



10 NONCONFORMING SITUATIONS

10.1 PURPOSE AND INTENT

The provisions of this Chapter establish the standards, allowances, and limitations for nonconforming situations that may exist within the Town and its Extraterritorial Jurisdiction. Nonconforming situations include land Uses, Structures, Signs, Lots of Record, and development Projects that were previously legally established prior to the adoption of this UDO (and all associated amendments) and do not comply with the current standards and regulations. These provisions do not apply to land Uses, Structures, Signs, and Lots that were not legally established pursuant to the laws and regulations that were in effect at that time; those situations are deemed illegal and not protected under the allowances of this Chapter.

The Town's intent is to allow these nonconforming situations to continue while limiting modifications, expansions, and alterations except under the provisions of this UDO.

The Town acknowledges that certain nonconforming Uses and Structures exceed the current density and intensity limits of its Zoning District. This Chapter is intended to create certain flexibility, allowances, and incentives to motivate property redevelopment that would eliminate blight and unsafe conditions.

10.2 GENERAL PROVISIONS AND APPLICABILITY

10.2.1 APPLICABILITY AND CONTENTS

This Chapter describes the various nonconforming situations, establishes the allowances and limitations thereto, and the review procedures to further Use, modify, and potentially expand said situations.

10.2.2 NONCONFORMING SITUATIONS DESCRIBED

This UDO recognizes the following nonconforming situations that may exist within the Town and its Extraterritorial Jurisdiction.

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- A. **Nonconforming Uses.** Land Uses or land Use activities that may exist within a Zoning District that would not be allowed, or that would normally require special approval to establish, under the current UDO standards (e.g., a land Use that is listed as a Special Use Permit – “SUP” pursuant to Table 3.2. of this UDO).
- B. **Nonconforming Structures/Buildings.** Any Building or Structure that may exist which does not comply with the Zoning District’s dimensional standards and/or Building size limitations (e.g., Setbacks, Building Height, and similar standards).
- C. **Nonconforming Signs.** Any Sign or collection of Signs on a given Lot/parcel that does not comply with the Zoning District’s size, area, and quantity limitations.
- D. **Nonconforming Lots of Record.** Any Lot, parcel, or tract that may exist that does not comply with its Zoning District’s minimum size or dimensional standards. This also includes Lots/parcels/tracts that do not comply with the Zoning District’s Access and Frontage requirements.
- E. **Nonconforming Site Development.** Existing developments that do not fully comply with the standards of this UDO with emphasis on façades, landscaping, and pedestrian Access requirements.
- F. **Legally Established.** A legally established Use or Structure means that the Use or Structure was a conforming Use or Structure at the time it was permitted by the Town, however the code has changed since Certificate of Occupancy and the Use or Structure has lost its status as conforming through only the operation of the change in law. The burden to show that a nonconforming Structure was legally established shall be on the landowner.
- B. **Lot Use.** Any legally established nonconforming Lot may be Used and developed pursuant to the Use and dimensional standards of the current Zoning District and the other applicable provisions of this UDO.
- C. **Repair and Maintenance.** Ordinary repairs and maintenance of nonconforming Buildings/ Structures, Building/Structures supporting a nonconforming Use, and nonconforming sites are allowed. This may include, but is not limited to, the repair/maintenance of walls, roofs, fixtures, wiring or plumbing. This allowance also includes activities that increase Building/Structural integrity or Americans with Disabilities Act (ADA) accessibility. The provisions of 10.4.D herein apply where a Building is damaged due to a catastrophe.
- D. **Other Allowances.** Sections of this Chapter establish the allowances and limitations for other activities associated with each nonconforming situation.

10.2.4 VERIFICATION OF NONCONFORMING USES

- A. The Administrator may verify whether a nonconforming situation was legally established by reviewing information submitted by the landowner, Town records and other readily available information to reach a determination. The Administrator may conduct its initial investigation as a Type 1 review pursuant to Chapter 11 of this UDO. The Administrator may request an applicant provide evidence to be considered in its determination, and it shall be the responsibility of the landowner to prove a nonconforming situation is legally established. The following items may be Used in confirming a nonconforming situation:
 1. Building and UDO Permits.
 2. Zoning maps and past UDO editions.
 3. Property tax records.
 4. Lease agreements relating to the subject Use/ property.
 5. Utility bills relating to the subject Use/ property.
 6. Insurance policies and/or mortgage contracts for the subject property.
 7. Aerial photography.

10.2.3 CONTINUATION, REPAIR, USE AND MAINTENANCE

- A. **Continuation.** A legally established nonconforming situation may remain in existence, however the provisions of Section 10.3 apply where a nonconforming Use is abandoned. Any proposed enlargement or alteration of a nonconforming situation shall be in conformance with the standards and review procedures of this UDO.

