

Article VIII. NONCONFORMITIES

Section 8.01 PURPOSE AND INTENT

- A.** The purpose of this Article is to protect the rights of property owners who have lawfully established, and continuously maintained in a lawful manner, a use prior to the adoption of this ordinance or prior to any amendment to this ordinance that otherwise renders such use unlawful. A non-conforming use or structure that was recognized prior to the adoption of this ordinance shall continue to operate under the provision of law under which the nonconforming structure or use was recognized so long as the non-conforming use or structure is not in violation of such provision of law, the adoption of this ordinance notwithstanding.
- B.** Nothing in this Article prohibits the voluntary compliance with any future ordinance, regulation, or incentive. Modifications to non-conforming situations shall be required to comply with standards of this UDO in effect at the time of the modification unless specifically exempted in this Article or otherwise approved by the Town.

Section 8.02 GENERAL PROVISIONS & APPLICABILITY

Upon the effective date of this ordinance, and any amendment thereto, pre-existing structures or lots of record and existing and lawful uses of any building or land which do not meet the minimum requirements of this ordinance or which would be prohibited as development in the district in which they are located shall be considered as nonconforming.

Except as specifically provided in this Article, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.

- A.** A nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this ordinance, or adoption of ordinances repealed by this ordinance, was clearly designed or arranged to accommodate such uses. However, a nonconforming use may not be extended to additional buildings or to land outside the original buildings.
- B.** A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., a quarry) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming, if 10 percent (10%) or more of the earth products had already been removed at such time that zoning was adopted at the same location.
- C.** Where a nonconforming situation exists, the equipment or processes may be changed if these or similar changes amount only to changes in degree or activity rather than changes in kind and no violations of other Articles of this ordinance occur.
- D.** Physical alteration of structures or the placement of new structure(s) on open land are unlawful if they result in:
 - 1.** An increase in the total amount of space devoted to a nonconforming use; and/or
 - 2.** Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations, or density requirements.

- E. Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

8.02.1 APPLICABILITY TABLE

The following table summarizes the requirements that shall be met when there are changes to existing development and/or to nonconforming structures or uses. A “●” indicates that compliance with all applicable standards is required.

	Article 2: Dimensional Standards	Article 4: Building Design Standards	Article 4: Landscaping , Buffers & Screening	Article 4: Parking Lot Landscaping	Article 4: Lighting	Article 4: Signs	Article 5: Sidewalks
Existing Development							
Change of Use (From Residential to Non-Residential)		●	●	●	●	●	●
Parking Area Expansion							
Less than 15 spaces or 50% of paved area				● ^a	● ^a		
Expansion of more than 15 spaces or more or 50% of paved area			●	●	●	●	●
Structure or Building Expansion/Reconstruction							
Less than 50% of Existing Gross Floor Area	● ^{ab}	● ^a			● ^a	●	
Greater than 50% of Existing Gross Floor Area	● ^{ab*}	● [*]	●	●	●	●	●
^a For expanded/reconstructed portion only							
^b Exception: Maximum front setbacks should be met to the extent practical as determined by the Administrator							
[*] For expansions, reconstruction areas and all other walls facing public streets							

8.02.2 APPEALS AND MODIFICATIONS

- A.** The Board of Adjustment shall hear and decide appeals from any land owner:
1. To make a change in use of a nonconforming use to a different, less-intense nonconforming use;
 2. To make a change in location of a nonconforming use of land to another location on the same property; or;
 3. Allow the replacement of a nonconforming use.
- B.** The Board of Adjustment may only grant a change for 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
 2. The proposed change will have a less harmful effect than the existing situation on the properties surrounding the lot(s) in question; and,
 3. 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 Board of Adjustment, 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 per *Article 9 – Enforcement & Penalties* of this ordinance.

8.02.3 DISCONTINUANCE

A nonconforming use shall be presumed discontinued when any of the following has occurred:

- A. The owner has indicated intent, in writing to the Administrator, to abandon the use.
- B. A conforming use has replaced the original nonconforming use.
- C. The building or structure housing the nonconforming use has been removed.
- D. The owner has physically changed the building or structure or its permanent equipment in such a way as to indicate clearly a change in use or activity to something other than the nonconforming use.

The property, structure or use has been vacant or completely inactive for one year.

