

6 NONCONFORMITIES

6.1 Nonconformities, Generally 6-3

6.1.1 Purpose and Intent	6-3
6.1.2 Determination of Nonconformity Status	6-3
6.1.3 Continuation, Minor Repairs, and Maintenance Allowed	6-3
6.1.4 Change of Tenancy or Ownership.....	6-3

6.2 Nonconforming Lots 6-4

6.2.1 Applicability	6-4
6.2.2 Nonconforming Lot Width or Area	6-4
6.2.3 Nonconformity Affects Required Setbacks.....	6-4
6.2.4 Expansion or Enlargement	6-4
6.2.5 Physically Constrained Properties	6-4
6.2.6 Governmental Acquisition of Land	6-4

6.3 Nonconforming Signs..... 6-5

6.3.1 General	6-5
6.3.2 Prohibited Actions.....	6-5
6.3.3 Maintenance of Nonconforming Signage Allowed.....	6-5
6.3.4 Replacement of Nonconforming Signage.....	6-5
6.3.5 Discontinuance of Business Activity	6-6

6.4 Nonconforming Situations 6-6

6.4.1 Applicability	6-6
6.4.2 Expansion of Buildings or Structures	6-6

6.5 Nonconforming Structures 6-7

6.5.1 Applicability.....	6-7
6.5.2 Continuation, Placement, and Relocation	6-7
6.5.3 Repair, Maintenance, Replacement, and Reconstruction.....	6-7
6.5.4 Alteration and Expansion	6-8

6.6 Nonconforming Uses 6-8

6.6.1 Nonconforming Uses in General	6-8
6.6.2 Changes of Use	6-8

6.6.3 Extension or Expansion6-9
6.6.4 Conversion to Another Nonconforming Use.....6-9
6.6.5 Cessation.....6-9

6.1 NONCONFORMITIES, GENERALLY

6.1.1 PURPOSE AND INTENT

There are existing structures, uses of land, lots of record, development sites, and other situations that were lawfully established before the effective date of this Ordinance or a subsequent amendment thereto, that do not conform to standards and requirements of this Ordinance. Such uses, structures, lots, sites, and situations are collectively referred to as “nonconformities.” The purpose and intent of this Chapter is to allow nonconformities to continue to exist, but to regulate and limit their expansion so as to bring them into conformity with these standards to the extent that is reasonably practicable.

6.1.2 DETERMINATION OF NONCONFORMITY STATUS

In all cases, the burden of establishing that a nonconformity lawfully exists shall be the responsibility of the landowner of the land on which the alleged nonconformity is located.

6.1.3 CONTINUATION, MINOR REPAIRS, AND MAINTENANCE ALLOWED

A. CONTINUATION

Unless otherwise specifically restricted in this ordinance, nonconforming situations that were otherwise lawful on the effective date of this ordinance may be continued.

B. COMPLETION

Nonconforming projects incomplete as of (date of LMO adoption), shall only be completed in accordance with this Chapter and Section 1.12, Transitional Provisions. Nothing in these standards shall require a change in approved plans or approved uses for development upon which construction was lawfully commenced prior to (date of LMO adoption). For the purposes of this section, commencement of construction shall mean excavation or demolition, permanent placement of construction materials on site, or the permanent fastening of building materials.

C. MAINTENANCE ALLOWED

Nonconformities are allowed and encouraged to receive minor repairs and routine maintenance as necessary to keep the nonconformity and its surroundings in a safe condition and to protect against health hazards.

D. STRENGTHENING ALLOWED

Nothing in this Ordinance shall prevent the strengthening or restoration to a safe or lawful condition of any part of any building or structure declared unsafe or unlawful by a duly authorized Town or County official.

6.1.4 CHANGE OF TENANCY OR OWNERSHIP

No change in tenancy or ownership of land shall limit the continuance of a lawfully established nonconformity.

6.2 NONCONFORMING LOTS

6.2.1 APPLICABILITY

Lawfully established nonconforming lots of record may be developed in accordance with the standards in this section.

6.2.2 NONCONFORMING LOT WIDTH OR AREA

A. LOTS WITH CONTIGUOUS FRONTAGE IN ONE OWNERSHIP

When two or more adjoining lots with contiguous frontage are under common ownership and one or more of the lots are nonconforming in terms of width or area, such lots shall be combined prior to filing a development application to create one or more lots, each of which conforms to the applicable dimensional requirements of the district prior to the commencement of development.

