

10. NONCONFORMITIES

10.1 PURPOSE AND INTENT

- A. **Purpose and Intent.** Due to the establishment of this LDO, there exists uses of land, structures, lots of record, and site features that were lawfully established prior to the adoption of this LDO that are not conforming. The purpose of this section is to allow and regulate the continued existence of such instances that do not conform to the provisions of this LDO, as nonconformities. This section further intends to:
1. Recognize the ability of landowners to continue to use property for uses and activities that were lawfully established;
 2. Promote upkeep, maintenance, reuse, and rehabilitation of existing sites and buildings; and
 3. Enforce limits on nonconformities that may adversely affect neighboring properties.

10.2. APPLICABILITY

- A. **Determination of a Nonconformity.**
1. The burden of establishing that a nonconformity lawfully exists shall be the responsibility of the person who owns or rents the property upon which the nonconformity exists, or an authorized agent of the person who owns or rents the property (i.e. the owner, agent, or applicant).
 2. Evidence that may be used to prove the legal status as a lawful nonconformity may include approved permits, approved construction plans, and/or records of previously approved regulations.
- B. **Ownership Changes.** No change of title or possession of property shall be construed to prevent the continuance of a nonconformity.
- C. **Increases in a Nonconformity.** A nonconformity shall not be expanded, intensified, or enlarged except as provided by this section.

10.3. NONCONFORMING STRUCTURES

- A. Nonconforming structures are structures which were lawfully established in accordance with regulations at the time but no longer meet the development standards of this LDO. Any lawful nonconforming structures with conforming uses may be added to, enlarged, reconstructed, or moved in accordance with the standards below:
1. Nonconforming structures may be enlarged provided the enlargements comply with the development standards (i.e. yard, height, parking, loading, access, and all other applicable requirements) of this LDO for the district in which such a structure is located.
 2. Nonconforming structures shall not be permitted to create any additional dwelling units, create new nonconformities, or increase the extent of existing nonconformities.
 3. Minor repairs to, and routine maintenance on, nonconforming structures shall be allowed. Minor repairs and routine maintenance shall mean repairs and maintenance that are necessary to maintain a nonconforming structure in a safe condition and to protect against hazards to the safety of surrounding areas and uses.
 4. Nonconforming structures which are damaged or destroyed by fire, explosion, flood, or other natural causes, may be reconstructed, and shall comply with the yard, height, parking, loading, access, and all other applicable development standards of this LDO for the district in which the structure is located.
 5. If the nonconforming structure is situated on a nonconforming lot of record, the provisions concerning nonconforming within Section 10.5: Nonconforming Lots, shall apply.
 6. If the nature of the damage would make it more feasible to rebuild in the previous location, the Board of Adjustment is authorized to approve a variance to allow the reconstruction or replacement.
 7. A nonconforming structure may not be moved off the lot (or lots) on which it is located unless when relocated it complies with the regulations for the district in which it is located.

10.4. NONCONFORMING USES

- A. A nonconforming use is a use of land or building that lawfully existed, or for which a vested right was established, before the adoption of this LDO, but is not a permitted use in the zoning district in which the use is located. Any lawful nonconforming use of a structure, land, or water existing at the time of the adoption of this LDO may be continued so long as the following standards are met:
1. Only that portion of the land or water in actual use may be so continued and the nonconforming use may not be enlarged or extended, except as provided for in Section 10.4.A.5.
 2. No additional structures may be added to be occupied by the nonconforming use, except that existing cemeteries can expand to the boundaries of the property which they owned at the time they became nonconforming, provided that required setbacks are met.
 3. Normal maintenance, repair, and incidental alteration of a building occupied by a nonconforming use is permitted provided it does not extend the nonconforming use.
 4. A structure occupied by a nonconforming use may be changed to make the structure more in character (i.e. more conforming) with the use permitted in the district in which it is located.
 5. If a nonconforming use is damaged by fire, explosion, flood, or other natural cause to the extent of more than seventy-five (75) percent of its current assessed value, it shall not be restored except so as to comply with the use provisions of this LDO. However, a nonconforming single and/or two-family dwelling may be restored in accordance with the provisions of Section 10.3: Nonconforming Structures, of this LDO.
 6. If such nonconforming use is discontinued or terminated for a period of more than one-hundred-and-eighty (180) days, any future use of the structure, land, or water shall comply with the provisions of this LDO. Operation of the use without a license or permit required by the town or state for one-hundred-and-eighty (180) days or more shall constitute a termination of nonconforming use.

