

# ARTICLE 10. NONCONFORMITIES

## §10.1. General

A lawful preexisting use, structure, or lot that does not meet the requirements of this UDO is deemed a nonconformity. Special provisions apply to nonconformities, as set forth in this article.

## §10.2. Nonconforming Structures

### §10.2.1. Continuation

The conforming use of a structure, as explained in §1.14.1, existing at the effective date of this UDO, may be continued, although the structure's size or location does not conform with the yard, dimensional, height, parking, loading, access, lot area, and lot coverage provisions of this UDO.

### §10.2.2. Damaged or Destroyed

Nonconforming structures which are damaged or destroyed by fire, explosion, flood, or other calamity to the extent of more than 50 percent of the value of the structure, as determined by the County, may be reconstructed and shall comply with the applicable provisions of this UDO for the district in which such structure is located, unless the structure is situated on a substandard lot of record, in which case the provisions concerning substandard lots of record shall apply.

### §10.2.3. Movement

A nonconforming structure, including a manufactured home, may not be moved off the lot or lots on which it is located, unless when relocated within the jurisdiction of the County, it complies with the regulations for the district in which it is located. Further, any subsequent reuse of the lot or lots from which the nonconforming structure has been moved must comply with the regulations for the district in which it is located.

### §10.2.4. Expansion

A nonconforming structure may be enlarged or expanded by a maximum of 50 percent, subject to the approval of the Director, provided that any expansion does not increase the degree of nonconformity and meets all of the requirements for the zoning district; including, but not limited to the yard, dimensional, height, parking, loading, access, lot area, and lot coverage provisions of this UDO.

## §10.3. Nonconforming Uses

### §10.3.1. Continuation

The nonconforming use of a structure or land at the effective date of this UDO may be continued, except for the following:

- A. Except as authorized by §10.2.4, only that portion of the land in actual use may be so continued, and the nonconforming use may not be enlarged or extended, nor may any additional structures be added to be occupied by the nonconforming use.
- B. Normal maintenance, repair, and incidental alteration of a building occupied by a nonconforming use are permitted, provided it does not extend the nonconforming

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Damaged or Destroyed

use. A structure occupied by a nonconforming use may be changed to make the structure more in character with the uses permitted in the district in which it is located.

**§10.3.2. Damaged or Destroyed**

If such nonconforming use is damaged by fire, explosion, flood, or other calamity to the extent of more than 50 percent of its current equalized value, it shall not be restored unless it will comply with the use provisions of this UDO. This provision shall not apply to nonconforming owner-occupied single-family detached dwellings; such dwellings may be restored in all cases.

**§10.3.3. Discontinued or Terminated**

If such nonconforming use is discontinued or terminated, as evidenced by the disconnection of electrical service to such use for a period of 180 days, any future use of the structure or land shall comply with the provisions of this UDO.

**§10.3.4. Movement**

A nonconforming use, including but not limited to, manufactured homes, may not be moved off the lot or lots on which it is located; unless, when relocated within the jurisdiction of the County, it complies with the regulations for the district in which it is located. Further, any subsequent reuse of the lot or lots from which the nonconforming use has been moved must comply with the regulations for the district in which it is located.

**§10.3.5. Change in Use**

- A. The Board of Commissioners may permit as a special use (See §9.11) a change in nonconforming use, provided that the requirements of §10.2.1 through §10.3.4 above are met, and the Board of Commissioners finds that such new use would be more in character with the uses permitted in the district than the previous use. In permitting such change, the Board of Commissioners may require appropriate conditions and safeguards in accordance with the provisions of this UDO.
- B. Once a nonconforming use has been changed or altered so as to comply with the provisions of this UDO, it shall not revert back to a nonconforming use. Once the Board of Commissioners has permitted the substitution of a more restrictive nonconforming use for an existing nonconforming use, the substituted use shall lose its status as a nonconforming use and become subject to all the conditions required by the Board. If the structure occupied by a nonconforming use is changed so as to be more in character with the uses permitted in the district in which it is located, it shall not subsequently be changed to be less in character.

**§10.4. Nonconforming Lots (Lots of Record)**

Except as provided in §10.6, an undeveloped lot in any zoning district which was recorded with the Lincoln County Register of Deeds Office prior to the effective date of the zoning by Lincoln County that does not comply with the minimum lot area or width requirements for the zoning district in which such lot is located, then such lot may be developed for a use allowed in that zoning district; provided all structures on said lot meet all applicable yard, setback, and bulk requirements, or a variance is approved by the Board of Adjustment pursuant to §9.18. Lots in the –WPO district shall comply with the requirements of §10.7.

## §10.5. Nonconforming Signs

### §10.5.1. Amortization of Nonconforming Signs

Any sign existing at the effective date of this UDO, which does not conform to the requirements of this UDO, may be continued with the following exceptions:

### §10.5.2. Enlargement and Revision of Nonconforming Signs

No nonconforming sign, including but not limited to billboards, shall be erected, replaced, or otherwise modified in such a way as to increase its nonconformity. Reasonable repair and maintenance of nonconforming signs, including the change of an advertising message, is permitted, provided that a nonconforming sign which is damaged or deteriorated to the extent of 50 percent or more of its value shall not be replaced unless it conforms to all provisions of this subsection. This section is also subject to the provisions of NCGS 136-131.2.

