

Section 14-1 Introduction

Understanding nonconformities

When zoning ordinances are enacted for the first time or substantially modified, "nonconformities" occur. While passage of the law or its modification seems to be the direct cause of the nonconformity, the change in the law is a result of changing development patterns community wide. While the use may have been appropriate in the past, development has occurred about it which makes the use seem out of character for the area.

Differing views on nonconformities

Nonconformities have been viewed in several different ways. One view is that, over time, nonconformities must be eliminated. One of the primary drawbacks to this approach is that a local government forcing cessation of a nonconformity (called "amortizing") could be liable for a monetary amount to the nonconformity owner. Another view of nonconformities, the "property rights' view", sees them as deserving of full protection and immunity. This Ordinance adopts a more moderate view of nonconformities. Essentially, nonconformities will continue to be phased out but only when their phasing out is a result of destruction, regardless of cause, or cessation of operation. Nonconformities will have no limitation on maintenance and repair activity but, prior to expansion or alteration, must successfully obtain a Certificate of Nonconformity Adjustment. The Certificate basically helps bring the nonconformity into conformity or so significantly adjusts any negative effects as to render it harmless.

Section 14-2 How to use this chapter

Different types of nonconformities are outlined in the following sections of this chapter.

Section 14-3 Definitions of terms frequently used in this Chapter

ASSESSED VALUE- The current monetary amount on file for any piece of property in the Office of the Cabarrus County Tax Assessor.

CERTIFICATE OF NONCONFORMITY ADJUSTMENT- Certification issued by the Zoning Administrator of Cabarrus County attesting to the fact that a nonconformity is being modified and causes no harm to either neighboring landowners or the community at large.

COMBINE- To create one lot by combining two or more lots usually with common ownership to meet development standards.

LOT OF RECORD-A lot which exists as shown or described on a plat or deed in the records of the local register of deeds and in Cabarrus County's GIS land records.

NONCONFORMING LOT- A lot which was lawfully created prior to the adoption of this Ordinance but which does not conform to the dimensional requirements for lots in its zoning district.

NONCONFORMITY- A use of land, buildings or structures or combination thereof that was lawfully established prior to the adoption of this Ordinance but does not conform with the Table of Permitted Uses set forth in Chapter Three or other requirements of this Ordinance.

NONCONFORMING FEATURE- A physical feature or characteristic of a use, building or structure or other development of land established prior to the adoption of this Ordinance that does not comply with the current standards of the Ordinance.

PREMISES- A lot, parcel, tract or plot of land together with any buildings and structures thereon.

STRUCTURE- Anything constructed or erected which requires location on or in the ground or is attached to something having a location on the ground or anything as defined by the Building Code.

Section 14-4 Intention

The intent of this Ordinance with regard to nonconformities is threefold:

- A. to not arbitrarily require the cessation of all nonconformities but instead, provide a process whereby owners/operators of negligible nonconformities can possibly continue to use and operate including expansions and alterations after review by the Zoning Administrator;
- B. to encourage the cessation (stopping) of those nonconformities, the negative effects of which cannot otherwise be mitigated; and,
- C. to phase out those nonconformities which must be eliminated in such a manner as to avoid unjust economic hardship for their owners.

Section 14-5 Nonconforming land, lots, divisions of land and existing structures

- A. Subdivision
Nonconforming land may not be subdivided except for purposes and in a manner conforming to district regulations.
- B. Use of single nonconforming lot
Any lot of record which is nonconforming may become the site of any use permitted within its zoning district as long as it can meet setback requirements and all other related development requirements.

