

ARTICLE IX NONCONFORMITIES

§200A-262. General

The purpose of this Article is to establish regulations which govern *uses, structures, lots* and other circumstances which came into being lawfully, but that do not conform to one or more requirements of this Chapter. Such nonconformities could have been created by the adoption of this Chapter, prior adoption of other ordinances carried forth in this Chapter, or change in the classification of property or change in the text of this Chapter. Any *nonconforming use, structure or lot* which lawfully existed as of the effective date of this Chapter and that remains *nonconforming* may be continued only in accordance with the terms of this Article. Any *use, structure or lot* which has become *nonconforming* as a result of the adoption of this Chapter or any subsequent amendment to the text of this Chapter or Official Zoning Map, may be continued or maintained only in accordance with the terms of this Article. As used in this Article the term, "effective date of this Chapter, or any amendment thereto," refers to the date of the Chapter/Ordinance which first rendered a *use, structure or lot nonconforming*.

§200A-263. Nonconforming Lots

- A. Improvement, Alteration, Expansion or Erection of a Structure on a Nonconforming Lot. Any improvement, alteration, expansion or erection of a *structure* on a *nonconforming lot* shall comply with all other minimum requirements of this Chapter for the *structure/use* or a *variance* from these requirements must be obtained.
- B. Maintenance, Required Alteration or Remodeling of a Structure on a Nonconforming Lot. Maintenance, alteration or remodeling of *structures*, as required by any public law and so ordered by a public officer in authority, shall be permitted. Routine maintenance shall be permitted where no expansion of nonconformity occurs as a result of the maintenance.
- C. Combining and Recombining Lots. Any *nonconforming lot* which adjoins one or more other *lots* in the same ownership should be combined or recombined as possible to form a conforming *lot* or *lots*.
- D. Water Supply Watershed Requirements. A *nonconforming lot* shall not be subject to the development restrictions of Article VIII Subpart B. (Water Supply Watershed Protection) subparts related thereto where developed for single-family residential purposes.

§200A-264. Nonconforming Structures

- A. Improvement, Alteration or Expansion of a Structure. A legally established *nonconforming structure* shall be permitted provided that the *nonconforming structure* shall not be improved, altered or expanded except to meet safety requirements or conform to the requirements of this Chapter. Where the improvement or expansion is to a residential *structure*, such improvement or expansion may occur provided that no additional *dwelling units* result, and that the improvement or expansion complies with the requirements for residential *structures* of the applicable district.

- B. Maintenance, Alteration or Remodeling of a Structure. Maintenance, alteration or remodeling of a *structure*, as required by any public law and so ordered by a public officer in authority, shall be permitted. Routine maintenance shall be permitted where no expansion of the nonconformity occurs as a result of the maintenance.
- C. Repair/Reconstruction of Damaged Structure (Other than Signs). Where a *nonconforming structure* has been damaged by fire, wind, flood or other natural causes, it may be repaired/reconstructed provided that repairs/reconstruction are:
- (1) Initiated within six (6) months and completed within one (1) year of the damage (An extension (for a period of up to 12 months) may be granted by the *Zoning Administrator* provided he/she determines that the *structure* does not pose a public health and safety risk).
 - (2) Not resulting in any increase in structural dimension except as otherwise permitted in this Article;
 - (3) Not resulting in any change in location of the *structures* except to provide greater conformance with the requirements of this Chapter; and,
 - (4) Made where damage is not substantial (see definition of *Substantial Damage*).

Where *substantial damage* occurs, the *structure* shall not be repaired/reconstructed except in conformity with the provisions of this Chapter.

- D. Repair/Reconstruction of Damaged Structure (Signs). Where a *nonconforming sign* has been damaged, it may be repaired/reconstructed and used as before, provided that repairs/reconstruction are initiated within 60 days and completed within 180 days of such damage.

