

# 14

# NONCONFORMITIES

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# CHAPTER 14 NONCONFORMITIES<sup>1</sup>

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## 14.1 GENERAL PROVISIONS

### 14.1.1 PURPOSE<sup>2</sup>

- A. Applying new regulations to existing development can create situations where existing lot dimensions, development density or intensity, land uses, buildings, structures, landscaping, parking areas, signs, or other conditions do not strictly comply with new requirements.
- B. To avoid undue hardship, this Chapter protects and regulates nonconforming lots, site elements, structures, and uses (collectively referred to as “nonconformities”) and specifies the circumstances and conditions under which those nonconformities may continue.
- C. The County finds that nonconformities adversely affect the orderly development and value of other property and should not continue unless brought into compliance with new County regulations over a reasonable period of time. In addition, reinvestment in some properties that do not strictly comply with current regulations can maintain existing neighborhood assets and economic growth and is allowed with appropriate conditions.

### 14.1.2 APPLICABILITY

This Chapter:

- A. Applies to nonconforming lots, site elements, structures, and uses; and
- B. Does not confer legal nonconforming status to expired approvals or abandoned uses and structures, nor to lots, site elements, structures, or uses

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<sup>1</sup> This is a comprehensive chapter to deal with existing situations, ranging from permits in progress to more comprehensively addressing different types of nonconformities (uses, lots, structures, and site improvements). This Chapter generally carries forward ZO Section 9 *Non-Conforming Situations* with edits as noted in the footnotes. However, ZO Section 9.4.c is not carried forward since its meaning is unclear and, further, this Chapter provides a more comprehensive treatment of nonconformities than the current Zoning Ordinance. The Chapter also proposes to use the term “nonconformities” rather than “non-conforming situations.”

<sup>2</sup> Revises the first paragraph in ZO Section 9 *Non-Conforming Situations* to remove the definition of nonconforming situation (now referred to as a nonconformity), which is established in Chapter 17, and more clearly describe the intent of this Chapter.

established inconsistent with County regulations in effect when the lot, site element, structure, or use was established.

### 14.1.3 AUTHORITY TO CONTINUE

- A. Nonconformities that were otherwise lawful on the effective date of this UDO may continue, subject to the restrictions and qualifications set forth in this Chapter.<sup>3</sup>
- B. In all cases, the burden of establishing a lawful nonconformity exists is the responsibility of the lot owner or the authorized user of the nonconforming lot, site element, structure, or use.

### 14.1.4 MINOR REPAIRS & MAINTENANCE<sup>4</sup>

Minor repairs to and routine maintenance of property where a nonconformity exists are allowed and encouraged if the minor repair or maintenance does not create a new nonconformity or increase the degree of the existing nonconformity. Changes other than minor repairs and routine maintenance to property where a nonconformity exists may be allowed as provided in this Chapter.

### 14.1.5 VESTED RIGHTS

This Chapter does not prohibit the exercise of any vested right established by common law or statute.

## 14.2 NONCONFORMING LOTS

- A. **Applicability.** This Section applies to lots that have less area or width than required by [Chapter 2: Zoning Districts](#) for the district in which the lot is located.
- B. **Use of Nonconforming Lots.** A nonconforming lot may be used for any use allowed in the zoning district in which the lot is located if the use meets all

<sup>3</sup> Carries forward 9.2 *Continuation of Non-conforming Situations*.

<sup>4</sup> Carries forward the first sentence of 9.4.e [*Extension or Enlargement of Non-conforming Situations*]. Clarifies the minor repair or maintenance cannot create a new nonconformity or increase the degree of the existing nonconformity. Deletes second sentence (related to major renovations of nonconforming structures since it is redundant to Section 14.5: *Nonconforming Structures*).

other applicable requirements, including setbacks and any use-specific standards.<sup>5</sup>

- C. **Building on Subdivision Lots of Record.** Where there exists platted subdivision lots of record, whether conforming or nonconforming according to the UDO, buildings may be situated on said lots according to the setbacks in effect in the Zoning Ordinance at the time of recordation.<sup>6</sup>
- D. **Lots Not Subject to Previous Zoning Ordinance.** If the County's previous Zoning Ordinance did not apply to the subdivision at the time of recordation, any undeveloped lots that were located in an un-zoned area of the county prior to county-wide zoning adoption must comply with all applicable UDO standards unless the parcel is located in a PUD or a major subdivision.<sup>7</sup>

## 14.3 NONCONFORMING SITE ELEMENTS<sup>8</sup>

### 14.3.1 APPLICABILITY

- A. This Section applies to developed lots with site elements that do not comply with the requirements of this UDO.
- B. "Site elements" are components, other than buildings, an applicant installs or maintains on a lot in conjunction with development and include exterior lighting, landscaping, buffers, open space, parking areas, loading areas, and signs.

