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# Article 11: Nonconforming Situations

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## Section 11.1. General Applicability

11.1.1. In this Ordinance there exist uses of land, structures, lots of record, signs, and site features that were lawfully established before this Ordinance was adopted or amended, that do not conform to its terms and requirements. It is the intent of this ordinance to allow such uses, structures, lots of record, signs, and site features to continue to exist until they are removed but not to encourage their continual use.

11.1.2. Nonconforming uses of land, structures, lots of record, signs, and site features may be continued provided they conform to the provisions of this ordinance.

## Section 11.2. Use of Undeveloped Nonconforming Lots

### 11.2.1. NONCONFORMING SINGLE LOT OF RECORD

A vacant lot of record established prior to October 6, 1969, or any amendment thereto, which does not conform to the minimum lot requirements of the district in which it is located may be used as a building site for a use permitted within that district provided:

- A. All construction and the location of the building(s) shall be in accordance with the applicable front, side, and rear setback standards of the district in which it is located; and
- B. The existing or proposed water and sewage disposal system is approved by the New Hanover County Environmental Health Department or the Cape Fear Public Utility Authority, whichever applies.

### 11.2.2. NONCONFORMING VACANT CONTIGUOUS LOTS OF RECORD

When any two or more adjoining lots of record (one of which is vacant) that are less than 100 feet in total width and less than 20,000 square feet in total area are held in identical ownership at any time, they shall be deemed to be combined into a lot or lots which meet the minimum lot area standards of the zoning district in which they are located.

## Section 11.3. Completion of Nonconforming Projects

The construction or erection of any project for which a building permit which is made nonconforming by this Ordinance or an amendment thereto, may be completed, provided all construction is done pursuant to a validly issued building permit.

## Section 11.4. Extension or Enlargement of Nonconforming Situations

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

#### **11.4.1. EXISTING INDUSTRIAL USES**

The standards outlined in Section 3.4.10, Light Industrial (I-1) District, and Section 3.4.11, Heavy Industrial (I-2) District, and any requirement for a special use permit shall apply to all new proposals in the I-1 and I-2 districts as shown on the Table 4.2.1: Principal Use Table. Any existing industrial uses which did not require a special use permit on October 3, 2011 would be considered a conforming use and shall not require a special use permit in order to continue operations. The term “existing industrial uses” shall mean industries in active operation and open for business on a tax parcel zoned I-1 or I-2, and developed for that particular use on October 3, 2011.

#### **11.4.2. MODIFICATIONS AND/OR EXPANSIONS OF EXISTING INDUSTRIAL USES**

**A.** Modifications or expansion of existing industrial uses whose site conditions were in conformity with the requirements of the County Zoning Ordinance on October 2, 2011, shall comply with the following. If these conditions are not met, or if the existing industrial use is classified within the intensive industry category, and the modification and/or expansion changes the particular use within that category, a special use permit is required for the modification and/or expansion.

##### **B. Modifications and/or Expansions on the Same Parcel**

Modifications or expansions of existing industrial uses shall be allowed if the uses are fully contained on the tax parcel currently developed for and operating as such use, if:

1. The expansion or modification is for the same existing industrial use that was in active operation and open for business as October 3, 2011.
2. The expansion or modification is for a less intensive industrial use than was in active operation and open for business as October 2, 2011. (For example, an existing intensive industry use could transition to other industry and manufacturing uses not designated as intensive).
3. The existing industrial use is classified within the other industry and manufacturing uses not designated as intensive industry category, and the use is expanded or modified to a different use within that same category.

##### **C. Modifications and/or Expansions onto Adjacent or Contiguous Parcels**

Modifications or expansions of existing industrial uses shall be allowed on tax parcels adjacent or contiguous (excluding rights of way) to the current use, if the zoning district in which they are located allows the use, they are held in the same ownership on October 3, 2011 (including successor ownership), and:

1. The expansion or modification is for the same existing industrial use that was in active operation and open for business on October 2, 2011.
2. The expansion or modification is for a less intensive industrial use than was in active operation and open for business as October 2, 2011. (For example, an existing intensive manufacturing use could transition to other industry and manufacturing uses not designated as intensive industry).
3. The existing industrial use is classified within the other industry and manufacturing uses not designated as intensive industry category, and

the use is expanded or modified to a different use within that same category.

