

ARTICLE 9. NONCONFORMITIES

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9.1. Purpose and intent.

There exist within the Town of Garner uses of land, structures, lots and signs that were lawfully established prior to the adoption of this UDO, but that no longer conform to the standards of this UDO. It is the intent of this UDO to permit these nonconformities to continue until they are removed, but not to encourage their survival except under the limited circumstances established in this article.

9.2. Nonconforming uses.

- A. **Normal maintenance and repair.** Normal maintenance or repair of structures where nonconforming uses are located may be performed in any consecutive 12-month period, to an extent not exceeding 15 percent of the current assessed value of the structure. Such maintenance and repair shall not be allowed to increase the cubic content of the structure, except pursuant to this section.
- B. **Extension or alteration.**
1. A nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this UDO, was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.
 2. A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use involving the removal of natural materials (e.g., a quarry) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming if ten percent or more of the earth products had already been removed at the effective date of this UDO.
- C. **Change in use.** A nonconforming use shall not be changed to any other use, unless such use conforms to the provisions of this UDO for the zoning district in which it is located.
- D. **Single-family residential nonconforming uses.** A structure used for a single-family residence and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as new nonconformities or an increase in the extent of existing nonconformities (with respect to such matters as setback and parking requirements) are not created.
- E. **Continuation of accessory use.** No use that is accessory to a principal nonconforming use shall continue after such principal use shall have ceased or terminated unless it conforms to all provisions of this UDO.
- F. **Discontinuance and abandonment.**
1. When a nonconforming use is discontinued for a consecutive 180-day period, the property involved may thereafter be used only for conforming purposes.
 2. All of the buildings, activities and operations maintained on a lot are generally to be considered as a whole in determining whether a right to

continue a nonconforming situation is lost pursuant to this section. For example, the failure to rent one apartment in a nonconforming apartment building for 180 days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building as whole is continuously maintained. However, if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

3. When a use (or use of land) made nonconforming by adoption of this UDO is vacant or discontinued at the effective date of this UDO, the 180-day period begins to run at the effective date of this UDO.

9.3. Nonconforming structures.

- A. **Normal maintenance and repair.** Normal maintenance or repair of nonconforming structures may be performed in any consecutive 12-month period, to an extent not exceeding 15 percent of the current assessed value of the structure. Such maintenance and repair shall not be allowed to increase the cubic content of the structure, except pursuant to this section.
- B. **Alteration or additions.** Alterations or additions to a nonconforming building or structure may be permitted as long as the alterations or additions do not increase the nonconformity of the structure related to the building setback line, height limitations, yard or other provisions regulating the size and placement of buildings and structures for the district in which the nonconforming structure is located.
- C. **Reconstruction.**
 1. **Nonresidential structures.**
 - a. If a nonresidential building or structure (including any accessory structures) is damaged by reason of fire, flood, explosion, earthquake, riot, war, or an act of God, it may be repaired, reconstructed, and used as before if the damage does not exceed 50 percent of its replacement value as determined by the Building Official, and if the repairs and reconstruction are done within 12 months from the time such damage occurred. Notwithstanding the foregoing, no illegal use shall be re-established.
 - b. If a nonresidential building or structure (including any accessory structures) is damaged and if such damage is greater than 50 percent of its replacement value as determined by the Building Official, such building or structure may only be reconstructed to conform with the provisions regulating the placement of buildings and structures in the district in which it is situated.
 2. **Residential structures.**
 - a. If a residential building or structure (including any accessory structures) is damaged by reason of fire, flood, explosion, earthquake, riot, war, or an act of God, it may be repaired, reconstructed, and used as before if the damage does not exceed

50 percent of its replacement value as determined by the Building Official, and if the repairs and reconstruction are done within 12 months from the time such damage occurred.