8. Historic land Use and/or insurance maps (e.g., Sanborn® Maps).
9. Witness affidavits.

10.2.5 DETERMINATION OF REPORTED TAX VALUE OR REPLACEMENT COST

- A. In determining the reported tax value of a Building or Structure or the replacement cost of a Sign, the Administrator may consider the following items:
 1. **Building or Structure.** Documentation provided on the tax card for the property.
 2. **Sign.** Documentation prepared by and provided by an appraiser licensed by the State of North Carolina to appraise the type of property involved.
 3. **Other Evidence.** Other documentary evidence relevant to reported tax value or replacement cost deemed appropriate by the Administrator.

10.3 NONCONFORMING USES

- A. **General Standards.** Nonconforming Uses that exist on the effective date of this UDO which would not be permitted by the provisions of this UDO may be continued pursuant to the following limitations.
 1. Nonconforming Uses may not be enlarged, expanded, increased or extended to occupy a greater area of land than was occupied on the effective date of this ordinance except as allowed in this section;
 2. Nonconforming Uses shall not be moved in whole or in part to any portion of the Lot or parcel other than that occupied by such Uses on the effective date of this UDO; and
 3. No additional Building or Structure shall be erected in connection with such nonconforming Use.
- B. **Discontinuation of a Nonconforming Use.** Where a nonconforming Use ceases to operate or is not occupied for 6 consecutive months (except when government action, a natural disaster, or state-wide pandemic impedes Access to the premises), any subsequent Use of such land

shall conform to the provisions of this UDO. The Administrator may allow for an additional 6 month extension where the applicant makes a formal request within 6 months of the initial abandonment.

- C. **Nonconforming Detached and Attached Dwellings.** Legally existing nonconforming Detached and Attached Dwellings shall be allowed to remain in existence and are not subject to the expansion limitations or discontinuation clauses of this section. All Building additions shall conform to the dimensional standards of the Zoning District. No additional units therein may be added unless specifically allowed in the Zoning District.

10.4 NONCONFORMING BUILDINGS / STRUCTURES

- A. **General Standards.** A nonconforming Building or Structure that could not be built under the terms of this UDO may continue on the property (e.g., legally established Buildings that do not comply with the Setbacks for the current Zoning Districts). Modifications and enlargements to, or relocation of said Buildings/Structures may be allowed pursuant to the provisions of this UDO (including the dimensional standards of its current Zoning District), and within the limitations of this section.
- B. **Enlargements.** A nonconforming Building or Structure may only be enlarged in a manner that complies with the dimensional and size limitations of the current Zoning District. Said Structures shall not be enlarged, expanded or altered in a way which increases its nonconformity, provided such Building or Structure may be altered so as to decrease the extent of nonconformity.
- C. **Moving and Relocating.** Nonconforming Buildings or Structures may be moved on its existing Lot/parcel or to a new Lot/parcel provided that the new location would result in compliance with the dimensional standards of the current Zoning District in terms of Setbacks, Building orientation, and Access.

D. Reconstruction Due to Catastrophes. Where a nonconforming Building or Structure (or legally established nonconforming portion of a Building or Structure), is damaged or destroyed by any means to the extent of more than 50% of the reported tax value at the time the damage or destruction is reported, said Building or Structure shall be reconstructed in conformity with the provisions of this UDO.

E. Historic Structure Allowances. Nonconforming Historic Structures may be altered or enlarged without conforming to the Zoning District Development Standards, provided:

1. The enlargement, expansion, or alteration does not exceed the Building Height limitations; Front, Side and Rear Setbacks and Yards; bulk; or other provisions of this UDO and is in compliance with all other applicable Development Standards; and,
2. The enlargement, expansion, or alteration shall, to the greatest extent practical, preserve historic materials, features, and/or spatial relationships that characterize the Structure as certified by a historic preservation specialist or licensed architect; and,
3. The enlargement, expansion, or alteration shall be constructed to be compatible with the historic Building material, features, size, scale, proportion, and massing to protect the historical integrity of the subject Structure, as certified by a historic preservation specialist or licensed architect.

2. A nonconforming Sign that received a Variance or Waiver approval of either a previously enacted zoning regulation or this UDO for number of Signs, height of Sign, Structure of Sign, or Sign Surface Area may be altered within the limits of the associated Variance or Waiver approval.
3. Except as provided for in subsection B.2., above, the removal of a Sign Structure or a Sign Cabinet shall be deemed definitive evidence that such Sign requires work beyond normal and routine repair and maintenance, and such Sign shall not be repaired, maintained or reconstructed except in conformity with the provisions of this UDO.

C. Reconstruction Due to Catastrophes. Where a nonconforming Sign is damaged or destroyed by any means to the extent that the repair or reconstruction of the Sign exceeds 50% of the Sign's replacement cost, said nonconforming Sign may only be reconstructed in conformity with the provisions of this UDO.

D. Amortization of Nonconforming Temporary Signs. All nonconforming temporary Signage shall be removed, changed, or modified to conform with the Sign standards pursuant to Chapter 9 of this UDO and pursuant to the following based on the Signage situation.