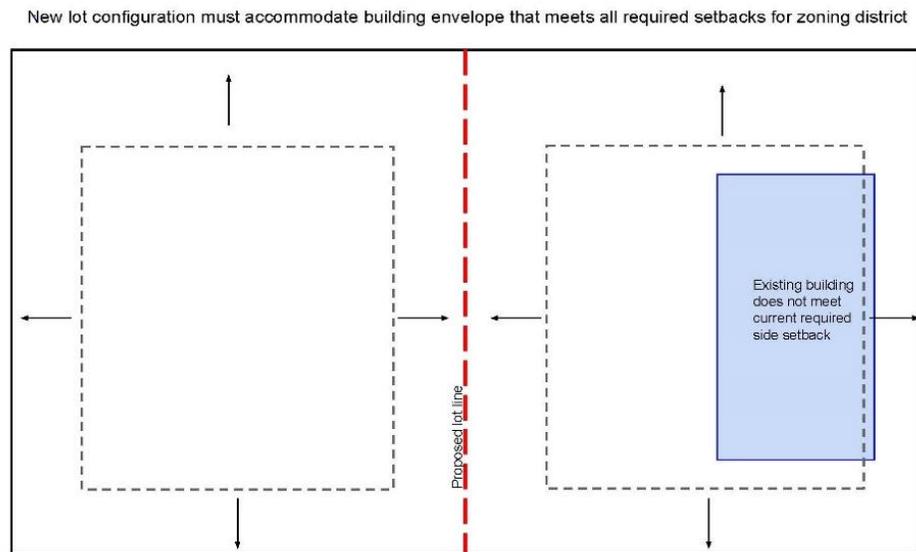
- C. Lots made nonconforming as a result of public taking or court order
If a lot becomes nonconforming through no fault of the owner, for example, as a result of losing square footage by public taking or court order, while still recognized as nonconforming, it may be used and developed in accordance with the design standards of its district nor will it be required to be combined.
- D. Existing lots of record in the AO, CR or LDR zoning districts
Existing lots of record located in the AO, CR or LDR zoning districts that do not meet the dimensional standards for required lot area or required average lot width as established in Chapter 5, District Development Standards, Section 5-5, Conventional Subdivision Standards, B. Dimensional Standards or C. Minor Subdivisions, may develop using the standards established for the MDR Open Space District related to setbacks and lot coverage. This adjustment shall be noted on any plot plan submitted for permitting and any zoning permits issued for the subject property.
- E. Division of lot of record with multiple existing primary structures that pre-date zoning ordinance
1. Lots with multiple existing primary structures constructed prior to the adoption of the zoning ordinance on February 1, 1982, may be subdivided to create individual tracts for the primary structures in any district provided that the resulting lots meet or exceed the minimum standards established for the Medium Density Residential Open Space subdivision option in Chapter 5.
 2. Each resultant lot and primary structure must be served by utilities in the form of an approved individual well and septic system or a combination of existing governmental utilities and an approved individual private well or septic system.
 3. A note shall be placed on the plat stating that the lots were created using this section of the Ordinance.
- F. Division of lot of record with multiple existing primary residential structures constructed or installed after February 1, 1982
1. Parcels with multiple existing primary residential structures, allowed at the time of construction or installation in any residential zoning district, may be subdivided to create individual parcels for the existing primary structures if sufficient evidence of proper permitting is provided.
 2. When the lot of record is located in the AO, CR or LDR district and does not include enough acreage to meet the conventional or minor subdivision standards for the district, Low Density Residential Open Space design standards may be used to subdivide the property. Resultant lots must meet or exceed the minimum standards established for Low Density Residential Open Space Subdivisions.
 3. When the lot of record is located in the MDR or LDR district and does not include enough acreage to meet the conventional or minor subdivision standards for the zoning district, the Open Space design standards for the applicable zoning district may be used to subdivide the property. Resultant lots must meet or exceed the standards established for Open Space Subdivisions for the district.

4. Each resultant lot and primary structure must be served by utilities in the form of an approved individual well and septic system or a combination of existing governmental utilities and an approved individual private well or septic system.
5. A note shall be placed on the plat to be recorded stating that the lots were created using this section of the Ordinance.

G. Division of lot of record where existing properly permitted buildings do not meet current zoning district setbacks

1. When a building on an existing lot of record does not meet the setback requirement for the current zoning district, the lot may be subdivided provided that all proposed new lot lines meet the applicable setback requirement for the current zoning district as it applies to the existing and proposed lot configuration. Evidence of proper permitting must be provided.
2. A note shall be placed on the plat referencing this section of the Ordinance, recognizing that the building was existing and non-conforming prior to subdividing the property.

The example below illustrates a case where an existing building does not meet the side setback requirement for the zoning district.



Section 14-6 Nonconforming use of premises,-with or without structures

A. Limitations

There shall be no enlargement, change in intensity or changes to the use unless a Certificate of Nonconformity Adjustment is obtained. See Section 14-10.

B. Cessation of use

If the existing non-conforming use ceases for more than 6 months, subsequent use or development of the land must conform to district regulations.

C. Changing from one nonconforming use to another

A request for an existing nonconforming use to change to another nonconforming use of the same or lesser intensity is allowed. However, approval must be obtained from the Planning and Zoning Commission, acting as a Board of Adjustment. The burden of proof to show the new nonconforming use is of the same or a lesser intensity than the existing nonconforming use rests completely with the applicant. A process similar to that used for special use permitting will be used when requesting a changing from one nonconforming use to another. The Board of Adjustment may impose conditions upon the proposed use as part of issuance of the Certificate.

If the proposed change of use is located in a nonconforming structure, the use of the structure may continue. However, site improvements or upgrades may be required. Should the applicant not agree with the decision of the Board of Adjustment, an appeal may be filed in Superior Court.

D. Maintenance and repair

Before a building permit may be issued, the owner/user of the nonconformity must apply for and receive a Certificate of Nonconformity Adjustment.

E. Reconstruction of damaged structures

1. When a nonconforming structure (excluding signs) or structure that contains a nonconforming use is damaged by fire, wind, flood, or any other natural cause, such structure may be reconstructed and used as it was before the event, provided that a building permit is issued for reconstruction within eighteen month of the date of the event.
2. If the cause of damage is not of natural origin and the repair costs will equal or exceed 75 percent or more of the tax assessed value it must, if reconstructed, conform in all ways to this Ordinance.
 - a. Calculation of the cost of damage will be that determined by the owner/operator's insurance carrier. If uninsured or no insurance claim is filed, the amount of damage will be estimated by a County Tax Assessor Appraiser.