- 11.4.3.** Subject to Section 11.4.6 of this section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming, was manifestly designed or arranged to accommodate such use. However, subject to Section 11.3, Completion of Nonconforming Projects, a nonconforming use may not be extended to additional buildings or to land outside the original building.
- 11.4.4.** Subject to Section 11.3, Completion of Nonconforming Projects, 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 ten percent or more of the earth products had already been removed on the effective date of this provision.
- 11.4.5.** Where a nonconforming situation exists, the equipment or processes may be changed if these or similar changes amount only to changes in degree of activity rather than changes in-kind and no violations of other paragraphs of this section occur.
- 11.4.6.** Physical alteration of structures or the placement of new structures on open land are unlawful if they result in:
- A.** An increase in the total amount of space devoted to a nonconforming use; or
  - B.** A greater non-conformity with respect to dimensional restrictions such as yard requirements, height limitations, or density requirements.
- 11.4.7.** Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.
- 11.4.8.** Notwithstanding Section 12.4.1.F, any structure used for single family residential purposes and maintained as a nonconforming use or structure may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new non-conformities or increase the extent of existing non-conformities with respect to lot area 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 paragraph is subject to the limitations stated in Section 11.6, Abandonment and Discontinuance of Nonconforming Situations.
- 11.4.9.** A structure that is nonconforming in any respect, or a structure that is used in a nonconforming manner may be reconstructed or replaced if partially or totally destroyed, if:
- A.** A letter of intent is received by the Planning Director within six months from the time of such destruction.
  - B.** A building permit is obtained from the Building Safety Department within one year from the time the damage or destruction took place.
  - C.** The total amount of space devoted to a nonconforming use may not be increased, except that a larger, single family residential structure may be constructed in place of a smaller one and a larger mobile home intended for residential use may replace a smaller one.

- D. The reconstructed building may not be more nonconforming with respect to dimensional restrictions such as setback standards, height, or density, and such dimensional non-conformities shall be eliminated if that can reasonably be accomplished without unduly burdening the reconstruction process or limiting the right to continue the nonconforming use of the building.

## **Section 11.5. Change in Kind of Nonconforming Use**

- 11.5.1. A nonconforming use may be changed to a conforming use. Thereafter, the property may not revert to a nonconforming use.
- 11.5.2. A nonconforming use may be changed to another nonconforming use only in accordance with approval issued by the Board of Adjustment. The Board shall issue such approval only if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use in operation at the time the approval is applied for. If a nonconforming use is changed to any use other than a conforming use without obtaining approval in accordance with this paragraph, that change shall constitute a discontinuance of the nonconforming use, and the property involved may thereafter be used only for conforming purposes
- 11.5.3. A nonconforming accessory use or building may only be changed to another nonconforming accessory use or building in accordance with subsection 11.5.2 above. Changes in a principal use are also considered as changes to any accessory use or building for the principal use.
- 11.5.4. If a nonconforming use and a conforming use, or any combination of a conforming and nonconforming uses, or any combination of nonconforming uses exist on one (1) lot, the use made of the property may be changed substantially (except to a conforming use), only in accordance with approval issued by the Board of Adjustment. The Board shall issue such approval only if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use or combination of uses in operation at the time the approval is applied for.
- 11.5.5. A use listed as permitted use in Table 4.2.1: Principal Use Table, may be established as a new use in any existing nonconforming building, provided such use complies with all off-street parking requirements of this Ordinance.

## **Section 11.6. Abandonment and Discontinuance of Nonconforming Situations**

- 11.6.1. When a nonconforming use is discontinued for a consecutive period of 180 days, only a conforming use may be located on the property.
- 11.6.2. For purposes of determining whether a right to continue a nonconforming situation is lost in accordance with this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building or one space in a nonconforming mobile home park for 180 days shall not result in the loss of the right to rent that apartment or space in the future, as long as the apartment building or mobile home park as a whole is continuously maintained. However, if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the

right to maintain it after 180 days of discontinuance. For example, if a mobile home is nonconforming use on a residential lot where a conforming residential structure also is located, removal of that mobile home for 180 days terminates the right to replace it.

- 11.6.3.** Any structure or operation made nonconforming by this provision that was vacant or discontinued on the date of its original adoption, the 180 day period for purposes of this section, began to run on that original date of adoption.

## **Section 11.7. Nonconforming Signs**

### **11.7.1. DETERMINATION OF NONCONFORMITY**

Existing signs which do not conform to the specific provisions of Section 5.6, Signs, and the other requirements of this Ordinance may be eligible for the designation "nonconforming" provided that:

- A.** The Building Safety Director determines that the sign is properly maintained and does not in any way endanger the public; and
- B.** The sign has a valid permit or variance approval, or complied with all applicable laws on August 6, 2001.

### **11.7.2. LOSS OF NONCONFORMING STATUS**

A nonconforming sign may lose its nonconforming designation if:

- A.** The sign is relocated or replaced; or
- B.** The structure of the sign is altered in any way except towards compliance with this Section 5.6, Signs, and the other requirements of this Ordinance. This does not refer to change of copy or normal maintenance.

### **11.7.3. MAINTENANCE AND REPAIR OF NONCONFORMING SIGNS**

Nonconforming signs are subject to all requirements of this Ordinance regarding safety, maintenance, and repair. However, if the sign suffers more than 50 percent appraised damage or deterioration; it shall be removed or brought into conformance with Section 5.6, Signs, and the other requirements of this Ordinance.