

## Chapter 3. Nonconformities

### 155.301. Purpose.

This Title places restrictions on the use and development of land by establishing minimum standards. In many instances, land and improvements were developed or proposals for the use of land were initiated prior to the adoption of this Title, or one (1) or more of the previous development ordinances which this Title supercedes. These uses may not meet the minimum standards contained in this Title because they were developed under no specific standards or under standards which were less restrictive. The Board of Commissioners recognizes that the strict application of these standards to those uses may create certain hardships for the property owner. The Board also recognizes that these nonconformities may be allowed to continue in use in accordance with the spirit of this Title, even though not meeting the ordinance standards. Therefore, the uses or situations described below are accorded a nonconforming status with all the specific privileges and limitations set forth to govern their existence. Many nonconformities may continue, but the provisions of this Chapter are designed to curtail substantial investment in nonconformities, and to bring about their eventual improvement or elimination in order to preserve the integrity of this Chapter and the character of the town. It is the intent of this Chapter to allow the continuation of any nonconformity and the repair and maintenance of such nonconformities, but to require that any expansion, improvement, or alteration to such situations obtain a variance to determine whether it will substantially injure the value, use and enjoyment of neighboring properties according to § 155.208 and § 155.403. ('72 Code, § 1501) (Ord. 477, passed 2-8-88; Am. Ord. 872, passed 8-8-94). [formerly known as § 153.220]



### 155.302. General Provisions.

#### 155.302.1. Nonconformities Defined

A nonconformity shall be any use, lot, improvement, or structure that, as a result of adoption of this Title or further amendments, or a pre-existing condition, does not meet the current standards of this Title.

- A. **NONCONFORMING USE.** A nonconforming use shall be any land use or type of residential use that was legally established but has become a prohibited use in the district in which it exists.
- B. **NONCONFORMING LOT.** A nonconforming lot shall be any legally established parcel that does not conform to the current area or dimensional requirements of the zoning district in which it is located.
- C. **NONCONFORMING IMPROVEMENT OR STRUCTURE.** Except in the HUC District, a nonconforming improvement or structure shall be any legally established improvement, building or structure that fails to meet current standards for setback, height, or similar factors.
- D. **MINOR NONCONFORMITIES DUE TO OUTDATED ZONING CLASSIFICATIONS.** Certain parcels of land that were developed under a zoning designation that is no longer available may have conditions legally established through an earlier zoning approval process which would be considered nonconformities under this Title. Those provisions may be eligible for relaxed standards of transition as provided at § 155.401.1.1. which lists certain exemptions to limit the extent of nonconformities on those specific parcels at the time they undergo a further zoning action.

**155.302.2. Continuation of Nonconformities**

Legal nonconformities may continue subject to the limitations of this Chapter. Continuation, reconstruction, alteration, and/or expansion of such nonconformities shall be subject to the provisions of this Chapter.

**155.302.3. Maintenance and Repair**

Nothing in this Chapter shall prohibit the ordinary maintenance of a nonconformity, including but not limited to repairs required by the Building Code official, subject to the value limits as further outlined in this Chapter. Maintenance and repairs shall be subject to issuance of permits as required by the appropriate building codes in effect at the time of permit issuance.

**155.303. Nonconforming Lots.**

A nonconforming lot is a lot which does not meet the minimum dimensional requirements for width, area, front, side or rear yard, height or unobstructed open space, for the district in which it is located, but was recorded by plat or description in the office of the Register of Deeds of Mecklenburg County prior to the adoption of this Title or any subsequent amendment. Such a lot can either be vacant or contain a structure. A nonconforming lot may be used for any of the uses permitted by this Title in the district in which it is located, or any structure on this type of lot may be improved or expanded in accordance with the following standards.

- A. The minimum requirements for front, side and rear yards, heights of structures and unobstructed open space for the district must be met.
- B. The lot in question does not adjoin a lot which could be combined with it to make it conforming as provided for in § 155.601. ('72 Code, § 1502) (Ord. 477, passed 2-8-88; Am. Ord. 872, passed 8-8-94) [formerly known as § 153.221]

**155.304. Nonconforming Structures.**

A nonconforming structure is any structure that existed prior to the adoption of this Title, or the effective date of any subsequent amendment, which does not comply with the minimum requirements of this Title in the district in which it is located. A nonconforming structure devoted to a use permitted in the zoning district in which it is located may continue only in accordance with the following limitations.

