

ARTICLE VI

NONCONFORMING SITUATIONS

6-1 GENERAL

A nonconforming situation occurs when, on the effective date of this Ordinance, an existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matter as density and setback requirement) is not in conformity with this Ordinance, because signs do not meet the requirements of this Ordinance, or because land or buildings are used for purposes made unlawful by this Ordinance.

Unless otherwise specifically provided for in this Ordinance and subject to the restrictions and qualifications set forth in the remaining sections of this Article, nonconforming situations that were otherwise lawful on the effective date of this Ordinance may be continued. Whenever this Article refers to the effective date of this Ordinance, the reference shall be deemed to include the effective date of any amendments to this Ordinance if the amendment, rather than this Ordinance as originally adopted, creates a nonconforming situation.

6-2 NONCONFORMING LOTS

6-2.1 Single Lot of Record with Lot Area and/or Lot Width Nonconformity

- (A) When an undeveloped lot has an area or width which does not conform to the dimensional requirements of the district where located, but such lot was approved and of record at the time of adoption of this Ordinance or any subsequent amendment which renders such lot nonconforming, then such lot may be used for a use permitted in the district where located, provided that the setback dimensions and other requirements, except area or width, are complied with.
- (B) In residential zones, only a single-family dwelling shall be permitted on the nonconforming lot.
- (C) Nothing contained herein exempts a lot from meeting the applicable provisions of the Cleveland County Health Department regulations.

6-2.2 Lots with Contiguous Frontage in One Ownership

- (A) When two or more adjoining and vacant lots of record with contiguous frontage are in one ownership at the time of the adoption of this Ordinance or subsequent to adoption and said lots individually have a lot area or lot width which does not conform to the dimensional requirements of the district where located, such lots shall be combined to create one or more lots that meet the standards of the district where located.

- (B) Nothing contained herein exempts the contiguous lots considered as a single buildable lot or lots from meeting the applicable provisions of the Cleveland County Health Department regulations.

6-2.3 Reduction of a Lot of Record

A lot of record reduced to less than the required area, width, or setback dimensions as the result of a condemnation or purchase by a local or state government agency shall become a nonconforming lot of record.

6-2.4 Lot of Record with Setback Nonconformity

When the use proposed for an undeveloped nonconforming lot is one that is conforming in all other respects except that the applicable setback requirements cannot reasonably be complied with, then the entity authorized by this Ordinance to issue a permit for the proposed use (the Zoning Administrator, Board of Adjustment, or City Council) may allow deviations from the applicable setback requirements if it finds that:

- (A) The property cannot reasonably be developed for the use proposed without such deviations;
- (B) The deviations are necessitated by the size or shape of the nonconforming lot; and
- (C) The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety and can comply with applicable requirements of the Fire Code.

6-3 NONCONFORMING USE OF LAND

6-3.1 Continuance of Nonconforming Use of Land

Any nonconforming use legally existing at the time of adoption or amendment of this Ordinance may be continued so long as it remains otherwise lawful subject to conditions provided in this Section.

6-3.2 Conditions for Continuance

Such nonconforming use of land shall be subject to the following conditions:

- (A) No nonconforming use shall be changed to another nonconforming use unless such use is determined to be of equal or less intensity. In determining whether a nonconforming use is of equal or less intensity, the Board of Adjustment shall consider:
 - (1) Probable traffic of each use;
 - (2) Parking requirements of each use;
 - (3) Probable number of persons on the premises of each use at a time of peak demand;
 - (4) Off-site impacts of each use, such as noise, glare, dust, vibration or smoke

and other impacts on surrounding properties or the public health or safety.

- (B) The number of dwelling units in a nonconforming residential use shall not be increased.
- (C) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance.
- (D) If any nonconforming use of land ceases for any reason for a continuous period of more than 365 days, any subsequent use of such land shall be a permitted use in the district in which such land is located.
- (E) The resumption of a nonconforming use of land shall not be permitted if such nonconforming use is superseded by a permitted use for any period of time.
- (F) No additional structure(s) not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.

6-3.3 Extension, Enlargement or Replacement of a Nonconforming Use

- (A) Except as provided for in subsection (B) through (F), no nonconforming use shall be extended, enlarged, or replaced.
- (B) Any single-family residential nonconforming use (which may be a manufactured home) may be enlarged or replaced with a similar single-family residential structure of the same size or of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to setback requirements.
- (C) Any other nonconforming use may be extended, enlarged, or replaced only upon the issuance of a special exception if the Board of Adjustment finds that, in completing the extension, enlargement, or replacement work:
 - (1) There is no increase in the total amount of lot area devoted to the nonconforming use;
 - (2) The building footprint is not enlarged;
 - (3) There is no greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, or density requirements or other requirements such as parking, loading and landscaping requirements;
 - (4) The extension, enlargement or replacement of a nonconforming use shall not cause an increase in traffic; and
 - (5) There is no significant adverse impact on surrounding properties or the public health or safety.

In issuing a special exception, the Board of Adjustment shall follow the procedural requirements established in Section 4-7 for the issuance of a conditional use permit and may affix other reasonable and appropriate conditions such as, but not limited

to, landscaping and buffering to separate dissimilar uses or to screen parking and loading areas.

- (D) 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. However, a nonconforming use may not be extended to additional buildings or to land outside the original building unless specifically authorized in accordance with subsection (C).
- (E) 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 sand pit) may be expanded to the limits of the site plan upon which the mining permit was granted if ten percent or more of the natural materials had already been removed on the effective date of this Ordinance.
- (F) The volume, intensity, or frequency of use of property where a nonconforming use exists may be increased and the equipment or processes used at a location where a nonconforming use exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind or use and no violations of other Sections of this Article occur.

