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NON-CONFORMING SITUATIONS

Section 11.1 General

- A. Nonconformities as defined in this chapter are declared to be incompatible with permitted uses in the districts established by this code. It is the intent of this Code to allow nonconformities to continue until they are removed, but not to encourage their survival.
- B. Any parcel of land, use of land, easement, building or structure lawfully existing on the date of any text amendment in this code, or on the date of a zoning map amendment that does not conform to the use or dimensional requirements of the zoning district in which it is located may be continued and maintained in accordance with the provisions of this chapter and other applicable provisions of this Code.
- C. A nonconformity shall not be changed to any other nonconformity unless the Board of Adjustment finds that the new proposed nonconformity is more in character with the uses and development patterns in the zoning district in which it is located. In approving such a request, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the purpose of this Code.
- D. A nonconformity shall only be extended, enlarged, or intensified in conformity with this chapter.

Section 11.2 Non-Conforming Lots

Vacant lots in general. Vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds for Union County, which fail to comply with the minimum area or other dimensional requirements of the zoning districts in which they are located may be used for any of the uses permitted in the zoning district in which it is located, provided that:

- A. Where the lot area is not more than 25 percent below the minimum specified in this code, and other dimensional requirements are otherwise complied with, the Zoning Administrator is authorized to issue a certificate of zoning compliance.
- B. Where the lot area is more than 25 percent below the minimum specified in this ordinance, or other dimensional requirements cannot be met, the Board of Adjustment may, in its discretion, approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.

Recombination of nonconforming vacant lots. If two or more adjoining lots with continuous frontage are in a single ownership at any time after the adoption or amendment of this code and such lots individually are too small to meet the dimensional requirements of the district in which they are located, such groups of lots shall be considered as a single lot or several lots of minimum permitted size and the lot or lots in one ownership shall be subject to the requirements of this Code.

Nonconforming occupied lots. Nonconforming lots occupied by buildings or structures that fail to comply with the dimensional requirements for the district in which they are located may continue to be used, provided the specific nonconformity is not increased. The minimum dimensional requirements of this Code shall not be construed as prohibiting the conversion of an existing building which does not meet the minimum yard requirements to another permitted use, so long as no further encroachment is made into the existing yards.

Nonconforming single-family lots. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Code, a single-family dwelling and customary accessory buildings may be erected on any single lot of record after the effective date of this Code provided that all applicable setback requirements of the zoning district are met.

Section 11.3 Non-Conforming Uses

A legal nonconforming use is a use existing legally at the time of the passage of this Code, or the time of annexation into the Town's jurisdiction, which does not by reason of use conform to the regulations of the district in which it is located. A use established after the passage of this Code which does not conform to regulations of the district in which it is located shall be considered an illegal nonconforming use and is a violation of this code. Legal nonconforming uses of land or structures may continue only in accordance with all the following provisions.

- A. A nonconforming use or characteristic of use shall not be expanded except in conformity with this chapter, provided however, that any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Code, but no such use shall be extended to occupy any land outside such building. Expansion shall include an intensification of use, a physical expansion that results in increased capacity or activity associated with the use, an extension of the hours of operation or number of days of activity and any similar change in activity or location. A nonconforming use of land outside a building shall not be extended, enlarged, or intensified on additional land after the effective date of this Code.
- B. A nonconforming use shall not be moved from one location on a site to another location on the same site unless the lot owner can demonstrate to the satisfaction of the Zoning Administrator that the relocation of the use will not increase the impacts of such use on the public, will not adversely affect adjacent lots, and will not have the effect of making the nonconformity more permanent.

- C. A nonconforming use shall not be changed to any other use unless the new use conforms to the standards of the zoning district in which it is located. Once a nonconforming use is changed to a conforming use, a nonconforming use shall not be re-established.
- D. A nonconforming use or characteristic of use shall not be reestablished after vacancy, abandonment, or discontinuance for any period of six consecutive months.
- E. No structural changes shall be made in any structure integral to, and occupied by, a nonconforming use except as follows:
 - 1. Structural changes ordered by an authorized official in order to ensure the safety of the structure shall be permitted.
 - 2. Maintenance and repairs to keep a structure in sound condition shall be permitted.
 - 3. Structural changes necessary to convert the nonconforming use to a conforming use shall be permitted.
 - 4. An existing nonconforming residential structure may be enlarged or altered provided that no additional dwelling units result. Any such enlargement or alterations shall be in compliance with all dimensional requirements of the district and/or use.
 - 5. The structure and its accompanying use may be moved to another location on the lot so long as the structure meets all applicable requirements of the district.
 - 6. Any nonconforming use may be extended throughout any parts of a structure that were manifestly arranged or designed for the use at the time of adoption or amendment of this code, but no such use shall be extended to occupy any land outside such structure.
 - 7. Presumption of Discontinuance.** A nonconforming use shall be presumed discontinued when:
 - a. The owner has indicated, in writing or by a public statement, intent to abandon the use;
 - b. A conforming use has replaced the prior nonconforming use;
 - c. The structure containing the nonconforming use has been removed;
 - d. The owner has physically changed the structure or its permanent equipment in such a way as to clearly indicate a change resulting in something other than the nonconforming use;
 - e. The property and/or structure has been vacant for 6 months as determined by the Zoning Administrator; or\

- f. The use has been completely inactive for 6 months as determined by the Zoning Administrator.