- A. Normal repair and maintenance may be performed to allow the nonconforming structures to maintain a safe and sound condition.
- B. Except as provided in §155.304.C. and D. immediately below, a nonconforming structure shall not undergo a change of use, renovation or expansion.
- C. A nonconforming structure may undergo a change of use or renovation without having to bring the structure into conformity with the requirements of these regulations provided that:
  - 1. The change in use or renovation does not increase the floor area of the structure; and
  - 2. The number of parking spaces provided for the use and the standards for landscaping and buffering are in conformity with the requirements of these regulations.
- D. A nonconforming structure may be expanded, without bringing the nonconforming structure into conformity with these regulations, only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place are brought into conformity with the requirements of these regulations.
- E. A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning district in which it is located.
- F. An existing manufactured home as a principal residential building on an individual lot or located in a nonconforming manufactured housing park or subdivision in operation at the time of the adoption of these regulations may be replaced with another manufactured home provided the number of manufactured home units may not be increased beyond the number available before replacement and the replacing manufactured home must not create nonconforming yards, separation distances, or increase existing nonconforming yards or separation distances. Any replacement manufactured home not within the R-MH

district shall comply with the lot development and design criteria as outline in 155.605.1.A.4. ('72 Code, § 1503) (Ord. 477, passed 2-8-88; Am. Ord. 872, passed 8-8-94; Am. Ord. 2083, passed 5-11-15) [formerly known as §153.222]

**155.305. Nonconforming Use of Open Land.**

A nonconforming use of open land is an open use on a lot, when the only buildings are incidental and accessory to the principal open use which was in existence prior to the adoption of this Title and which would not be permitted by this Title in the district in which it is located. Uses of open land may include, but are not limited to, storage yards, used car lots, auto wrecking, salvage yards, golf driving ranges, and miniature golf courses. A legally established nonconforming use of open land may be continued but is subject to the following limitations.

- A. When a nonconforming use of open land has been changed to a conforming use, it may not later be used for any nonconforming use.
- B. A nonconforming use of open land may only be changed to a conforming use.
- C. A nonconforming use of open land that is discontinued for more than one (1) year may not be re-established, and all subsequent uses of the site must be in conformance with the particular district regulations. Any vacancy or non-use of the land regardless of the intent of the owner or tenant will be considered discontinuance for the purposes of this requirement.
- D. A nonconforming use of open land may not be enlarged to cover more land that it occupied when it became nonconforming. The cost of any repairs or improvements to a nonconforming use of open land shall not exceed forty percent (40%) of the then-current County tax assessed value of the land. Before any repairs or improvement activity commences on the site of a nonconforming use of open land a list of all the repairs or improvements proposed to be completed, along with cost estimates for each activity, shall be submitted to the Zoning Administrator for a written determination that the proposed repairs or improvements comply with the requirements of this Chapter. ('72 Code, § 1504) (Ord. 477, passed 2-8-88) Penalty, see §153.999 [formerly known as § 153.223]

**155.306. Nonconforming Use of Structures.**

A nonconforming use of a structure is a use in a structure existing prior to the adoption of this Title which would not be permitted by this Title in the district in which it is located. This type of use may be continued subject to the following limitations.

- A. A nonconforming use of a structure may be changed to another nonconforming use of the same classification or of a higher classification or to a conforming use. The determination of the classification of the use is based on the district in which the use would be allowed by right under this Title. The change from one nonconforming use to a different nonconforming use must not generate any more truck or automobile traffic, noise, vibration, smoke, dust, or fumes than the original nonconforming use.
- B. Once a nonconforming use of a structure has been changed to a conforming use, it will not be allowed to return to any nonconforming use.
- C. Maintenance and repairs necessary to keep a structure which houses a nonconforming use in safe and sound condition are permitted. No structural alterations are allowed to any structure containing a nonconforming use except for those required by an order from the office or agent authorized by the Board of Commissioners to issue building permits to ensure safety of the structure, and where the cost of such repairs do not exceed forty percent (40%) of the then-current County tax assessed value of the structure. Before any construction activity commences or any building permit is issued, a list of all proposed work, along with cost estimates for each activity, shall be submitted to the Zoning Administrator for written determination that it complies with the requirements of this Chapter.
- D. A nonconforming use of a structure may be enlarged or extended only into portions of the structure which existed at the time that the use became nonconforming and which were designed or arranged to accommodate the use. No structural alterations are allowed to any structure containing a nonconforming use. The cost of such renovations to a nonconforming use of a structure shall not exceed forty percent (40%) of the then current County tax assessed value of the structure. Before any construction activity commences or any building permit is issued, a list of all proposed work, along with cost estimates for each activity, shall be submitted to the Zoning Administrator for written determination that it complies with the

