

Chapter 13. NONCONFORMITIES

13.1 Purpose and Applicability

The purpose of this section is to regulate and limit the continued existence of uses and structures established prior to the effective date of this Ordinance (or any subsequent amendment) that do not conform to this Ordinance. Any nonconformity created by a change in the classification of property or the text of these regulations shall also be regulated by the provisions of this section. Many nonconformities may continue, but the provisions of this section are intended

and designed to limit substantial investment in nonconformities and to bring about eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the area in which it is located.

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13.2 Summary Applicability Matrix

The following table summarizes the primary requirements that shall be met when there are changes to nonconforming structures. A ✓ indicates that compliance with all applicable standards is required.

| | Ch. 2 | Ch. 5 | Ch. 5 | Ch. 8 | Ch. 8 | Ch. 4 | Ch. 10 | Ch. 12 |
|--|---------------------|-----------------------|-------------------|----------------------|--------------------------|-----------|--------------------|-----------------|
| | District Provisions | Dimensional Standards | Design Provisions | Landscape Provisions | Parking Area Landscaping | Sidewalks | Parking Provisions | Sign Provisions |
| Reconstruction of nonconforming principal structure when damage >50% of assessed value (Sec. 13.4.C) | ✓ | ✓ | ✓ | | ✓ | | ✓ | |
| Reconstruction of nonconforming principal structure when damage <50% of assessed value (Sec. 13.4.G) | ✓ (a) | ✓ | | | | | | |
| Nonconforming vacant lot (Sec. 13.6.A) | ✓ | ✓ | | | | | | |
| Replacement of nonconforming signs (damage > 50% of market value) (Sec. 13.7.C) | | | | | | | | ✓ |
| Replacement of non-conforming manufactured home (Sec. 13.4.E) | ✓ | | ✓ | | | | | |

(a) Except Use not required to conform

13.3 Nonconforming Uses

- A.** Nonconforming uses of land or structures, and nonconforming structures that contain nonconforming uses may continue only in accordance with the provisions of this section, but this section shall only apply to the extent these or such nonconformities fully and clearly meet the definition of “non-conforming use” in Chapter 18 of this Ordinance.
- B.** A nonconforming use shall not be expanded, changed or enlarged, nor shall such a nonconforming use be enlarged by additions to the structure in which the nonconforming use is located (either attached or detached). Any occupation of additional lands beyond the boundaries of the lot on which the nonconforming use is located is prohibited.
- C.** A nonconforming use may make necessary alterations to enhance the health, safety, and general welfare of the community by mitigating environmental impacts to air, ground, or water quality; however, these necessary alterations shall not expand or enlarge the nonconforming use.
- D.** Once a nonconforming use has been changed to a conforming use, it shall not revert or be used for any nonconforming use.
- E.** If a nonconforming use is discontinued for a period equal to or exceeding one hundred-eighty (180) consecutive calendar days, the use shall not be re-established.
- F.** An abandoned nonconforming use shall not be re-established; however, a nonconforming use that has not been abandoned may be reinstated. For the purpose of this Ordinance, intent of resumption shall be considered when determining abandonment.

13.4 Nonconforming Principal Structures and Building Types

- A.** Routine maintenance and repair may be performed to allow the continuation of nonconforming structures.
- B.** The nonconforming situation of a nonconforming structure may not be enlarged or altered in a way which increases the nonconformity; however, enlargements or alterations to those areas where the structure is conforming may be permitted.
- C.** If a nonconforming structure is damaged to an extent greater than 50 percent of its assessed value, it may be rebuilt only after the issuance of a Zoning Permit from the Administrator. A Zoning Permit for reconstruction of such structure shall be secured no later than 180 days from the date of destruction. In the issuance of the permit, the following standards shall apply:
 - 1.** The structure shall be rebuilt to meet all of the provisions of this Ordinance if it can be met.
 - 2.** If the structure cannot be rebuilt to meet all of the provisions of this Ordinance, it shall not be rebuilt in a manner which increases its nonconformity.