B. SINGLE LOT OF RECORD IN ANY DISTRICT

When development is proposed on a platted lot in any zoning district that has an area or width which does not conform to the dimensional requirements of the district where it is located but was lawfully established on or before (date of LMO adoption), the lot may be built upon, subject to compliance with applicable setbacks. Approval of an administrative adjustment (see Section 5.2.1, Administrative Adjustment) or a variance (see Section 5.2.26, Variance) is required in cases when the proposed development cannot meet the setback requirements for the district where located.

6.2.3 NONCONFORMITY AFFECTS REQUIRED SETBACKS

In cases where the size or shape of a nonconforming lot inhibits the ability of a use to comply with required setbacks, an applicant may apply to reduce the setback requirements by the minimum amount necessary in accordance with the standards and requirements in Section 5.2.1, Administrative Adjustment.

6.2.4 EXPANSION OR ENLARGEMENT

The boundaries, shape, or size of a nonconforming lot may be modified through a lot line adjustment, boundary adjustment, recombination, or consolidation, provided it reduces the extent of the nonconformity.

6.2.5 PHYSICALLY CONSTRAINED PROPERTIES

Lands that are physically constrained due to limited size, topography, or other environmental considerations may seek a reduction to these standards in accordance with Section 5.2.1, Administrative Adjustment, or Section 5.2.26, Variance.

6.2.6 GOVERNMENTAL ACQUISITION OF LAND

Conforming lots subject to governmental acquisition of a portion of the lot for a public purpose that results in the lot becoming nonconforming because it no longer complies with lot area, width, or depth standards of the zoning district where located shall be deemed conforming, provided the development complies with the requirements in Section 4.2.1, Principal Use Table and complies with all other dimensional standards for the district where located.

6.3 NONCONFORMING SIGNS

6.3.1 GENERAL

A sign that was legally in existence on (date of LMO adoption) and was constructed, erected, affixed, or maintained in accordance with the applicable laws and ordinances in effect on the date that such action occurred, shall be regarded as a lawful nonconforming sign. Although it is not the intent of the ordinance to encourage the continued use of nonconforming signs, nonconforming signs shall be allowed to be continued and a decision as to the continued existence and use or removal of such signs shall be controlled as set forth in this section.

6.3.2 PROHIBITED ACTIONS

The following actions associated with a nonconforming sign shall be prohibited:

A. ENLARGEMENT OR ALTERATION

Structural alteration, enlargement, or extension of a nonconforming sign or sign structure shall not be permitted; however, nothing shall limit the ability to modernize an outdoor advertising use in accordance with Section 136.131.2 of the North Carolina General Statutes; and

B. RELOCATION

Relocation of a nonconforming sign upon the premises, unless the relocation meets the requirements of this Ordinance, is prohibited, however, nothing shall limit the ability to modernize an outdoor advertising use in accordance with Section 136.131.2 of the North Carolina General Statutes. Nonconforming signs required to be moved because of public right-of-way improvements or expansion may be re-established in the same manner and to the same extent of nonconformity as existed prior to the relocation.

6.3.3 MAINTENANCE OF NONCONFORMING SIGNAGE ALLOWED

A nonconforming sign may remain in place and be maintained, subject to the following standards:

A. MAINTENANCE ACTIONS

Normal maintenance of a nonconforming sign shall be allowed, and shall be limited to the following:

1. Nonstructural repairs, such as repainting or electrical repairs;
2. Incidental alterations which do not increase the degree or extent of the nonconformity; and
3. Changing of copy, as provided in this section.
4. Normal maintenance shall not include repairs or maintenance that involve costs that exceed fifty percent (50%) of the estimated total value of the sign at the time of the repair or maintenance. Maintenance exceeding this value shall be considered deterioration/damage in accordance with Section 6.3.4, Replacement of Nonconforming Signage.

B. CHANGE OF SIGN COPY

Nonconforming signs may change copy in the form of replacement panels or replacement lettering, provided such change does not worsen the degree of nonconformity.

6.3.4 REPLACEMENT OF NONCONFORMING SIGNAGE

A. REMOVAL

Any nonconforming sign that is removed for any reason, with the exception of temporary removal to perform sign maintenance or repair, shall only be replaced with a sign that complies with the provisions of this Ordinance. Should such temporary removal occur, the landowner or agent shall inform the Planning Director in writing of the action prior to its occurrence. If the responsible party fails to inform the Planning Director, the nonconforming status for the sign will be lost and any sign erected on the site must comply with current regulations.

