

Article 11.0 Nonconformities

Sec. 11.1 Generally

The purpose of this Article is to establish regulations and limitations on the continued existence of uses, lots, structures, signs, parking areas and other development features that came into existence legally, in conformance with then-applicable regulations, but that do not conform to one or more of the requirements of this Ordinance. These are referred to in this Ordinance as “nonconformities”.

Commentary: *For the purposes of this Section, a development feature is a site standard, not specifically identified herein, such as lighting, buffers and open and recreational space. A development feature does not include use and district building standards (e.g., yard setbacks and height).*

Sec. 11.2 Intent

- a. In order to encourage development that is consistent with this Ordinance and to provide owners with reasonable use of their uses, lots, structures, signs, parking areas and other development features that came into existence legally, such uses, lots, structures, signs, parking areas and other development features are encouraged to continue to exist and be put to productive use.
- b. The regulations of this Article are intended to clarify the effect of such nonconforming status and to avoid confusion with illegal uses, lots, structures, signs, parking areas and development features. Furthermore, the regulations are intended to:
 - i. Recognize the interest of owners in continuing to use their property;
 - ii. Promote reuse and rehabilitation of existing buildings, where applicable; and,
 - iii. Prohibit the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the community as a whole.

Sec. 11.3 General Standards

11.3.1 Exemptions

The provisions of this Article shall not be construed to prohibit the reconstruction of any lawfully established nonconforming, single-family residential structure (including the replacement of manufactured single-family residential structures) if such structure is damaged or destroyed by a natural calamity or other involuntary act, provided that:

- a. The extent of the nonconformity is not expanded in scale, scope or intensity beyond that of the original structure (e.g., the square footage of the replacement structure cannot exceed that of the original structure).
- b. Any dimensional nonconformities are corrected to the extent reasonable and practicable as determined by the Governing Body Building Official.
- c. Adequate documentation (e.g., an insurance report) is provided to demonstrate that the damage or destruction necessitating the reconstruction or total replacement is the result of a natural calamity or other involuntary act.

- d. A valid plot plan, as required by the Governing Body Building Official, and building permit for its reconstruction must be applied for within 12 months of the date that the damage occurred.

11.3.2 Authority to Continue

Any lawful nonconformity that existed on the effective date of this Ordinance or any use, structure, lot, sign, parking area or development feature that becomes lawfully nonconforming upon adoption of any amendment to this Ordinance may be continued in accordance with the regulations of this Article.

11.3.3 Determination of Nonconformity Status

The burden of proving that a lawful nonconformity exists (as opposed to a violation of this Ordinance) rests with the property owner.

11.3.4 Repairs and Maintenance

- a. Nonconformities must be maintained to be safe and in good repair.
- b. Incidental repairs and normal maintenance necessary to keep a lawful nonconformity in sound condition are permitted unless otherwise expressly prohibited by this Ordinance.
- c. Installation or relocation of non-load bearing walls, non-bearing partitions, fixtures, wiring or plumbing, may be performed on any structure that is devoted in whole or in part to a nonconforming use.
- d. Nothing in this Article shall prevent the strengthening or restoration to a safe condition of a structure, sign, parking area or development feature in accordance with an order of the Governing Body Building Official who declares such structure, sign, parking area or development feature to be unsafe and orders it to be restored to a safe condition provided such restoration is not otherwise in violation of the various provisions of this Ordinance prohibiting repair or restoration of partially damaged or destroyed structures, signs, parking areas or development features.

11.3.5 Changes in Ownership, Tenancy or Management

Nonconforming status is not affected by changes of ownership, tenancy or management.

Sec. 11.4 Nonconforming Uses and Structures

11.4.1 Definition

a. Nonconforming Use

A nonconforming use is a use of land or structure that lawfully existed before the adoption or amendment of this Ordinance but that fails, by reason of such adoption or amendment, to conform to the use regulations of the zoning district in which the use is located or other development standards of this Ordinance.

b. Nonconforming Structure

A nonconforming structure is any structure that lawfully existed before the adoption or amendment of this Ordinance but that fails, by reason of such adoption or amendment, to conform to the building standards of the zoning district in which the structure is located or other development standards of this Ordinance.