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<sup>5</sup> Carries forward ZO Section 9.3 *Non-Conforming Lots of Record* with revisions to simplify the text. Clarifies a nonconforming lot may be used for any allowed use, not just as a "building site," since some uses may not involve a building.

<sup>6</sup> Carries forward the first sentence of ZO Section 9.8 *Building on Subdivision Lots of Record* with the following changes: replaces "Zoning Ordinance" with "UDO," replaces "requirements" with "setbacks," and deletes the end of the last sentence ("...when zoning becomes applicable").

<sup>7</sup> Carries forward the second sentence of ZO Section 9.8 *Building on Subdivision Lots of Record* with revisions to require conformance with current UDO standards rather than the "most applicable zoning district within the pre-existing Ordinance."

<sup>8</sup> This Section establishes rules for the review and redevelopment of sites that are nonconforming as to landscaping, parking, or other development standards.

### 14.3.2 NONCONFORMING EXTERIOR LIGHTING<sup>9</sup>

Nonconforming exterior lighting must be brought into compliance with [Section 4.5: Exterior Lighting](#) when:

- A. It is relocated, upgraded, or replaced;
- B. The fixture housing is changed (routine maintenance, including changing the lamp, ballast, starter, photo control, lens, and other required components, is allowed for all existing fixtures); or
- C. Fifty percent or more of the existing light fixtures in a vehicular canopy are upgraded or replaced or the fixture housing is changed.

### 14.3.3 NONCONFORMING LANDSCAPING OR BUFFERS<sup>10</sup>

- A. Nonconforming landscaping, transitional buffers, or screening of site features must be brought into compliance with [Section 4.4: Landscaping & Screening](#) when any individual expansion of a structure, including outdoor patio and deck areas, existing prior to the effective date of this UDO, if the expansion increases the structure's floor area by 25% or more in the IL or IH District or by 50% or more in all other districts.
- B. If the cumulative total of all expansions or alterations of a structure over any consecutive three-year period exceeds the maximum allowed by 14.3.3A, above, the nonconforming site element(s) must be brought into full compliance with [Section 4.4](#).
- C. If there is insufficient space on a lot to accommodate the required transitional buffer, the Appearance Commission may approve an alternative buffer plan that meets the intent of [4.4.7: Transitional Buffers](#).

### 14.3.4 NONCONFORMING PARKING OR LOADING FACILITIES<sup>11</sup>

Nonconforming parking or loading facilities must be brought into compliance with [Section 4.6: Parking & Loading](#) when:

- A. The principal use changes; or

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<sup>9</sup> Carries forward ZO Section 13.17 *Nonconformities [Lighting]*, streamlines the text, and eliminates redundant language.

<sup>10</sup> This matches 4.4.2: *Applicability [Landscaping & Screening]*.

<sup>11</sup> This matches 4.6.2: *Applicability [Parking & Loading]*.

- B. A structural alteration or other addition to a principal structure produces an increase in parking demand.

### 14.3.5 NONCONFORMING SIGNS

- A. **On-Premises Signs.** Any permanent, on-premises sign may be replaced, repaired, or relocated on the property, if the replaced, repaired, or relocated sign does not exceed the size (square footage) or height of the original sign.<sup>12</sup>
- B. **Off-Premises Signs (Billboards).** Pursuant to 4.7.9.B, all legally established billboards existing within the jurisdiction of Chatham County on the effective date of this UDO are nonconforming signs. Nonconforming billboards may remain in use and may be repaired, reconstructed, and relocated as provided in 4.7.9: *Billboards*.
- C. **Temporary Signs.** All nonconforming temporary signs must be removed within 90 days of the effective date of this Chapter.

## 14.4 NONCONFORMING STRUCTURES<sup>13</sup>

### 14.4.1 APPLICABILITY<sup>14</sup>

This Section applies to any lawfully constructed structure that:

- A. Does not meet the dimensional standards (e.g., setbacks, height, density, or gross floor area) in Chapter 2: *Zoning Districts* for the district in which the structure is located; or
- B. Is located within a perimeter or right-of-way buffer required by Section 4.4: *Landscaping & Screening*.