- b. If a residential building or structure (including any accessory structure) is damaged greater than 50 percent of its replacement value as determined by the Building Official, such building or structure may be repaired, reconstructed, and used as before if the repairs and reconstruction are done within 12 months from the time such damage occurred. The Planning Director may require conformance with specific provisions of this UDO where deemed necessary to resolve public safety concerns. Notwithstanding the foregoing, no illegal use shall be re-established.
- D. **Unsafe structures.** If a nonconforming structure or portion thereof becomes physically unsafe or unlawful due to the lack of repairs or maintenance and is declared to be an unsafe structure, it shall thereafter be rebuilt only in conformance with the standards of this UDO and the building code.
- E. **Discontinuance and abandonment.**
1. If the principal activity on property where a nonconforming structure exists is discontinued for a consecutive period of 180 days then that property may thereafter be used only in conformity with all of the regulations applicable to the pre-existing use. This permit may be issued if the permit-issuing authority finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.
 2. All of the buildings, activities and operations maintained on a lot are generally to be considered as a whole in determining whether a right to continue a nonconforming situation is lost pursuant to this section.
 3. When a structure made nonconforming by this UDO is vacant or discontinued at the effective date of this UDO, the 180-day period begins to run at the effective date of this UDO.

9.4. Nonconforming lots of record.

- A. This section applies only to undeveloped nonconforming lots of record. A lot is undeveloped if it has no substantial structures upon it. A change in use of a developed nonconforming lot may be accomplished in accordance with Section 9.2.C., above.
- B. When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum set forth in Article 6, then the lot may be used just as if it were conforming. However, no use that requires a greater than minimum lot size for a particular zone (e.g., a duplex) is permissible on a nonconforming lot.
- C. When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements located in Article 6 cannot reasonably be complied with, then the entity authorized to issue a permit for the proposed use may allow deviations from the setback requirements if it finds that:
 - 1. The property cannot reasonably be developed for the use proposed without such deviations;
 - 2. These deviations are necessitated by the size or shape of the nonconforming lot; and
 - 3. The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.
- D. For purposes of paragraph C. above, compliance with applicable building setback requirements is not reasonably possible if a building serving the minimal needs of the proposed use cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, mere financial hardship does not constitute grounds for finding that compliance is not reasonably possible.
- E. If, on the effective date of this UDO, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then the provisions of this section cannot be taken advantage of. (This subsection shall not apply if a majority of the developed lots on either side of the street where such undeveloped lot is located and within 500 feet of such lot are also nonconforming.) The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the way the existing neighborhood has been developed.

9.5. Abandonment and discontinuance of nonconforming situations.

- A. When a nonconforming use is discontinued for a consecutive 180-day period, the property involved may thereafter be used only for conforming purposes.
- B. All of the buildings, activities and operations maintained on a lot are generally to be considered as a whole in determining whether a right to continue a nonconforming situation is lost pursuant to this section.

9.6. Nonconforming signs.

It is the intent of this section to provide a reasonable time for the elimination of nonconforming signs and sign structures. The provisions of this section shall apply to nonconforming signs.

- A. **Normal maintenance and repair.**
 - 1. Nonconforming signs may be repaired or renovated as long as the cost of such work does not exceed, within a 12-month period, 50 percent of the value of such sign. A permit for such renovation or repair is required. Proof of value is required at the time of permit.
 - 2. The message of a nonconforming sign (sign face) may be changed, so long as a change in use has not occurred. If a change in use occurs, the sign must be brought into full conformity with this UDO.
- B. **Enlargement or alteration.**
 - 1. No nonconforming sign shall be enlarged or altered in any manner that results in a greater degree of nonconformity.
 - 2. No modification of the structure of any nonconforming sign shall be permitted, except to bring the sign into conformity.
 - 3. Illumination may not be added to a nonconforming sign that previously was unilluminated.
- C. **Discontinuation of business.** If a nonconforming sign other than a billboard advertises a business, service, commodity, accommodation, attraction or other enterprise or activity no longer operating or being offered or conducted, that sign shall be considered abandoned and shall be removed within 90 days after such abandonment by the sign owner, property owner or other person having control of the property.
- D. Billboards on federal aid highways. Billboards on federal aid highways are protected by the State and Federal Highway Beautification Acts and cannot be amortized and can be removed only upon payment of just compensation as defined by those Acts.

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