11.4.2 Regulations

a. Change in Use

A nonconforming use of land or of a structure shall not be changed to any use other than a use permitted in the zoning district in which such land or structure is located. When such nonconforming use has been changed to a permitted use, it shall only be used thereafter for a use allowed in the zoning district in which it is located and meet any applicable use standard(s). For purposes of this paragraph, a use shall be deemed to have been changed when an existing nonconforming use has been terminated and a business license or tax certificate for the permitted use has been obtained.

b. Enlargements, Expansions

i. Nonconforming Uses

A nonconforming use shall not be enlarged or expanded to occupy a greater area of land or of a structure that was not occupied by the use when it became nonconforming unless it is hereafter devoted to a conforming use. Activity further prohibited shall include, without being limited to:

- (1) Enlargement or expansion of such use within a structure to any portion of the floor area that was not occupied by such nonconforming use on the effective date of this Ordinance, or any amendment to this Ordinance that causes such use to become nonconforming.
- (2) Operation of such nonconforming use in such a manner as to conflict with, or to further conflict with, if already conflicting on the effective date of this Ordinance or any amendments to this Ordinance, any use limitations established for the district in which such use is located.
- (3) New construction, reconstruction or structural alterations except as provided in Sec. 11.3.4.

ii. Nonconforming Structures

Any nonconforming structure may be enlarged, maintained, repaired or altered; provided, however, that no such enlargement, maintenance, repair or alteration shall create an additional nonconformity or increase the degree of the existing nonconformity of all or any part of such structure that is not in compliance with this Ordinance.

Commentary: For example, an enlargement that proposes a greater encroachment into a required setback is considered an additional nonconformity and is not permitted by this provision.

c. Relocation

i. Nonconforming Uses

No nonconforming use of land shall be relocated in whole or in part to any other location on the same or any other lot, unless such use conforms to all the regulations of the district in which such use of land is located after being so relocated.

ii. Nonconforming Structures

No nonconforming structure shall be relocated in whole or in part to any other location on the same or any other lot, unless the entire structure after its relocation conforms to all the regulations of the district in which the structure is located after being so relocated.

d. Damage

Any nonconforming structure which is damaged by any means, to beyond 75% of its replacement cost at the time of damage, shall not be rebuilt, altered or repaired unless in compliance with this Ordinance. Otherwise, a building permit must be secured within 12 months of the date of occurrence of such damage. If a building permit has not been obtained within that time, or if the a building permit is obtained but expires, the structure cannot be rebuilt, altered or repaired.

e. Abandonment

Once a nonconforming use is abandoned, the nonconforming status of the use is lost and any subsequent use or occupancy of such land or structure shall comply with the regulations of the zoning district in which such use or structure is located. A nonconforming use will be considered abandoned when any of the following occurs:

- i. The use has been discontinued for a period of at least 12 months regardless of whether the intent is to resume the nonconforming use;
- ii. The nonconforming use has been replaced by a conforming use; or
- iii. A building permit to reconstruct a damaged structure that housed a nonconforming use has not been secured within 12 months of the date of occurrence of such damage or the building permit has expired or construction has not been diligently pursued.

Sec. 11.5 Nonconforming Accessory Uses

No use which is accessory to a principal nonconforming use shall continue after such principal use shall have ceased, unless such accessory use shall thereafter conform to all the regulations of the district in which it is located.

Sec. 11.6 Nonconforming Lots of Record

11.6.1 Definition

A nonconforming lot is a tract of land that was lawfully established in accordance with all regulations in effect at the time of its establishment but which no longer complies with the applicable lot area, lot width, lot frontage, or access standards on the effective date of this Ordinance or because of a subsequent map or text amendment.

11.6.2 Determination of Nonconforming Lot Status

A nonconforming lot shall be considered a legal building site if it meets one or more of the criteria specified below:

a. Approved Subdivision

The lot was created through a subdivision plat approved in accordance with the Subdivision Ordinance.

b. Individual Lot Legally Created by Deed

The lot was legally created by a recorded deed before the effective date of the amendment that made the lot nonconforming, or before the County or City adopted regulations requiring a recorded plat.

c. Recombination Subdivision

The current configuration of the lot resulted from a recombination subdivision approved in accordance with the Subdivision Ordinance.

d. Partial Government Acquisition

The lot was created in conformity with the provisions of this Ordinance, but was made nonconforming when a portion of the lot was acquired by a government entity.

11.6.3 Development on Nonconforming Lots

Development on nonconforming lots must comply with all applicable development standards of the zoning district in which the lot is located, unless otherwise stated below or elsewhere in this Ordinance.

a. Single-family Dwellings

A single-family detached dwelling which is permitted within the zoning district in which it is proposed to be located may be erected on a nonconforming lot, notwithstanding the regulations imposed by any other provisions of this Ordinance.

b. Further Subdivision

A nonconforming lot may be subdivided provided that subdivision does not create a nonconforming lot.

Sec. 11.7 Nonconforming Signs

11.7.1 Definition

A nonconforming sign is any sign that lawfully existed before the adoption or amendment of this Ordinance but that fails, by reason of such adoption or because of a subsequent map or text amendment, to conform to the current provisions of Sec. 9.9, Signs.

11.7.2 Signs Granted a Variance

Any sign granted a variance may be continued after the effective date of this Ordinance. However, any aspect of such sign that was not approved for a variance, and that is in violation of this Ordinance, shall be considered nonconforming.