requirements of this Chapter. Existing nonconforming residential uses in a business or industrial district may be enlarged or extended if no additional dwelling units result from the enlargement or extension. (Ord. No. 1418, passed 2-14-05)

- E. A nonconforming use of a structure that is discontinued for more than one year may not be re-established, and all subsequent uses of the structure must be in conformance with the particular district regulations. Any vacancy or non-use of any portion of the structure housing the nonconforming use regardless of the intent of the owner or tenant will be discontinuation for the purpose of this Chapter. ('72 Code, § 1505) (Ord. 477, passed 2-8-88; Am. Ord. 875, passed 5-9-94) Penalty, see § 153.999 [formerly known as § 153.224]

**155.307. Reconstruction of Damaged Structures.**

- A. When a structure on a nonconforming lot is damaged by fire, flood, wind, or act of God, or condemnation proceedings, the structure may be repaired and restored to its original dimensions and condition as long as a permit authorizing the reconstruction is issued within one (1) year of the occurrence of the damage, and the reconstruction work has received a Certification of Completion and/or Occupancy, as appropriate, within eighteen (18) months of the damage. ('72 Code, § 1506) (Ord. 477, passed 2-8-88) [formerly known as § 153.225]
- B. When a structure containing a nonconforming use and not also on a nonconforming lot or being a nonconforming structure, is damaged by fire, flood, wind, or act of God, the structure may be repaired and restored to its original dimensions and condition as long as a permit authorizing the reconstruction is issued within one (1) year of the occurrence of the damage, and the reconstruction work has received a Certificate of Completion and/or Occupancy, as appropriate, within eighteen (18) months of the damage.
- C. When a nonconforming structure is damaged by fire, flood, wind, or act of God, the structure may be repaired and restored only to current dimensional limits of the zoning district in which it is located as long as a permit authorizing the reconstruction is issued within one (1) year of the occurrence of the damage, and the reconstruction work has received a Certificate of Completion and/or Occupancy, as appropriate, within eighteen (18) months of the damage.

**155.308. Nonconforming Signs.**

A nonconforming sign is one which existed prior to the adoption of this Title but which does not meet the standards for signs for the use or the district in which it is located. A nonconforming sign may be allowed to continue subject to the following limitations.

- A. Nonconforming signs made of paper, cloth, or other nondurable materials or freestanding signs not attached to a building or to the ground must be removed within six (6) months of the adoption of this Title.
- B. A nonconforming sign will not be replaced with another nonconforming sign. However, the replacement of paper, vinyl, film or similar lightweight material poster panels, painted boards, or other demountable materials on nonconforming signs is allowed.
- C. Minor repairs and maintenance of a nonconforming sign, such as repainting, electrical repairs, and neon tubing repairs will be permitted. However, no structural repairs or changes in the size, shape, height, or type or intensity of illumination of a sign will be permitted, except to make the sign comply with the requirements of these regulations.
- D. New signs related to legally established nonconforming uses may be erected, provided they comply with the sign regulations applying to the use in the most restricted district in which the use is permitted. ('72 Code, § 1507) (Ord. 477, passed 2-8-88) Penalty, see § 153.999 [formerly known as § 153.226]

**155.309. Changes in Zoning.**

Any nonconformance created by a change in a zoning classification or district boundary or by a change in the regulations in this Title will be regulated by the provisions of this Chapter. ('72 Code, § 1508) (Ord. 477, passed 2-8-88) [formerly known as § 153.227]