8. Overcoming the Presumption of Abandonment. A nonconforming use contained in a structure, based solely on the length of time the use of a structure has remained vacant or inactive, may be rebutted and overcome upon a showing, to the satisfaction of the Zoning Administrator, that during such period the owner of the land has:

- a. Been maintaining the land and structure in accordance with the North Carolina State Building Code; and
- b. Either:
 - i. Been actively and continuously marketing the land or structure for sale or lease or has been making necessary improvements in order to continue the use.
 - ii. Been operating a seasonal business on the land and/or in the structure for a similar period of time each year since the use lawfully came into existence.

Section 11.4 Non-Conforming Structures, Except Signs.

A legal nonconforming structure is a structure, including a building, existing legally at the time of the passage of this Code, or the time of annexation into the Town's jurisdiction, which does not by reason of design or dimensions conform to the regulations of the district in which it is situated. A structure established after the passage of this Code which does not conform to regulations of the district in which it is situated shall be considered an illegal nonconforming structure and is a violation of this Code. Legal nonconforming structures, excluding signs, may continue only in accordance with all the following provisions.

- A. On any building devoted in whole or in part to any nonconforming use, work may be done on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing provided that the content of the building as it existed at the time of passage or amendment of this Code shall not be increased. Nothing in this Code shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
- B. Structural changes necessary to convert the nonconforming use to a conforming use shall be permitted.
- C. A nonconforming structure shall not be moved to another location unless it thereafter conforms to the standards of the zoning district in which it is located.

- D. A nonconforming structure shall not be rebuilt, altered, or repaired except in conformity with this Code after sustaining damage or necessitating repair exceeding 60 percent of the replacement cost of the structure at the time of damage or wear, provided that any permitted reconstruction shall begin within six months from the time of damage or notice of wear and shall be completed within 12 months after the issuance of a building permit.
- E. A nonconforming structure shall not be demolished and rebuilt as a nonconforming structure.

Section 11.5 Non-Conforming Signs

A legal nonconforming sign is a sign existing legally at the time of the passage of this Code, or the time of annexation into the Town's jurisdiction, which does not by reason of location, type, design or dimensions conform to the regulations of the district in which it is located. A sign erected or created after the passage of this Code which does not conform to the regulations of the district in which it is situated shall be considered an illegal nonconforming sign and is a violation of this Code.

Nothing in this Code shall prevent the normal maintenance of an existing non-conforming sign. However, a non-conforming sign shall not be:

- A. Changed to another type or shape of non-conforming sign; provided, however, the copy, content, or message of the sign may be changed so long as the shape or size of the sign is not altered.
- B. Structurally altered, except for normal maintenance.
- C. Physically expanded, enlarged, or extended in any manner.
- D. Reestablished after discontinuance for 180 days.
- E. Reestablished after the sign is removed, except for normal maintenance.
- F. Reestablished after damage or destruction where the estimated expense of reconstruction exceeds 60% of the appraised replacement cost of the sign in its entirety.

Section 11.6 Non-Conforming Accessory Uses and Structures

No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, discontinuance, damage, or destruction unless such accessory use or accessory structure thereafter is made to conform to the standards for the zoning district in which it is located.

Section 11.7 Non-Conforming Manufactured Home Parks

Nonconforming manufactured home parks may not be expanded or increased in size. This requirement shall include adding spaces to the park.

Section 11.8 Nonconforming Features

A legal nonconforming feature is a physical characteristic existing legally at the time of the passage of this Code, or the time of annexation into the Town's jurisdiction, which does not by reason of design or dimension conform to the regulations of the district in which it is situated. Nonconforming features include, but are not limited to, physical characteristics of development that exceed allowable maximum standards (e.g. built upon area, structure height, etc.), and those that lack or fall short of required minimum standards (e.g. off-street parking, landscaping and buffering, lighting standards, etc.). A feature added or changed after the passage of this Code which does not conform to regulations of the district in which it is situated shall be considered an illegal nonconforming feature and is a violation of this Code. Legal nonconforming features may be continued subject to the following limitations.

- A. No action shall be taken which increases the degree or extent of the nonconformity. Any enlargement, extension, structural alteration, parking changes, and other changes to lot design and access shall conform to all current requirements of this chapter.
- B. For development existing (or for which a vested right had been established) before the effective date of current regulations, nonconforming features created by a change in regulations may continue to exist, and structures with such nonconforming features may be reconstructed if demolished or destroyed.

Section 11.9 Temporary Non-Conformances

An administrative permit may be issued by the Zoning Administrator for an appropriate period of time not to exceed 12-month increments for nonconforming buildings, structures or uses incidental to building construction or land development or deemed to be generally beneficial, provided that the owner of such temporary nonconforming use agrees to remove the temporary nonconforming use upon expiration of the permit.

Section 11.10 Changes of Tenancy or Ownership

There may be a change in tenancy or ownership of an existing nonconforming use or structure provided there is no change in the nature or character of such nonconforming use or structure except as provided herein and all other applicable requirements of this Code are met (e.g., parking, screening, landscaping, etc.).