### 14.4.2 CHANGES TO A NONCONFORMING STRUCTURE

- A. **Alteration of a Nonconforming Structure.** Physical alteration of a nonconforming structure is allowed if it does not result in greater

<sup>12</sup> Carries forward ZO Section 9.4(f) *Non-conforming Signs* [Extension or Enlargement of Non-conforming Situations]. The other relevant section, ZO Section 15.2 *Non-conforming Signs*, is simply a cross-reference to ZO Section 9.

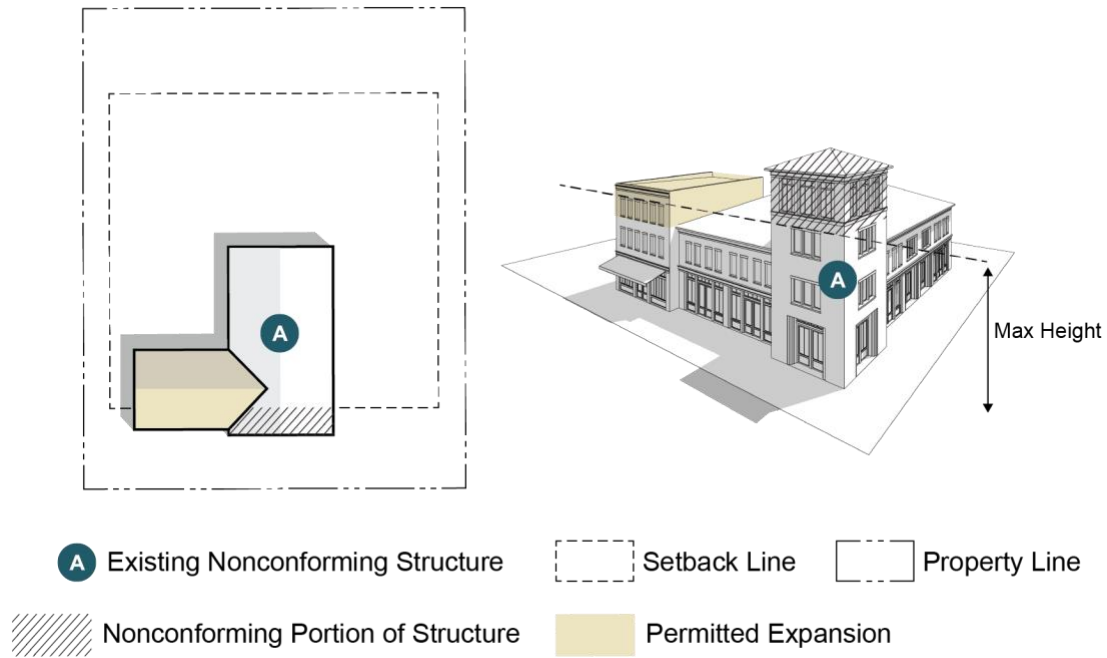
<sup>13</sup> This Section carries forward rules for the continuation, expansion, alteration, and reestablishment of structures that are nonconforming as to the district dimensional standards.

<sup>14</sup> Note Section 4.2: *Building Design* only applies to new structures, so existing buildings that do not meet the building design standards are not considered nonconforming.



nonconformity with respect to dimensional standards such as yard requirements, height limitations, built upon area, or density requirements.<sup>15</sup>

**Figure 14.4.2-1: Alteration of a Nonconforming Structure**



- B. **Damage or Destruction of a Nonconforming Structure.** Any nonconforming structure that is destroyed or damaged to an extent equal to 60% or less of the taxed value of the structure by fire, flood, explosion, earthquake, winds, war, riot, act of nature, or any other act not under the control of the owner, may be reconstructed and used as before, if:<sup>16</sup>
1. The nonconformity is not increased or extended; and
  2. A Zoning Compliance Permit and building permit are received within two years of the event.

<sup>15</sup> Carries forward ZO Section 9.4.d with minor revisions to state the requirement in the positive (“...is allowed...”) rather than the negative (“...is unlawful...”).

<sup>16</sup> Carries forward 9.5 *Reconstruction Limitations*.