Section 8.03 NONCONFORMING LOTS

8.03.1 DEFINITION AND APPLICABILITY

A nonconforming lot is a lot of record existing on the effective date of this ordinance or any amendment to it that does not meet the dimensional requirements of *Article 2 – Zoning District Provisions* for the zoning district in which the lot is located. A nonconforming vacant lot of record is one that was recorded by plat or description in the Harnett County Register of Deeds prior to the adoption of this ordinance or prior to the time that the lot was brought into the Town's jurisdiction. This definition shall not be interpreted to include recorded lots that were in violation of any prior zoning or subdivision regulations of the Town and which will remain in violation.

8.03.2 STANDARDS

A. Adjoining Lots

When two or more adjoining lots of record with continuous frontage, where no more than one is developed, are in one ownership at any time after the adoption of this ordinance, and such lots individually or together are less than the minimum square footage and/or have less than the minimum width required in the zoning district in which they are located, then such lot(s) shall be combined to create lots which meet the minimum size requirements or which minimize the degree of nonconformity.

B. Lots Not Meeting Minimum Lot Size

- 1. Except as set forth in Section 8.03.2.A above, in any zoning district in which single-family dwellings are permitted, and regardless of whether or not a vested right has been established, any lot of record existing at the time of the adoption of these regulations which has dimensions which are less than required by these regulations may be used as a building site for a single-family dwelling with related accessory buildings, provided that

the lot area and width are not less than 80% of the requirements in the district.

2. If the lot is smaller or narrower, a variance may be requested of the Board of Adjustment, but in no case shall the Board reduce the requirements by more than 40%. If a lot of record existing at the time of adoption of this ordinance in a zoning district other than residential, has dimensions which are less than required by these regulations, a variance may be requested from the Board of Adjustment, but in no case shall the Board reduce the requirements by more than 30%.

C. Exceptions for Previously Approved Plats

A nonconforming lot may be developed if, at the effective date of this ordinance, the lot is located in a subdivision that had received preliminary plat approval or a subdivision that had received final plat approval.

D. Existing Structures on Non-Conforming Lots

1. Any structure on a nonconforming occupied lot may be occupied, without expansion, by a conforming use or may be improved or expanded in accordance with the standards listed in this section. Structural alterations or remodeling of structures on nonconforming lots required by an authorized public official shall be permitted. Routine maintenance shall also be permitted so long as no expansion of the nonconformity occurs as a result of the maintenance.
2. Any improvement or expansion of any structure on a nonconforming occupied lot must comply with all other minimum requirements of this ordinance or a variance must be obtained from these requirements through an action of the Board of Adjustment.

Section 8.04 NONCONFORMING MANUFACTURED HOME PARKS

All Manufactured Home Parks existing at the time of the adoption of this ordinance shall not be allowed to expand or increase in any manner unless such expansion meets fully the requirements set forth in this ordinance.

Section 8.05 NONCONFORMING PLANS

A. APPROVED PLANS

1. Previously Approved Plans Grandfathered

Any plan (including but not limited to preliminary subdivision plats, site plans, construction plans, final plats, conditional zoning district plans, special use permit plans) for the development of property and/or construction of a building which has received final approval by the Town for development and/or construction, but does not conform to this ordinance, may be developed and/or constructed in accordance with the rules and regulations, including any conditions imposed upon approval, that were in place prior to the effective date of this ordinance. 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.

2. Choice of New Ordinance

A property owner with an approved plan as identified in 8.05.A.1 above may elect to develop such property and/or construct such building in accordance with the terms and provisions of this ordinance in lieu of the rules and regulations upon which the plan was approved. The Administrator shall notify the property owner in writing of any additional required procedures or modifications which may be necessary in order for the plan to conform to the ordinance.

3. Amendments or Modifications of Previously Approved Plans

Any amendment or modification to an approved 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.

B. VESTED RIGHTS

This section does not prohibit the exercise of any vested right established by common law ordinance or statute.

**Section 8.06
8.06.1**

**NONCONFORMING USES AND STRUCTURES
DEFINITION AND APPLICABILITY**

A. Nonconforming Use

A nonconforming use is a use which was once a permitted use on a parcel of land or within a structure, or which precedes any ordinances, but which is now not a permitted use of that parcel according to *Article 3 – Use Standards* of this ordinance. This definition includes open uses of land as well as the structures that contain nonconforming uses. The nonconformity may result from the adoption of this ordinance or any subsequent amendment.

B. Nonconforming Structure

A nonconforming structure does not conform to dimensional, design, locational, or other requirements of this ordinance. The nonconformity may result from adoption of this ordinance or any subsequent amendment.

