

Chapter 18: Non-Conforming

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Section 18.1 General

This Ordinance places restraints on the use of land and its improvements by establishing minimum standards. Prior to the adoption of this Ordinance, land and improvements were used and plans were initiated to use land and improvements in a number of instances according to standards below the standard established in this Ordinance. It is recognized that the strict application of the provisions of this Ordinance to circumstances emanating from past actions and past intentions as regards the use of land, when no standards or lesser standards were in existence, could yield hardships. It is recognized further that properties which do not now conform to the provisions of this Ordinance could be allowed to be used in such ways without violating the spirit of the Ordinance.

Accordingly, the following sections refer to situations in which lots have been platted prior to the adoption of this Ordinance with dimensions and other characteristics which are not in conformity with the standards of this Ordinance; to treatment of existing uses and structures not in conformity with the standards of this Ordinance; to standards for the reconstruction of damaged structures which did not conform to the standards of this Ordinance; and to changes in zoning, subsequent to the adoption of this Ordinance, as these might affect conformity of parcels of land, their use or improvements thereon to the standards of this Ordinance.

Section 18.2 Non-Conforming Vacant Lots

This category of nonconformance consists of vacant lots for which plats or descriptions have been recorded in the office of the Register of Deeds of Iredell County, which at the time of the effective date of this Ordinance, fail to comply with the dimensional requirements for the districts in which they are located. Any such nonconforming lot may be used for any of the uses permitted by this ordinance in the district in which it is located, provided:

A. Where the owner of a lawfully existing lot of record in any residential district or the owner's successor in title thereto does not own sufficient contiguous land to enable the owner to conform to the minimum lot size requirements of this Ordinance, such lot may be used. However, all other requirements of the district must be met. Notwithstanding the foregoing, whenever two (2) or more adjoining vacant lots of record are in a single ownership at any time after the adoption of this Ordinance and such lots individually have less area or width than the minimum requirements of the district in which such lots are located, such lots shall be considered as one or more lots which meet the minimum requirements of this Ordinance for the district in which such lots are located.

Section 18.3 Non-Conforming Occupied Buildings or Structures

This category of non-conformances consists of occupied buildings or structures at the time of the passage of this Ordinance, that fail to comply with minimum requirements for area, width, front yard, side yard, rear yard, height, unobstructed open space and other requirements for the districts in which they are located. Structures and buildings may be improved, enlarged, extended, and replaced provided as follows:

- A. Non-conforming Principal Buildings or Structures (excluding mobile homes and signs)
 - 1. Normal structural repair and maintenance may be performed to allow the non-conforming structured to be used.
 - 2. Any improvement, enlargement or extension, vertical or horizontal, of principal buildings or structures shall comply with minimum requirements as to front yard, side yard, rear yard, height and unobstructed open space and other requirements for the district in which they are located.
 - 3. Replacement of the structure is permitted provided the original foundation is used and the replacement does not create new non-conformities with respect to setbacks and height.
 - 4. The existence of a nonconforming condition on a lot, parcel or tract of land shall not prevent the construction of additional buildings or structures on said parcel, lot or tract so long as the new building or structure meets the requirements of this ordinance.

- B. Non-conforming Mobile Homes
 - 1. The mobile home was the only principal residential structure on the lot. If more than one principal residential structure is located on the lot, any mobile home removed may not be replaced;
 - 2. The mobile home to be replaced was occupied for at least 90 of the 180 days immediately preceding the date of replacement;
 - 3. The replacement mobile home is placed on the property within 90 days following removal of the existing manufactured home;
 - 4. The replacement does not create new non-conformities with respect to setbacks.

5. Normal structural repair and maintenance may be performed to allow the non-conforming structure to be used.

C. Non-conforming Accessory Buildings or Structures

1. A nonconforming accessory structure may be expanded only if the enlargement or extension, vertical or horizontal, of the accessory buildings or structures shall comply with minimum requirements as to front yard, side yard, rear yard, height and unobstructed open space and other requirements for the district in which they are located.
2. Replacement of any accessory structure must comply with all regulations concerning setbacks, size, and height.

D. Non-Conforming Signs

1. Any sign legally in use prior to the effective date of this Ordinance or any amendments hereto which does not satisfy the requirements of Chapter 9 is declared to be nonconforming and may be continued subject to regulations of Subsection 2 below.
2. A nonconforming sign may be continued but it shall not be:
 - a. Changed or replaced with another nonconforming sign. Only copy may be changed.
 - b. Moved, expanded, altered or modified in any way, except to bring the sign into complete conformity with Chapter 9.
 - c. Re-established once the sign structure has been removed.
 - d. Re-established after damage or deterioration as defined in Subsection 3 or 4 below.

4. Damaged or Deteriorated Non-Conforming Signs

If a non-conforming sign suffers more than sixty percent (60%) of its value by damage or deterioration it must be brought into conformance with this Article or removed. The value shall be determined as the replacement cost at the time of damage or destruction. The applicant is required to provide two (2) estimates from different companies to the Zoning Administrator, which will be averaged to determine the replacement cost. If the Zoning Administrator approves the replacement, it must be completed (i.e. final building approval) within six months of the determination. If the Zoning

Administrator denies the replacement, the sign must be completely removed within thirty (30) days of the determination.

5. Maintenance of Non-Conforming Signs

Non-conforming signs shall be subject to all requirements of Chapter 9 regarding safety, maintenance and repair. Non-conforming signs shall be maintained in good condition including necessary non-structural repairs, incidental alterations or copy alterations, such as repainting and electrical repairs which do not extend or intensify the non-conforming features of the sign.