6-4 NONCONFORMING STRUCTURES

6-4.1 Continuance of Nonconforming Structure

Any nonconforming structure legally existing at the time of adoption or amendment of this Ordinance may be continued so long as it remains otherwise lawful.

6-4.2 Conditions for Continuance

Such nonconforming structures shall be subject to the following conditions:

- (A) No nonconforming structure may be enlarged or altered in any way that increases its dimensional deficiencies; however, any nonconforming structure or portion thereof may be altered to decrease its dimensional deficiencies. Any enlargement of the structure shall conform to the current dimensional requirements.
- (B) In the event of damage by fire or other causes to the extent exceeding sixty percent of its tax value prior to such damage as established by the Building Inspector, reconstruction of a nonconforming structure shall be permitted only in compliance with the dimensional provisions of this Ordinance.
- (C) In the event of damage by fire or other causes to the extent causing less than sixty percent of its tax value prior to such damage as established by the Building Inspector, reconstruction of a nonconforming structure shall be permitted provided it is constructed:
 - (1) In the same manner in which it originally existed subject to compliance with the requirements of the NC State Building Code; or
 - (2) In compliance with the dimensional requirements.

- (D) No nonconforming structure shall be moved or relocated unless it is made to comply with the dimensional and use requirements of the district in which it is relocated and with the requirements of the NC State Building Code.

6-4.3 Preservation of Safe or Lawful Conditions

Nothing in this Ordinance shall prevent the strengthening or restoration to a safe or lawful condition any part of any building declared unsafe or unlawful by the Shelby Building Inspector or other duly authorized official.

6-5 MISCELLANEOUS NONCONFORMING SITUATIONS

6-5.1 Nonconforming Situation Resulting From Governmental Acquisition

Any lot reduced in size by municipal, county or state condemnation or purchase of land shall obtain nonconforming lot or building status to the extent that said condemnation or purchase causes noncompliance with any provisions of this Ordinance.

6-5.2 Nonconforming Parking Created By Change of Use

Whenever a change of use that does not involve the enlargement of an existing structure is proposed for a lot on which the parking requirements of this Ordinance for the proposed new use can not be met due to insufficient lot area, the proposed change of use shall not be regarded as an impermissible extension or enlargement of a nonconforming situation. However, the permit-issuing authority shall require that the parking requirements be satisfied to the extent possible utilizing the lot area that is available and may require that satellite parking space be obtained.

6-6 NONCONFORMING PROJECTS

All nonconforming projects on which construction was begun at least 180 days before the effective date of this Ordinance as well as all nonconforming projects that are at least ten percent completed in terms of the total expected cost of the project on the effective date of this Ordinance may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this Section shall apply only to the particular phase under construction. In addition, as provided in NCGS 106A-385 (b), neither this Ordinance nor any amendment to it shall, without the consent of the property owner, affect any lot with respect to which a building permit has been issued pursuant to NCGS 160A-417 prior to the enactment of the Ordinance making the change so long as the building permit remains valid, unexpired, and unrevoked.

6-7 NONCONFORMING SIGNS

6-7.1 Continuance of Nonconforming Signs

- (A) Signs in existence on the effective date of this Ordinance which do not conform to the provisions of this Ordinance, but which were constructed, erected, affixed or maintained in compliance with all previous regulations, shall be regarded as nonconforming signs. Although it is not the intent of this Ordinance to encourage the continued use of nonconforming signs, nonconforming signs shall be allowed to

continue and a decision as to the continued existence and use or removal of such signs shall be controlled as follows:

- (1) No nonconforming sign shall be changed to another nonconforming sign.
 - (2) No nonconforming sign shall have any changes made in the words or symbols used or the message displayed on the sign unless the sign is specifically designed for periodic change of message.
 - (3) No nonconforming sign shall be structurally altered so as to change the shape, size, type or design of the sign other than to make the sign a conforming sign.
 - (4) No nonconforming sign shall be re-established after the activity, business or use to which it relates has been discontinued and such sign shall be removed.
 - (5) No nonconforming sign shall be re-established and all remains of the sign must be removed after damage or destruction, if the estimated expense of repairs exceeds fifty percent of the estimated total value of the sign at the time of destruction, as determined by the Building Inspector. If damaged by less than fifty percent, but repairs are not made within three months of the time such damage occurred, the nonconforming sign shall not be allowed to continue and must be removed.
 - (6) No nonconforming sign shall be relocated unless it is brought into conformance with the requirements of this Ordinance.
 - (7) Normal maintenance and repair of a nonconforming sign is permitted providing the shape, size, type or design of the sign is not altered.
- (B) Any nonconforming sign which is structurally altered, relocated or replaced shall immediately be brought into compliance with all the provisions of this Ordinance.
- (C) Any nonconforming sign which (i) is a menace to the public safety, (ii) has been abandoned, or (iii) which has not been properly maintained, including cleaning and painting of painted surface areas and replacement of damaged parts, shall be removed after due notice has been given by the Zoning Administrator.

6-7.2 Violations of Nonconforming Sign Provisions

The Zoning Administrator shall order the removal of any sign maintained in violation of the provisions of this Section for which removal procedures are herein prescribed, accordingly: the Zoning Administrator shall give ninety days written notice to the owner or lessee to remove the sign or to bring it into compliance with this Ordinance. If the owner or lessee fails to remove the sign within ninety days after the ninety-day written notice has been given, the Zoning Administrator or his duly authorized representative may institute removal proceedings according to the procedures specified in NCGS 160A-175.