8.06.2

STANDARDS FOR NONCONFORMING USES

A. Continuation

Any legally established nonconforming use may be continued subject to the standards listed in this ordinance. However, once a nonconforming use is made conforming, it may not later be used for any nonconforming use or expanded in violation of this ordinance.

B. Extension of Use

Any non-conforming use of land or structure, shall not hereafter be enlarged or extended in any way which serves to increase the nature of non-conformity, except where the non-conforming use is a residential structure used exclusively for dwelling purposes, said structure is a permitted use and the proposed addition shall conform to all zoning requirements; and the total area of the addition shall be limited to 25% percent of the area of the original non-conforming structure; and shall be used solely for residential purposes.

C. Loss of Nonconforming Status

A nonconforming use that is discontinued for a continuous period of more than one year may not be reestablished. All subsequent uses of the site or structure must be in conformance with the particular regulations for the zoning district in which the property is located.

8.06.3

STANDARDS FOR NONCONFORMING STRUCTURES

A. Continuation

Any legally established nonconforming building or structure may be continued subject to the standards listed in this ordinance. However, once a nonconforming structure is made conforming, it may not later be used for any nonconforming use or expanded in violation of this ordinance. Should any non-conforming structure be moved for any reason for any distance, whatever, it shall hereafter conform to the regulations for the zoning district in which it is relocated.

B. Repairs and Modernization

Repairs and modernization of any nonconforming building or structure are permitted provided that such repairs or modernization shall in no way serve to augment the nature of non-conformity. Nothing in this ordinance shall be construed so as to prevent the strengthening or restoring to a safe condition any building or part thereof declared to be unsafe by the Administrator charged with protecting the public safety, health and welfare.

C. Loss of Nonconforming Status

The nonconforming use of a building or structure may be extended throughout the building provided no structural alterations (except those required by law or ordinance or ordered by an authorized officer to secure the safety of the building) are made therein but no such use shall be extended to occupy any land outside the building. If the nonconforming use of such building is discontinued for a continuous period exceeding one year, every future use of such premises shall be in conformity with the provisions of this ordinance.

D. Restoration After Destruction or Damage

1. Should a non-conforming building or structure or non-conforming portion of a building or structure be destroyed by any means to an extent of more than 50% of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.
2. The above requirement does not apply to single-family dwellings and accessory buildings or structures. Structures meeting these classifications may be reconstructed as long as such reconstruction does not increase the nonconformity of the original structure.

E. Manufactured Homes

No Class C manufactured home shall be removed for more than seven days and replaced unless its lot and stand conform to the requirements of this ordinance.

F. Enlargement and Expansion

Any structure which is nonconforming solely because of its encroachment in a required yard area may be extended in any lawful manner that does not further encroach in that yard. Expansions to structures classified as existing development must meet the requirements of this ordinance; however, the built-upon area of the existing development is not required to be included in the density/built-upon area calculations.

G. Nonconforming Non-Residential Structures within a Special Flood Hazard Area

Any nonconforming building or structure wholly or partly within a Special Flood Hazard Area may be flood-proofed according to methods and specifications set for in the publication of the Office of the Corps of Engineers, U.S. Army, entitled Flood-proofing Regulations.

8.06.4

NONCONFORMING ACCESSORY USES AND STRUCTURES

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 structure is made to conform to the standards for the zoning district in which it is located. No nonconforming accessory use or structure shall become or replace any terminated principal nonconforming use or structure except as permitted in Section 8.06.3.D above.

Section 8.07 NONCONFORMING SIGNS

- A.** Signs erected after the passage of this ordinance shall conform to the standards set forth in *Article 4 – Design Standards*. All nonconforming signs in existence as of the effective date of this ordinance may be continued and shall be maintained in good condition.
- B.** Nothing in this article shall prevent the normal maintenance of an existing nonconforming sign. However, a nonconforming sign shall not be:
 - 1.** Changed to another type or shape of nonconforming 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;
 - 2.** Structurally altered, except for normal maintenance;
 - 3.** Physically expanded, enlarged or extended in any manner;
 - 4.** Reestablished after the sign is removed, except for normal maintenance; or
 - 5.** Reestablished after damage or destruction where the estimated expense of reconstruction exceeds 50% of the assessed value of the sign in its entirety.
- C.** All non-conforming signs created as a result of the passage of this ordinance shall be allowed to remain in place in accordance with this section. Signs erected after the passage of this ordinance shall conform to the standards set forth herein.