1. **Nonconforming Temporary Signs.** All nonconforming Temporary Signs on a property shall be amortized within 1 year of the effective date of this Chapter.
2. **Annexed Property.** If a Sign becomes nonconforming as a result of annexation into the Town or its Extraterritorial Jurisdiction, the Sign(s) shall be amortized within the timeframes listed above and based on the effective date of such annexation or inclusion in the Town's Extraterritorial Jurisdiction (not the effective date of this Chapter).

10.5 NONCONFORMING SIGNS

A. General Standards. Nonconforming Signs may continue to exist, including the performance of normal and routine maintenance, so long as such Sign remains otherwise lawful.

B. Repair and Maintenance Provisions. Nonconforming Signs may receive normal and routine repair and maintenance subject to the following provisions:

1. A nonconforming Sign may not be enlarged, expanded or altered in a way which increases its nonconformity.

10.6 NONCONFORMING LOTS OF RECORD

- A. General Standards.** Any legally established Lot or legally platted Lot recorded prior to the effective date of this UDO not meeting the minimum area or dimensional requirements of the current Zoning District may be Used for any permitted Use/Building provided that:
1. All other Development Standards are met; and
 2. Such Lot must be in separate ownership and not be contiguous with other Lots in the same ownership. If a nonconforming Lot is under the same ownership as a contiguous Lot, such contiguous Lots shall be deemed as 1 Lot for the purposes of this UDO
- B. Subdivision Activities.** Any Subdivision activity involving a nonconforming Lot shall only be allowed where the resulting Lots/parcels/tracts meet the size and dimensional standards of this UDO and the current Zoning District.
- C. Lot Recombination Activities.** Any Lot recombination activities involving a nonconforming Lot shall not result in a smaller Lot size or property dimension than originally existed at the time of application or as required in the current Zoning District.
- D. Variances and Administrative Adjustments.** Applicants may request a Variance and/or administrative adjustment to obtain deviations/relief from applicable Lot size and dimensional standards of the current Zoning District.

10.7 NONCONFORMING SITE DEVELOPMENT

- A. General Standards and Applicability.**
1. **Applicability.** The provisions of this Section apply in those situations where an applicant initiates an application/permit after the adoption of this UDO for Building/site alterations and expansions and the resulting improvements exceed the market value of the property at the time of application. Whereas

the following activities do not count towards this threshold for determining applicability:

- a. Improvements to landscaping or tree preservation;
 - b. Improvements or alterations involving fire suppression systems, security, and other life/safety elements;
 - c. Electrical and energy efficiency upgrades;
 - d. Site remediation and hazardous material cleanup;
 - e. Improvements to ADA Lot; and
 - f. Improvements that address drainage, stormwater management, and/or climate resiliency.
- 2. Landscaping and Pedestrian Access Elements.** Existing site developments that do not fully comply with the landscaping (Chapter 5) and pedestrian Access provisions (Chapter 8) of this UDO shall be incrementally brought into compliance proportionally with other Building/site improvements on the same property.
- 3. Façades.** Existing façades shall be enhanced, modified, and redeveloped pursuant to the design standards of Chapter 8 of this UDO and subject to the additional provisions of this section.
- 4. Exemptions.** The provisions of this Chapter do not apply to detached and attached residential Buildings and their Accessory Uses.
- B. Required Concurrent Site Improvements.** The applicant shall perform site improvements to nonconforming landscaping and/or pedestrian Access elements in a manner that brings the conditions in closer compliance with current UDO standards under one of the following options: (e.g., existing landscaping planters that do not meet the width requirements of this UDO).
1. **Option 1 Full Compliance.** The applicant shall upgrade all nonconforming landscaping and pedestrian Access elements to fully comply with UDO standards.

2. **Option 2 Proportional Compliance.** The applicant shall Use 5% of the proposed Building/site improvement value towards other property upgrades to nonconforming landscaping and/or pedestrian Access elements. The landscaping/Access investment shall bring these elements in closer compliance with the applicable UDO provisions.
3. **Option 3. Phased Proportional Compliance:** The applicant may apply the methods outlined in Option 2 to align with the Building/site construction phases of the associated permit (e.g., improve landscaping concurrent with each Building improvement Project).

C. Façade Improvements. The following standards apply to development activities that involve an existing Building façade.

1. **Façade Modifications.** Façade enhancements and modifications shall conform to the design standards outlined in Chapter 8 of this UDO, new and modified Building features shall comply with those standards.
2. **Repair and Maintenance.** Applicants may perform normal repair and maintenance of façade elements (e.g., window and/or trim repair or replacement). In those situations, the activities are exempt from the design requirements of Chapter 8.
3. **Full Façade Enhancement.** Applicants shall modify/enhance existing Building façades to fully comply with the design standards in Chapter 8 of this UDO where proposed alterations exceed 50% of a total façade area. This provision applies to any façade that is readily visible from an adjacent Right-of-Way and is subject to any applicant-initiated modifications to an existing Building.