### 14.4.3 CHANGE OF USE IN A NONCONFORMING STRUCTURE<sup>17</sup>

A conforming use may be established or reestablished in a nonconforming structure if the use complies with all applicable UDO provisions, including [Section 4.6: Parking & Loading](#) and [Section 12.2: Zoning Compliance Permits](#).

## 14.5 NONCONFORMING USES<sup>18</sup>

### 14.5.1 APPLICABILITY

This Section applies to any lawfully established use that does not meet the requirements in [Chapter 3: Use Regulations](#).

### 14.5.2 CONTINUATION OF NONCONFORMING USES

A nonconforming use may continue if it remains otherwise lawful. Any change to a nonconforming use must be made in accordance with this Chapter.

### 14.5.3 LIMITED USES<sup>19</sup>

A use that is nonconforming because it was a permitted use at the time of establishment and now is a limited use in the zoning district pursuant to [Chapter 3: Use Regulations](#):

- A. May continue; and
- B. Shall not be relocated, expanded, enlarged, or increased in intensity without first receiving limited or special use approval, as applicable, and a Zoning Compliance Permit. [See [Chapter 12: Procedures](#)]

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<sup>17</sup> Carries forward a portion of 9.6 *Change in Kind of Non-conforming Use* with revisions to streamline the language and state the requirement in the positive (“the use complies...”) rather than the negative (“no other provisions of this Ordinance for the establishment of new uses is violated”).

<sup>18</sup> This Section carries forward rules for the continuation, expansion, and reestablishment of uses that are prohibited in a district or that would require discretionary review under the new regulations.

<sup>19</sup> These provisions are new.

**14.5.4 EXTENSION OF NONCONFORMING USE<sup>20</sup>**

- A. A nonconforming use may be extended through any portion of a completed building.
- B. A nonconforming use may be extended on the same lot to:
  - 1. Additional buildings, including new buildings; and
  - 2. Land outside the original building.
- C. A nonconforming use may be extended to cover more land than was occupied or manifestly designed and arranged to be occupied by that use when it became nonconforming, if:
  - 1. It is not extended to additional lots; and
  - 2. All applicable UDO standards are met (e.g., setbacks, and buffers).

**14.5.5 CHANGE OF NONCONFORMING USE<sup>21</sup>**

- A. A nonconforming use may be changed only to a conforming use. Thereafter, the property may not revert to a nonconforming use.
- B. If a nonconforming use and a conforming use or any combination of nonconforming uses exist on one lot, the use made of the property may be changed only to a conforming use.

**14.5.6 CHANGES TO A STRUCTURE CONTAINING A NONCONFORMING USE**

- A. A conforming structure containing a nonconforming use can be altered and the nonconforming use extended as provided in 14.5.4: Extension of Nonconforming Use. Discontinuance of a Nonconforming Use<sup>22</sup>
- B. When active operation or occupancy of a nonconforming use is discontinued, regardless of the purpose or reason, for a consecutive period of 365 days, the property involved may thereafter be used only for conforming uses.

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<sup>20</sup> Carries forward ZO Section 9.4.a but deletes “[n]ew buildings are allowed provided they meet the zoning district requirements or the zoning district requirements of their type of actual use, whichever is more stringent.” Clarifies a nonconforming use may be extended *on the same lot*.

<sup>21</sup> Carries forward a portion of 9.6 *Change in Kind of Non-conforming Use*.

<sup>22</sup> Carries forward 9.7 *Discontinuance of Non-conforming Uses* with minor edits to simplify the language.

- C. This Paragraph does not apply to a nonconforming use located in a structure undergoing reconstruction in accordance with 14.4.2B: *Damage or Destruction of a Structure Containing a Nonconforming Use*, above.
- D. For purposes of determining whether a right to continue a nonconforming use is lost pursuant to this Paragraph, all of the buildings, activities, and operations maintained on a lot are generally considered as a whole.
1. For example,, the failure to rent one apartment in a nonconforming apartment building for 365 days does not result in a loss of the right to rent that apartment thereafter if the apartment building as a whole is continuously maintained.
  2. For example, if three buildings with nonconforming retail uses are located on a lot zoned R1 and the nonconforming use ceases to operate in all three buildings for a consecutive period of 365 days or more, the nonconforming retail use cannot be reestablished after the 365-day period.
  3. However, when a nonconforming use is maintained in conjunction with a conforming use, cessation of operation or occupancy of the nonconforming use for the period specified in 14.5.6B, above, terminates the right to maintain it thereafter.