§200A-265. Nonconforming Structures Containing Nonconforming Uses

- A. Improvement or Alteration of a Structure. Where a *nonconforming structure* contains a *nonconforming use*, no improvement or alteration of the *nonconforming structure* is permitted except where such improvement or alteration:
- (1) Does not result in an expansion/enlargement of the *structure*;
 - (2) Is required by law or order from the *Zoning Administrator*, Building Inspector or Fire Marshal to ensure safety of the *structure*; or
 - (3) Is on a residential *structure* (where such alteration may occur provided that no additional *dwelling units* result, and that the alteration complies with the requirements for residential *structures* of the applicable district).
- B. Nonconforming Use. Standards for *nonconforming uses* shall also apply (see §200A-266 (Nonconforming Uses)).
- C. Enlargement or Expansion of a Use. A *nonconforming use* of a *structure* may be enlarged or expanded only into portions of the *structure* which existed at the time the *use* became *nonconforming*.

§200A-266. Nonconforming Uses

A. Nonconforming Uses (General).

(1) Changed to Conforming Use. A *nonconforming use* may only be changed to a conforming *use*, and thereafter may not be used for any *nonconforming use*.

(2) Presumption of Discontinuance. A *nonconforming use* shall be presumed discontinued when:

- a. The owner has indicated, in writing or by 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 six (6) months as determined by the *Zoning Administrator*; or
- f. The *use* has been completely inactive for six (6) months as determined by the *Zoning Administrator*.

(3) Overcoming 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 (see §200A-266 (Nonconforming Uses) subsection A(2)e and/or A(2)f), 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:
 - 1. 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*.
 - 2. 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.

B. Nonconforming Outside/Outdoor Uses.

(1) Enlargement or Expansion of a Use. A *nonconforming outside/outdoor use* shall not be enlarged or expanded to cover more of the *lot* than was occupied by that *use* when it became *nonconforming*.

C. Nonconforming Manufactured/Mobile Home Used for Residence.

(1) Enlargement of a Use. A *nonconforming manufactured/mobile home* may be enlarged provided the enlargement does not result in new nonconformities.

- (2) Replacement of a Use. A *nonconforming manufactured/mobile home* may be replaced with a similarly sized/larger *manufactured/mobile home* provided the replacement adheres to the standards of this Chapter (including aesthetic standards). The replacement home shall not result in new nonconformities and shall take place within 180 days of removal of the initial *manufactured/mobile home* (see §200A-63 (Supplemental Requirements) S.R. 1.4. (*Dwelling, Manufactured/Mobile Home*) regarding standards).

D. Nonconforming Manufactured Home Park.

- (1) Enlargement or Expansion of a Use. A *nonconforming manufactured home park* may be enlarged or expanded provided that any such enlargement/expansion shall be in accordance with the requirements of this Chapter (see §200A-63 (Supplemental Requirements) SR 1.13 (*Manufactured Home Park*)).

§200A-267. Nonconforming Commercial and Industrial Uses/Structures within the former Open Use (OU) Zoning District

- A. Maintenance, Improvement, Alteration, Expansion, Remodeling, Repair and Reconstruction. Commercial and industrial *uses/structures* legally established in the former Open Use zoning district and made *nonconforming* by the adoption of this Chapter and its associated *zoning map* shall be allowed to be maintained, improved, altered, expanded, remodeled, repaired and/or reconstructed in adherence with the dimensional requirements and *setbacks* of the current applicable district. *Uses/structures* established in the former Open Use zoning district by the issuance of a special use permit and made *nonconforming* by the adoption of this Chapter and its associated *zoning map* may be allowed to be expanded or reconstructed only with the amendment of the special use permit or issuance of a new special use permit unless the *use/structure* is allowed by right in the current applicable district. The procedures set forth in §200A-323 (Special Use Permits) shall govern the amendment or issuance of any special use permit.
- B. Discontinuance of Nonconforming Use. Standards found in §200A-266 (Nonconforming Uses) shall apply.

§200A-268. Exemptions and Modifications from Regulations

- A. **Reduction of Front Yard Setbacks.** The required *front yard setbacks* applied to any *lot* shall be reduced by the *Zoning Administrator*, at the request of the *applicant*, to the average *front yard setback* of lots which are: (1) located wholly or in part within 100 feet of the *lot*, (2) within the same block and zoning district as the *lot*, and (3) fronting on the same side of the *road* as the *lot*.

§200A-269. Reserved

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