B. DETERIORATION/DAMAGE

1. If a nonconforming sign is deteriorated or damaged such that the cost to repair or maintain the sign exceeds fifty percent (50%) of the estimated cost of replacement, the sign shall not be reestablished and shall be removed immediately.
2. If damage to a nonconforming sign from any cause is fifty percent (50%) or less of its replacement cost, the sign may be rebuilt or repaired to its original condition in its original location and may continue to be displayed as long as the use it serves remains in operation. In such instances, all repairs to the damaged sign must be complete within ninety (90) calendar days of the time such damage occurred, or the sign shall lose its legal nonconforming status and must be replaced by a sign that complies with current regulations.
3. For the purposes of this section, the costs associated with the repair or replacement of a sign shall be determined based on estimates provided by a qualified professional. The burden of acquiring such a cost estimate shall be upon the property owner or business owner responsible for the sign in question. The estimate shall include both the cost of repair of the sign and the comparative cost of replacement of the sign, and shall be provided to the Planning Director, who will make the final determination regarding the ability of the sign to be repaired as opposed to replaced.

6.3.5 DISCONTINUANCE OF BUSINESS ACTIVITY

No nonconforming sign shall be reestablished after the activity, business, or use to which it relates has been discontinued, and such sign shall be removed within ninety (90) calendar days after the activity, business, or use has been discontinued.

6.4 NONCONFORMING SITUATIONS

6.4.1 APPLICABILITY

- A. For purposes of this section, the term “nonconforming site features” includes the following:
1. Nonconforming off-street parking;
 2. Nonconforming landscaping;
 3. Nonconforming screening;
 4. Nonconforming walls or fences; and
 5. Nonconforming exterior lighting.
- B. Expansion of existing buildings or structures on nonconforming sites shall comply with the standards in this section, with Section 6.2, Nonconforming Lots, and with Section 6.5, Nonconforming Structures.

6.4.2 EXPANSION OF BUILDINGS OR STRUCTURES

If a building permit is required for expansion of a building or structure where a nonconforming situation exists, the expansion shall require correction of existing on-site nonconforming off-street parking, landscaping, screening, wall or fencing, and exterior lighting in accordance with this Section.

A. EXCEPTIONS

1. The provisions of Section 6.4.2 shall not apply to Single-Family Attached, Single-Family Detached, or Duplex uses, regardless of project size or value.
2. The provisions of this Section shall only apply to expansion(s) which cumulatively exceed twenty-five percent (25%) of the floor area of a building or structure as of [date of LMO adoption], except that said expansions shall still be required to install streetyards, bufferyards, and parking lot landscaping at a rate of fifty percent (50%) of the requirements specified in Section 7.3. Additionally, any changes to the site of the building or structure being expanded shall not make the site less conforming with LMO standards.

- a. If the permit value of the expansion(s) described in Section 6.4.2.A.2 exceeds fifty percent (50%) of the property's valuation in the most recent bill of the Alamance County Tax Assessor, the nonconformity correction provisions of Section 6.4.2 shall still apply.

B. TWO OR FEWER ADDITIONAL PARKING SPACES

When two or fewer additional off-street parking spaces are required under this subsection as a result of an expansion project, the applicant may select to install a comparable number of bicycle parking spaces as an alternative to the vehicular parking spaces required by the expansion.

C. ADDITION OF OUTDOOR STORAGE AREA ONLY

When only outdoor operations/storage/display areas are being added or increased on a site, the percentage increase in outdoor operations area shall require a corresponding percentage increase in perimeter buffers and screening. Perimeter buffer and screening augmentation shall be located so as to achieve the performance objectives in Section 7.3.7, Bufferyard Requirements, with priority given to screening the impacts of outdoor operations.

6.5 NONCONFORMING STRUCTURES

6.5.1 APPLICABILITY

Nonconforming principal and accessory structures shall be subject to the standards in this section.

6.5.2 CONTINUATION, PLACEMENT, AND RELOCATION

A. CONTINUATION

A nonconforming structure may be continued only in accordance with this chapter.