### §10.5.3. Removal of Nonconforming Signs

- A. Nonconforming signs, when removed for other than normal maintenance, may not be erected again, nor may any such sign be replaced with another nonconforming sign.
- B. Nonconforming signs determined by the Board of Commissioners to be a public nuisance or detrimental to the health or safety of the populace shall be removed within 30 days of such determination and written notice to that effect delivered by first-class mail to the property owner of record.
- C. All nonconforming signs shall be completely removed within 30 days of the discontinuance of a business use advertised on said sign(s).
- D. Property owners shall be responsible for removal of nonconforming signs.

## §10.6. Nonconformities in the Airport Overlay (-AO)

In addition to complying with the other applicable requirements of this article, nonconformities in the -AO district may be continued and maintained subject to the provisions as set forth below.

### §10.6.1. Regulations Not Retroactive

The regulations prescribed by this subsection shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this subsection or any amendment thereto, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this subsection, and is diligently prosecuted.

### §10.6.2. Marking and Lighting

Notwithstanding the preceding provision of this section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Lincoln-Lincoln County Regional Airport Authority to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstructions. Such markers and lights shall be installed, operated and maintained at the expense of the Lincoln County.

## Abandoned or Destroyed

**§10.6.3. Abandoned or Destroyed**

Whenever the Director determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

**§10.7. Nonconformities in the Watershed Protection Overlay (-WPO)**

In addition to complying with the other applicable requirements of this article, nonconforming lots, buildings and structures in the –WPO district may be continued and maintained subject to the provisions as set forth below. Expansions to nonconformities must meet the requirements of §7.3, however, the impervious surface area is not required to be included in the density calculations.

**§10.7.1. Vacant Lots**

This category consists of vacant lots for which plats or deeds have been recorded in the office of the Lincoln County Register of Deeds. Lots may be used for any of the uses allowed in the -WPO district in which it is located, provided the following:

- A. Where the lot area is below the minimum specified and no other standard needs to be modified to use the lot for residential purposes.
- B. Notwithstanding paragraph A above, whenever two or more adjoining residential vacant lots of record are in single ownership at any time after the effective date of this UDO, and such lots individually have less area than the minimum requirements for residential purposes for the -WPO district such lots shall be combined to create a single lot or lots which meet or minimize the degree of nonconformity.
- C. Where a nonconforming lot of record is not contiguous to any other lot owned by the same party, such lot of record shall not be subject to this section provided the lot is developed for single-family residential development purposes. Any lot or parcel created as part of a family subdivision after the effective date of this section shall be exempt from these rules if it is developed for one single-family detached, zero lot line or alley-loaded residence and if it is exempt from County subdivision regulations. Any lot or parcel created as part of any other type of subdivision that is exempt from subdivision shall be subject to the land use requirements (including impervious surface requirements) of these regulations, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent practicable.

**§10.7.2. Occupied Lots**

This category consists of lots occupied for residential purposes at the effective date of this UDO. These lots may continue to be used, provided that whenever two or more adjoining lots of record, one of which is occupied, are in single ownership at any time after the effective date of this UDO, and such lots individually or together have less area than the minimum requirements for residential purposes specified, such lots shall be combined to create lots which meet the minimum size requirements, or which minimize the degree of nonconformity.

**§10.7.3. Buildings and Impervious Surfaces**

This category includes any buildings or impervious surface area existing at the effective date of this UDO not in conformance with the restrictions of this UDO. Such buildings and impervious surface areas shall be allowed to remain.

**§10.7.4. Reconstruction of Damaged Buildings or Impervious Surfaces**

Any existing building or impervious surface area not in conformance with the restriction of this UDO that has been damaged by fire, wind, flood or other causes, may be repaired and used as before. The total amount of space devoted to impervious surface area may not be increased unless stormwater controls, that equal or exceed the previous development, are provided.

**§10.7.5. Nonconforming Mobile and Manufactured Homes**

A nonconforming mobile or manufactured home located on a lot (outside of a mobile home park) on the date of adoption of this UDO may be replaced in any district, except the R-MF, RL-14, and RL-20 districts, with a manufactured home under the following conditions:

- A. There are no more than two mobile or manufactured homes on the lot in question.
- B. Existing mobile or manufactured homes may be replaced as a permitted use subject to the following:
  1. An existing Class A manufactured home may only be replaced by a Class A manufactured home.
  2. An existing Class B manufactured home may only be replaced by a Class A or Class B manufactured home.
  3. An existing Class C manufactured home may be replaced by a Class A, B, or C manufactured home.
  4. An existing Class D manufactured home may only be replaced by a Class A, B, or C manufactured home.
  5. Any existing mobile home may only be replaced by a Class A, B, or C manufactured home.
- C. Any replacement manufactured home shall have been constructed at a later date than the mobile or manufactured home which it is replacing. The applicant shall be required to document that this condition has been met.
- D. In no instance may a Class D mobile or manufactured home serve as the replacement manufactured home, except as a special use in the R-R and R-T districts in accordance with the requirements of §9.11.
- E. The replacement manufactured home shall be placed on the lot within 180 day of removal of the previous mobile or manufactured home.
- F. The replacement mobile or manufactured home shall be placed on the lot in conformity with all applicable yard regulations for the district in question.