11.7.3 Alteration, Enlargement, Relocation

No nonconforming sign shall be changed or altered in any manner which would increase the degree of its nonconformity; enlarged; structurally altered to prolong its useful life; or relocated in whole or in part to any other location where it would be nonconforming. Replacing the support structure of the sign shall be considered structurally altering the sign to prolong its useful life. A change in the copy or advertising message on the sign shall not constitute an alteration of the sign. Routine maintenance of the sign shall be permitted in order to keep it in a safe condition and neat and orderly appearance.

11.7.4 Removal of Nonconforming Signs

a. Removal by Abandonment, Change of Business

- i. Any nonconforming sign, the use or copy of which is discontinued or removed for a period of six (6) months, regardless of any intent to resume or not to abandon such sign, shall be deemed to be abandoned and shall not thereafter be re-established.
- ii. Any period of such discontinuance caused by government actions, natural calamity or other involuntary act, without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for the purposes of this Section.

b. Removal by Damage or Destruction

Any nonconforming sign which is partially damaged or destroyed by any means, to beyond 50% of its replacement cost at the time of destruction, shall not be restored, but shall be removed or brought into compliance with Sec. 9.9, Signs.

c. Removal of Nonconforming Signs upon Demolition of a Principal Use Structure

When a principal use structure is demolished, any nonconforming signs on the property where the structure was located shall be brought into compliance with Sec. 9.9, Signs or removed from the property.

d. Process for Removal of Nonconforming Signs

If any nonconforming sign is not removed as required by this Section, the Governing Body Building Official shall initiate the necessary proceedings to secure removal of such nonconforming sign, or secure compliance with the provisions of this Ordinance as provided below.

i. Notice to Correct, Remove or Appeal

Upon mailed notification from the Governing Body Building Official, the property owner shall have 30 days to bring the nonconforming sign into compliance, appeal the decision of the Governing Body Building Official to the Zoning Board of Appeals or remove said sign. Notice shall be deemed delivered three (3) days after being mailed, first class mail, postage prepaid, through the U.S. Mail, to the owner as shown on the most recently available Chatham County Tax Digest.

ii. Enforcement Actions

It shall be a violation of this ordinance and the property owner shall be subject to criminal prosecution as provided in this ordinance upon the occurrence of either one of the following:

- (1) The property owner does not remove the nonconforming sign within 30 days as provided in subsection i. above and does not appeal the decision of the Governing Body Building Official to the Zoning Board of Appeals.
- (2) The property owner appeals the decision of the Governing Body Building Official but does not remove the nonconforming sign within five (5) days of a decision of the Zoning Board of Appeals affirming the decision of the Governing Body Building Official.

Sec. 11.8 Nonconforming Parking Areas

11.8.1 Definition

A nonconforming parking area is any parking area that lawfully existed before the adoption or amendment of this Ordinance but that fails, by reason of such adoption or amendment, to conform to the current provisions of Sec. 9.3, Off-street Parking and Loading. For certain circumstances, nonconforming parking areas shall be brought into compliance as provided below.

11.8.2 Change of Use

- a. When the use of a structure or land is discontinued for any period of time and the subsequent use does not require additional off-street parking, such parking area shall not be required to comply with Sec. 9.3, Off-street Parking and Loading, unless specified elsewhere in this Ordinance.

- b. When a change in use of a structure or land to another use requires additional off-street parking spaces, the following shall be required:
 - i. Any existing parking areas shall be required to meet the requirements of Sec. 9.5, Landscaping, Screening and Buffers, and Sec. 9.8, Outdoor Site Lighting; and,
 - ii. New parking areas shall comply with all of the requirements of this Ordinance.

11.8.3 Expansion of Use

Where the increase in area devoted to an existing use, whether a structure or land, results in additional off street parking spaces, the following shall apply:

- a. The existing parking areas shall only be required to meet the requirements of Sec. 9.5, Landscaping, Screening and Buffers and Sec. 9.8, Outdoor Site Lighting; and
- b. New parking areas shall comply with all of the requirements of this Ordinance; however, where the expansion results in an increase of 40% or more required off-street parking spaces, the existing and new parking area shall comply with all of the requirements of this Ordinance.

11.8.4 Site Redevelopment

Where an existing principal use structure on a property is replaced with a new principal use structure, new and existing parking areas associated with that use shall comply with this Ordinance.

Sec. 11.9 Nonconforming Development Features

11.9.1 Definition

A nonconforming development feature is any aspect of a development (other than those described in Sec. 11.4 thru 11.8) that was lawfully established, in accordance with the regulations at the time of its establishment but that no longer complies with one or more standards of this Ordinance. Common examples of nonconforming development features are sites that do not comply with the lighting or landscaping, screening and buffer standards of this Ordinance.

11.9.2 Regulations

- a. No action may be taken that increases the degree or extent of the nonconforming development feature.
- b. If a structure or other development containing a nonconforming development feature is damaged to the extent of 75% of the assessed value as determined by the Chatham County Tax Assessor, it may not be restored, reconstructed, or replaced unless the nonconforming development feature is eliminated or made conforming.