B. PLACEMENT

- 1. Except in accordance with Section 6.5.3, Repair, Maintenance, Replacement, and Reconstruction, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in either an increase in the total amount of spaced devoted to a nonconforming use, or a greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, or density requirements, or other requirements such as parking requirements.
- 2. Nothing shall limit the elevation of a structure as necessary to ensure habitable floor area is outside the regulatory flood elevation.

C. RELOCATION

A nonconforming structure shall not be moved, in whole or in part, to another location on the parcel of land on which it is located, unless the relocation removes or reduces the nonconformity.

6.5.3 REPAIR, MAINTENANCE, REPLACEMENT, AND RECONSTRUCTION

A. Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovation (i.e., work estimated to cost more than sixty (60) percent of the appraised valuation of the structure to be renovated) may be done only in accordance with a certificate of zoning compliance pursuant to this section.

B. If a structure is located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement would exceed sixty (60) percent of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a certificate of zoning compliance issued pursuant to this Ordinance. This section does not apply to structures used for single-family residential purposes, which may be reconstructed pursuant to a certificate of zoning compliance just as they may be enlarged or replaced as provided in subsection 6.5.4, Alteration and Expansion.

- C.** For the purposes of subsections A and B, above:
1. The “cost” of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement;
 2. The “cost” of renovation or repair or replacement shall mean the total cost of all such intended work and no person may seek to avoid the intent of subsections A and B above by doing such work incrementally; and
 3. The “appraised valuation” shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or a sealed appraisal or estimate determined by a professionally recognized property appraiser. Data necessary for the determination of the appraised valuation shall be provided to the Planning Director by the property owner or the owner’s authorized agent.
- D.** Replacement of nonconforming manufactured or mobile homes shall be permitted only in accordance with the following standards:
1. The replacement is sixteen (16) feet wide or wider;
 2. The replacement is in place within 180 days of the removal of the prior nonconforming manufactured or mobile home;
 3. The location for the replacement is outside the special flood hazard area or elevated to or beyond the minimum freeboard height requirement;
 4. The replacement is connected to the public sewer system, or, where public sewer is not available or required, has all the necessary permits from the Alamance County Health Department pertaining to wastewater treatment;
 5. The replacement meets all of the standards in Section 4.3.59, Manufactured Dwelling.

6.5.4 ALTERATION AND EXPANSION

- A.** Except for manufactured or mobile homes, a structure which houses a nonconforming residential use may not be extended, expanded, enlarged, or altered in any way that increases the degree of nonconformity.
- B.** No nonconforming structure may be altered in any way which increases the nonconformity; however, any nonconforming structure or portion thereof may be altered to decrease the degree of nonconformity.
- C.** Nothing shall limit the elevation of a structure as necessary to ensure habitable floor area is outside the regulatory flood elevation.

6.6 NONCONFORMING USES

The lawful nonconforming use of a structure, land, or water existing as of (date of LMO adoption), may only be continued in accordance with the following standards:

6.6.1 NONCONFORMING USES IN GENERAL

- A.** All nonconforming uses are hereby declared incompatible with the permitted uses in the district in which they are located and with the provisions of this Ordinance.
- B.** No nonconforming use shall be converted to another nonconforming use.

6.6.2 CHANGES OF USE

- Changes in use shall comply with the following requirements:
- A.** In cases where an existing use is replaced by another use type of the same or lesser intensity (as measured by number of vehicular trips generated, hours of operation, number of on-site visitors, or other metric as determined by the Planning Director), then compliance with site features requirements shall be in accordance with the standards in Section 6.4.2, Expansion of Buildings or Structures.

- B. In cases where an existing use is replaced by a more intense use type (as measured by number of vehicular trips generated, hours of operation, number of on-site visitors, or other metric as determined by the Planning Director), full compliance with all applicable provisions in this section is required.

6.6.3 EXTENSION OR EXPANSION

A nonconforming use shall not be extended or expanded to occupy more space or altered in any way that increases the degree of nonconformity.

6.6.4 CONVERSION TO ANOTHER NONCONFORMING USE

No nonconforming use shall be converted to another nonconforming use.

6.6.5 CESSATION

- A. In the event a nonconforming use is discontinued or abandoned for a period of more than 180 consecutive days, the nonconforming use may only be replaced by a use permitted in the district where located.
- B. Any time a nonconforming use is converted to a conforming use, the conforming use shall not revert to the former nonconforming use or any other nonconforming use.