- D. If a nonconforming structure is moved on a lot upon which it is located, it shall, if possible, be moved so as to make the structure conforming. Otherwise, the moved structure shall be placed on the lot as conforming as possible.
- E. A nonconforming manufactured home used as a principal residential structure may only be replaced in accordance with the design criteria found in Chapter 5 of this Ordinance.
- F. A manufactured home may continue to be placed or replaced within a non-conforming manufactured home subdivision on previously platted lots or previously approved spaces, as well as make any necessary improvements to the subdivision infrastructure, but shall not be permitted to expand the area or number of units contained within the boundary of the subdivision.
- G. Normal structural repair and maintenance may be performed to allow the continuation of a nonconforming use. Also, a nonconforming use may be re-established in case of damage to the structure in which it is located (to an extent of less than 50 percent of its assessed value) due to fire or other disaster event pursuant to the issuance of a permit by the Administrator. This shall include, as well, the repair or reconstruction of any structure or on-site utility, parking or street infrastructure in support of said nonconforming use. If said structure was also nonconforming, the reconstruction shall meet the requirements of the applicable District. An application shall be filed for such building permit no later than 60 days after the structure has been destroyed or damaged, otherwise the use will not be allowed to be rebuilt. The building permit shall expire six months after it is issued unless prior thereto a substantial beginning of the reconstruction shall have occurred and thereafter diligently pursued.
- H. If a nonconforming structure is destroyed to an extent of more than 50 percent of its assessed value at the time of destruction, a use may only be allowed to re-establish in accordance with the Ordinance in effect in the area in which it is located. Assessed value shall be determined by using tax assessment records provided by the tax assessor's office for the year in which the structure was destroyed.
- I. For the purpose of determining dimensional standards for nonconforming building types and their lots, the following dimensional standards shall apply to all nonconforming building types: (all standards are minimum unless otherwise noted)

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| 1. | Lot Width: | 30 feet |
| 2. | Lot Depth: | 0 feet |
| 3. | Front Setback: | 0 or 10 feet |
| 4. | Front Setback Maximum: | No Maximum |
| 5. | Front Yard Encroachment: | 5 feet |
| 6. | Side Setback: | 0 or 5 feet |
| 7. | Rear Setback: | 0 feet |
| 8. | Rear Setback from Alley: | 15 feet from centerline |
| 9. | Accessory Structure/Dwelling Side/Rear Setback: | 5 feet |
| 10. | Height Maximum: | 3 story |

13.5 Nonconforming Accessory Uses and Structures

- A.** A nonconforming accessory use or accessory structure may be expanded only if the expansion does not increase the non-conforming condition of the structure.
- B.** No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, damage, or destruction unless such accessory use or structure is made to conform to the standards for the zoning district in which it is located. No non-conforming accessory use or structure shall become or replace any terminated principal non-conforming use or structure.

13.6 Nonconforming Lots

- A.** Except as provided in 13.6.B & 13.6.C of this Chapter, a nonconforming vacant lot may be developed for any of the uses permitted by these regulations in the District in which it is located, provided that the use meets all applicable yard and setback requirements for the District in which the lot is located.
- B.** A nonconforming vacant lot shall not be developed if it can be combined with an adjoining lot (owned by the same person) on or after the effective date of these regulations in order to create a single lot. If the combination results in the creation of a single lot that is more than 1 ½ times the minimum lot width or area required in the District, then the single lot may be divided into two lots of equal width and area without being further classified as nonconforming. For the purposes of this section, “adjoining” shall be deemed to mean the sharing of one or more common lot lines and access to both lots can be provided by the same street without crossing that street.
- C.** A nonconforming lot may be developed if, at the effective date of this Ordinance the lot is nonconforming, the lot is located in (i) a subdivision in which the lot was located had received preliminary plat approval; or (ii) a subdivision in which the lot was located had received final plat approval.

13.7 Nonconforming Signs

- A.** Minor repairs and maintenance of nonconforming signs, including but not limited to repainting and electrical repairs are permitted. However, relocation or structural changes to size, shape, or height of the sign are prohibited except to make the sign more conforming to the provisions of this Ordinance.
- B.** The interchangeable sign face of a nonconforming freestanding or building cabinet sign may be replaced; however, this permission does not extend to include relocation or structural changes to size, shape, or height.
- C.** A nonconforming sign shall not be replaced if the sign is damaged by more than fifty (50%) percent of its value as listed in the Rowan County assessor's office on the annual tax listing. If the value of the sign is not listed, the value shall be determined by the Administrator as the depreciated replacement value of the sign.

- D. Abandoned nonconforming signs or sign structures, as defined in Chapter 12 (Signs) of this Ordinance, shall be removed or dismantled within 60 days of notice by the Zoning Administrator or their designee.

13.8 Nonconforming Lighting

Outdoor light fixtures installed prior to the effective date of this Ordinance are exempt from the provisions of Chapter 11, provided, that no change in use, replacement, and structural alteration of outdoor light fixtures shall be made unless it conforms to the provisions of this Ordinance.