7. A nonconforming manufactured home used as a principal residential structure may be replaced with another manufactured home only if:
 - a. The replacement is a manufactured home that bears a valid seal indicating conformance with the current National Manufactured Housing Construction and Safety Standards Act;
 - b. The replacement manufactured home is a Class A manufactured home, as defined in this LDO;
 - c. The replacement manufactured home must have been manufactured within five years from the date of a request for a replacement of the existing mobile home;
 - d. Was not granted a special use permit to allow its presence at a particular location or zoning district
 - e. It is not in a mixed-use district or the Town Center district.
 - f. The replacement manufactured home must receive a certificate of occupancy no later than one-hundred-and-eighty (180) days of the removal of the original manufactured home. The manufactured home must meet all zoning district requirements.

8. A special use permit may allow for a change in nonconforming use provided that the requirements of this section are met. The special use permit shall find 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 special use permit may require appropriate conditions and safeguards in accordance with the provisions of this LDO.
 - a. Once a nonconforming use has been changed or altered to comply with the provisions of this LDO, it shall not revert back to a nonconforming use.
 - b. If the substitution of a more restrictive nonconforming use for an existing nonconforming use is approved, the substituted use shall lose its status as legal nonconforming use and become subject to all the requirements of this LDO.

9. 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.

10.5. NONCONFORMING LOTS

- A. A nonconforming lot is a tract of property that was lawfully established at the time of its establishment but is no longer conforming to the lot standards of this LDO.
- B. Where the owner of a lawful lot of record, at the time of adoption of this LDO, or their successor in title thereto does not own sufficient land to enable them to conform to the lot area or lot width requirements of this LDO, such a lot may be used as a building site for a single-family residence in a district in which residences are permitted.
 1. The standards above shall also apply for a mobile home only if the lot is in a district where mobile homes are permitted.
- C. In no situation shall the lot width and lot area be greater than twenty (20) percent below the minimum specified in this LDO. The appropriate county department shall approve the reduction if on-site water or wastewater facilities are involved.
- D. In any case where the lot area and lot width are greater than twenty (20) percent below the minimum specified in this LDO, or other requirements cannot be met, the Board of Adjustment is authorized to approve, as a variance, such dimensions that shall conform as closely as possible to the required dimensions. This provision shall also require that Wake County Health Department submits a letter of approval if on-site water or wastewater facilities are involved.
- E. If the pre-existing nonconforming lot is not in a district where single-family dwellings or mobile homes are permitted, the Board of Adjustment may issue a variance to allow some reasonable use.
- F. If two (2) or more adjoining lots of record are in one ownership when this LDO is adopted, or at any time after the adoption of this LDO, and such lots individually do not meet the minimum dimensional requirements of this LDO for the district in which such lots are located, then such group of lots shall be considered as a single lot or several lots of minimum permitted width and area for the district in which located, and therefore, the provisions of Section 10.5: Nonconforming Lots, do not apply. No portion of said lot

or structure shall be used or sold in a manner which diminishes compliance with the requirements of this LDO.

10.6. CONFORMING USES AND STRUCTURES

- A. Any use or structure existing prior to the effective date of this LDO which conforms to the regulations of this LDO for permitted uses and satisfies the development standards and any other applicable regulations of the district in which it is located, may be continued, provided any changes in use or structural or other changes shall comply with the provisions of this LDO.
- B. Any structure or use existing prior to the effective date of this LDO which would be permitted by this LDO as a special use permit may be continued as if a special use permit had been applied for and issued, provided that any changes in use or structural or other changes shall comply with the provisions of this section and LDO.

10.7. EFFECT OF AMENDMENTS

- A. If subsequent amendments to this LDO or the official zoning map result in the creation of additional nonconformities, such nonconformities shall be governed by the provisions of this section unless otherwise stated in the amendment.