminated principal nonconforming use or structure.

### 13.6. Nonconforming Wireless Telecommunication Towers

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Towers existing at the time this Ordinance was adopted may be reviewed for approval by the Land Use Administrator and replaced with a taller tower, provided that the tower shall conform to the standards detailed in Section 5.9(D), as well as the following:

- A. Subject to the provisions of Section 5.9(D)(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 fifty (50) feet may occur only once.
- B. The fall and debris radius requirement and setback requirement in Section 5.9(D)(3) and Section 5.9(D)(4) may be exempted provided that:
  - 1. A registered professional 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 registered professional 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 fifty (50) feet from the base of the original tower.
- D. The owner of the replacement tower must provide the Land Use Administrator with an affidavit stating that at least one (1) other wireless communications carrier needs a wireless communications facility within one-thousand two-hundred fifty (1,250) feet of the subject site and that such carrier has agreed to co-locate on the replacement tower.

### 13.7. Nonconforming Manufactured Homes

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- A. A nonconforming manufactured home used as a principal residential structure may only be replaced in accordance with the criteria found in Sections 5.2(E) and 6.5 of this Ordinance.
- B. A manufactured home may continue to be placed or replaced within a nonconforming manufactured home neighborhood or mobile home park on previously platted lots or previously approved spaces, as well as make any necessary improvements to the neighborhood or park infrastructure, but shall not be permitted to expand the area or number of units contained within the boundary of the neighborhood or park.

### 13.8. Nonconforming Landscaping, Screening, and Lighting

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- 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 twenty-five (25) percent, the lot shall fully comply with all applicable street yard landscaping and screening requirements of Chapter 7.
- B. Expansions to the vehicle accommodation areas which increase the total area by more than twenty-five (25) percent shall be required to comply with all applicable vehicle accommodation area screening and parking lot landscaping requirements of Chapter 7.
- C. Changes in the use of a nonconforming light fixture, replacement, or structural alterations of outdoor light fixtures shall require that the fixture conform to the applicable requirements of Chapter 7.

### 13.9. Nonconforming Signs

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- A. The ordinary maintenance or repair of an on-site nonconforming sign is allowed. The copy of an on-site nonconforming sign may be altered, replaced, or modified if the following two (2) conditions are met:
  - 1. There is no change in the supporting structural components of the said on-site non-conforming sign; and
  - 2. Only the existing on-site tenants operating a business on the related site at the time of the original sign construction, and whose name already appears on the non-conforming sign are permitted to locate copy on the non-conforming sign.
  - 3. New tenants may be permitted to locate on the related site; however, if they wish to add their tenant name to the existing non-conforming sign, the sign shall be immediately brought into compliance with all the requirements of Chapter 8. Under no circumstance, however, shall the nonconforming condition of any nonconforming sign be increased. Any other alteration, replacement, conversion, or change will require the entire sign to be immediately brought into compliance with all the requirements of Chapter 8.
- B. Nonconforming signs which are destroyed or damaged by fifty (50) percent or more of their value shall not be rebuilt or repaired except in conformance with the requirements of Chapter 8.
- C. When the establishment to which a sign is related ceases or is vacated, the sign shall be classified as 'obsolete', and such sign, including all of its attendant supports, frames, and hardware, shall be removed within 180 days of the cessation or vacating of the use or establishment unless such sign is used by a new use or establishment on the premises in accordance with all of the other requirements of Chapter 8.
- D. If there is an expansion of the heated square footage of an existing business, or a change in use to an existing building (except multi-tenant buildings), and there were one (1) or more on-premise nonconforming signs which advertised the former or current business or use, any new signs and all new sign faces for the new use or business must meet all the requirements of Chapter 8.
- E. Residential neighborhood identification signs which exist prior to the adoption of this Ordinance may be replaced with new signs in the same location as the existing signs as long as the sign will comply with the sign area and height limitations of Chapter 8.

## 13.10. Nonconforming Street Frontages

- A. **Nonconforming Street Frontages and Site Plan Review.** In any of the following situations, projects shall submit site plans for review in accordance with Chapter 11, and be required to comply with all street improvement requirements of Chapter 10 along the fronting public streets, including but not limited to; turning and storage lanes, access management, sidewalks, bike lanes, and curb and gutter:
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 7.1 (G)(2), 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 twenty-five (25) percent.
- B. **Nonconforming Street Frontages and Redevelopment Site Plan Review.** In any of the following situations, 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 7.1(G)(2), 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 twenty-five (25) percent.
- C. **Administrative Review of a Redevelopment Site Plan.**
1. The Land Use Administrator may approve a redevelopment site 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 twenty-five (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; and
    - g. The applicant submits a redevelopment site plan that complies with all the requirements in this section. If the Land Use Administrator determines that a request for a change of use or expansion warrants a full DRC review in order to address community concerns or potential project impacts, he/she may require the request to go through the full site development plan review process as described in Section 12.2(D)(5).

2. Property owners shall submit a site plan signed and sealed by a professional engineer or landscape architect licensed in North Carolina. At a minimum, this plan shall comply with the applicable requirements of this Ordinance for the following.
  - a. Rights-of-way dedication to meet the applicable specifications in the Town's Comprehensive 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 Comprehensive 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 requirements of Chapter 6 or be heard before the DRC if alternative exterior improvements are proposed and meet the spirit and intent of said 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).

### **13.11. Nonconforming Plans (Approved Prior to the Adoption of this Ordinance)**

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- A. Any site-specific plan, including but not limited to: master plans, preliminary plats, final plats, conditional district plans, planned unit developments, and site plans, for the development of property and/or construction of a building which has received 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 rules, regulations, and conditions that were in effect at the time of approval, so long as a vested right established by common law, ordinance or statute is maintained (Section 12.2(F)(4)).