Section 18.4 Non-Conforming Open Uses of Land

This category of non-conformances consists of lots used for storage yards, used car lots, auto wrecking, junk yards, golf driving ranges, miniature golf, and similar open uses where the only buildings on the lot are incidental and accessory to the open use of the lot and where such use of the land is not permitted to be established hereafter, under this Ordinance, in the district in which it is located. A nonconforming open use of land may be continued except as follows:

- A. When a nonconforming open use of land has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
- B. Nonconforming open uses of land shall not be changed to any but conforming uses.
- C. A nonconforming open use of land shall not be enlarged to cover more land than was occupied by that use when it became nonconforming.
- D. When any non-conforming open use of land is discontinued for a period in excess of one year, any future use of the land shall be limited to those uses permitted in the district in which the nonconforming use of land is located. Vacancy and/or non-use of the land regardless of the intent of the owner or tenant shall constitute discontinuance under this provision.
- E. Signs for legal non-conforming uses of open land in residential districts shall be illuminated only between sunrise and 10:00 p.m.

Section 18.5 Non-Conforming Uses of Structures

This category of non-conformances consists of structures used at the effective date of this Ordinance for purposes not permitted in the district in which they are located. Such uses may be continued, provided as follows:

- A. When a nonconforming use of a structure has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
- B. Except as specifically authorized below, a nonconforming use of a structure shall not be extended or enlarged except into portions of the structure which, at the time the use became non-conforming were already erected and arranged or designed for such non-conforming use. No structural alterations or additions shall be made in any structure occupied by a nonconforming use, except those required by law or ordinance, and except as follows:
 - 1. A nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this Ordinance, was manifestly designed or arranged to accommodate such use.
 - 2. A structure containing a nonconforming use, may be enlarged within the boundaries of the lot it occupied at the time it became nonconforming upon approval by the Iredell County Board of Commissioners. Said approval shall be considered after hearing and recommendation from the Iredell County Planning Board upon the following:
 - (a) The enlargement will not cause substantial harm to the adjoining property owners.
 - (b) The enlargement will not result in traffic increases beyond the capacity of the roads serving said use.
 - (c) The enlargement will not result in emission of smoke, fumes, noise, odor, or dust which will be detrimental to the character of the district or to the health, safety, or general welfare of the community.
 - (d) The enlargement will maintain all minimum setbacks and buffer requirements of the use district in which said use would be permitted.
 - 3. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of this Ordinance occur.
 - 4. Any structure used for single-family residential purposes and maintained as a nonconforming use may be replaced with a similar structure of the same, lesser, or larger size, so long as the replacement does not create new non-conformities or increase the extent of existing nonconformities with respect to yard size and setback requirements. In particular, a mobile

home may be replaced with a larger mobile home, and a "single-wide" mobile home may be replaced with a "double-wide". This section is subject to the limitations stated in subsection C. below on discontinued use.

5. Maintenance and repairs necessary to keep a nonconforming structure in sound condition shall be permitted.
- C. When any nonconforming use of a structure is discontinued for a period in excess of one year, the structure shall not thereafter be used except in conformance with the regulation of the district in which it is located.
 - D. Signs for legal non-conforming uses of structures in residential districts shall be illuminated only between sunrise and 10:00 p.m.

Section 18.6 Reconstruction of Damaged Structures

When a non-conforming structure or a structure containing a nonconforming use is damaged by fire, flood, wind, act of God, or casualty, such structure may be reconstructed and used as before any such calamity, provided such reconstruction begins within six (6) months and is completed within one year, and provided that the non-conforming situation is not increased.

Section 18.7 Change in Kind of Non-Conforming Use

A non-conforming use of a building or buildings may be changed to another non-conforming use of similar or less intensity upon appeal to the Board of Adjustment. Such permit may be issued if the Board of Adjustment determines that:

- A. The new use is allowed only in the same or more restrictive zoning districts as the previous use;
- B. The hours of operation generally can be expected to be similar (i.e., with regard to opening and/or closing times) or fewer than the previous use;
- C. The days of operation generally can be expected to be similar (or fewer) than the previous use;
- D. The amount of required parking for the use is no greater than ten percent greater than the previous use;

- E. The level of traffic generated by the new use can be expected to be no more than ten percent greater than the previous use as determined by the most recent version of the ITE (International Traffic Engineers) manual;
- F. The use meets all other ordinance criteria, such as but not limited to, screening and parking requirements.

Section 18.8 Other Non-Conforming Standards

- A. The existence of a nonconforming condition on a lot, parcel or tract of land shall not prevent the construction of additional buildings or structures on said parcel, lot or tract so long as said building or structure itself meets the requirements of this ordinance.
- B. Nonconforming conditions such as absent or substandard buffering or screening, or other landscaping nonconformities existing at the enactment of this Ordinance should be made conforming when the site meets the conditions set forth in Sections 6.1.2 and 6.2.1.
- C. Nonconforming conditions such as absent or substandard parking spaces or parking area/driveway surfaces existing at the enactment of this Ordinance should be made conforming when six or more parking spaces are added (whether required or not) or when the capacity of the site is increased. Capacity of the site is increased when the aspect used to calculate the number of parking spaces required is increased. For example, in retail stores the capacity is increased when floor area is increased, in offices capacity is increased when net rental area is increased, in manufacturing facilities capacity is increased when the number of employees is increased.