13.9 Nonconforming Plans

- A. Any site specific development plan (including but not limited to Master Plans, Preliminary Plats, Final Plats) for the development of property and/or construction of a building which has received final approval by the City of Salisbury for development and/or construction, but does not conform to this Ordinance, may be developed and/or constructed in accordance with the Ordinance, rules, and regulations, including any conditions imposed upon approval. Any plan approved prior to the adoption of this Ordinance, but which conforms to its provisions, shall be administered, interpreted, amended and implemented in accordance with the provisions of this Ordinance. For additional information, please refer to Chapter 15, Administration.
- B. A property owner with an approved site specific development plan as identified above may elect to develop such property and/or construct such building in accordance with the terms and provisions of this Ordinance and the rules and regulations upon which the plan was approved. The property owner shall notify the Administrator assigned to approve such plan. A property owner shall be notified in writing of additional required approvals or modifications which may be necessary in order for the plan to conform to the Ordinance.
- C. Any amendment or modification to an approved site specific plan, which would have required approval pursuant to the Ordinance, the rule or regulation by which the plan was originally approved, shall be reviewed and considered in accordance with the terms and provisions of this Ordinance as if it were an amendment or modification to a plan originally approved under this Ordinance.
- D. This section does not prohibit the exercise of any vested right established by common law Ordinance or statute.

13.10 Nonconformities in a Watershed Area

- A. Existing development as defined in this Ordinance may be continued and maintained subject to the provisions provided. Expansions to structures or modifications to plans classified as existing development shall meet the requirements of this Ordinance; however, the built-upon area of the existing development is not required to be included in the built-upon area calculations.

- B. Vacant lots:** This category consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds of Rowan County. Lots may be used for any of the uses allowed in the watershed area in which it is located, provided the following:
1. Where the lot area is below the minimum specified in this Ordinance the Watershed Administrator is authorized to issue a watershed protection permit.
 2. Whenever two or more contiguous residential vacant lots of record are in single ownership following the adoption of this Ordinance and such lots individually have less area than the minimum requirements for residential purposes for the watershed area in which such lots are located, such lots shall be combined to create one or more lots that meet the standards of this Ordinance, or if this is impossible, reduce to the extent possible the nonconformity of the lots.
- C. Occupied Lots:** This category consists of lots, occupied for residential purposes at the time of the adoption of this Ordinance. 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 adoption of this Ordinance, and such lots individually or together have less area than the minimum requirements for residential purposes for the watershed area in which they are located, such lots shall be combined to create lots which meet the minimum size requirements or which minimize the degree of nonconformity.
- D. Prohibited Uses of Land:** This category consists of uses existing at the time of adoption of this Ordinance where such use of the land is not permitted to be established in the watershed area in which it is located. Such uses may be continued only under the following conditions:
1. When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
 2. Such use of land shall be changed only to an allowed use.
 3. When such use ceases for a period of at least 180 continuous calendar days, it shall not be re-established.
- E. Reconstruction of Buildings or Built-Upon Areas:** Any existing building or built-upon area that has been removed or damaged and is not conforming with the provisions of this Ordinance may be reconstructed and/or repaired, provided:
1. Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
 2. The amount of built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

Provisions 1 and 2 above shall not apply to single family residential development.

13.11 Appeals And Modifications

- A. The Board of Adjustment shall hear and decide appeals from any landowner (i) to make a change in use of a nonconforming use to a different, less-intense nonconforming use; (ii) to make a change in location of a nonconforming use of land to another location on the same property; or (iii) allow the replacement of a nonconforming use.

- B. The Board of Adjustment may only grant a change for a nonconforming use or replacement of a nonconforming structure which has been destroyed after having first held a public hearing and determining through findings of fact that:
 - 1. Said change will be more suitable and appropriate for the lot(s) on which it is located than the existing situation; and,
 - 2. The proposed change will have a less harmful effect than the existing situation on the properties surrounding the lot(s) in question; and,
 - 3. The decision to grant the change will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise be detrimental to the public welfare.

- C. The Board of Adjustment, in granting such changes, may through the findings of fact prescribe appropriate conditions and safeguards that are in conformity with this Ordinance. Violation of such conditions and safeguards when made a part of the terms upon which the change was granted, shall be deemed a violation of this Ordinance and shall be subject to enforcement provisions as prescribed per Chapter 17, Violations and Penalties.