F. Unsafe nonconforming structures

When a nonconforming structure becomes unsafe due to lack of maintenance or damage from either a natural or manmade event, it will be cited by the Zoning Administrator. After having reached this extreme state of disrepair, a structure may only be restored or repaired in such a way as to make it a conforming structure. The Zoning

Administrator will notify the owner by written notice. The owner shall then have a period of ninety days in which to either repair the structure to make it conforming or have it demolished.

G. Expansion

See "Limitations" above.

H. Additions to nonconforming single family detached structures or manufactured homes located in non-residential zoning districts

Single family detached structures that exist in non-residential zoning districts may be enlarged using the Certificate of Nonconformity Adjustment process provided the dimensional standards, impervious, and structural coverage of the applicable zoning district are met.

Section 14-7 Nonconforming characteristics of uses

Nonconforming characteristics of use, for example, inadequate parking and loading facilities, inappropriate landscaping, lighting, etc., may continue to exist, but shall not be expanded, altered, changed or relocated in such a manner as to increase the degree of nonconformity.

Section 14-8 Manufactured homes on individual lots of record without a Manufactured Home Overlay

Manufactured homes on individual lots of record that do not have the Manufactured Home Overlay may be removed and replaced provided that the replacement manufactured home is equal to, or greater than, the size of the manufactured home being replaced and meets the design and installation standards for individual manufactured homes in Chapter 4.

Section 14-9 Nonconforming manufactured home parks

All manufactured home parks made nonconforming by this Ordinance and not operating under a special use permit in accordance with this Ordinance, may continue. However, the arrangement of spaces is not to be altered nor the number of spaces increased.

In the absence of a plat recorded in the Cabarrus County Register of Deeds office prior to June 30, 1981, records in the Cabarrus County Tax Administrator's office will be utilized as verification of the number of individual lots assessed and taxed for the manufactured home park.

Section 14-10 Applying for a Certificate of Nonconformity Adjustment

When the adoption of this Ordinance creates a nonconformity and the owner of that nonconformity desires to expand or alter it and also has reason to believe that so doing will not

adversely affect neighboring land use, he or she must file for a Certificate of Nonconformity Adjustment.

14-10.1 Request for Nonconformity adjustment process

The first step in the process is to schedule a pre-submittal meeting with Staff. During that meeting, Staff will address the submittal requirements and how the process works for the type of adjustment proposed.

The next step is to submit a complete application for consideration.

The application for a Certificate of Nonconformity Adjustment is available from Staff and will be provided to the applicant as part of the pre-submittal meeting.

As part of the review process, all adjacent property owners, including those located across the road or road right-of-way will receive notification of the filing of the request for a Certificate of Nonconformity Adjustment and will be provided the opportunity, to comment on the proposed site changes. Adjacent property owners are given ten days from receipt of the letter to provide comments to the Zoning Administrator and/or his/her designee.

Within 45 days of the date of receipt of a request for a nonconformity adjustment, the Zoning Administrator will either approve or deny the request. His or her decision to approve may be based upon the applicant agreeing to site changes or to making improvements to the site.

The decision to approve or deny the request will be made based on the following criteria:

- a. Does the proposed change to the nonconformity create noise above and beyond levels considered normal to the area?
- b. Does the proposed change to the nonconformity generate or have the potential to generate a significantly higher volume of traffic than surrounding land use?
- c. Other measurable, physical effects- Does the proposed change to the nonconformity generate any other negative effects including but not limited to: dust, air pollution, foul smell, etc.?
- d. Does the change to the nonconformity compliment or detract from the overall aesthetic character of the area?
- e. Is the proposed change consistent with current site conditions? Does it propose to create additional nonconformity? For example, if the proposed change is an addition to a building that does not meet the current setbacks for the zoning district, is the addition proposed in a location where it will not increase the current nonconforming setback situation?

- f. Is the property owner willing to make needed adjustments to the site to better comply with the Ordinance or to mitigate the proposed change to the existing nonconformity?

For example, landscaping or fencing may be required or a shift of operations away from adjoining properties may be stipulated as part of the conditions of Certificate approval.

1. Decision by the Zoning Administrator

- a. Denial

If the Zoning Administrator, after an analysis of the facts of the situation, finds that the nonconformity cannot be adjusted, it will be handled as such and subject to those provisions of this Ordinance which deal with nonconformities that are unreformable.

If an application is denied, the applicant may petition the Planning and Zoning Commission, acting as a Board of Adjustment, for a review of the Zoning Administrator's decision within 30 days of the final determination on the Certificate of Non-Conformity Adjustment.

- b. Approval

Certificates of Nonconformity Adjustment may be issued with or without conditions. Those with conditions will be issued after a visual inspection by the Zoning Administrator and/or his/her designee.

Section 14-11 Revocation of a Certificate of Nonconformity Adjustment

Certificates are issued for an indefinite time period. However, the Certificate may be revoked if required conditions of approval are not being met or maintained. For example, a Certificate for a nonconforming use that has been adjusted through installation of a landscape buffer could be revoked if the buffer were not maintained properly or if the required plantings were removed.