

13 NONCONFORMITIES [Revises Z-4]

13.1 PURPOSE AND APPLICABILITY

The purpose of this section is to regulate and limit the continued existence of uses and structures established prior to the effective date of this ordinance (or any subsequent amendment) that do not conform to this ordinance. Any nonconformity created by a change in the classification of property or the text of these regulations shall also be regulated by the provisions of this section. The provisions of this chapter are intended to limit substantial investment in nonconformities and to bring about their eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the areas in which they are located. The thresholds established in this chapter at which nonconforming uses or structures must be brought into compliance shall apply to the cumulative expansion, reconstruction or other modification of nonconforming uses or structures from the condition in which they existed on the date of adoption of this ordinance.

13.1.1 APPLICABILITY MATRIX

The following table summarizes the primary requirements that shall be met when there are changes to existing development and/or to nonconforming structures or uses. A ✓ indicates that compliance with all applicable standards is required.

| | Ch. 2 | Ch. 5 | 6.11 | Ch. 8 | 8.4 | 8.5 | 8.6-8.8 | Ch. 10 | Ch. 11 |
|---|-----------------------|---------------------------|-----------|-------------------------------|---------------------|----------------------|-------------------------|------------------|--------|
| | Dimensional Standards | Building Design Standards | Sidewalks | Tree Protection & Landscaping | Buffers & Corrosion | Street Tree Planting | Parking Lot Landscaping | Outdoor Lighting | Signs |
| Existing Development | | | | | | | | | |
| Change of Use (From Residential to Non-Residential) | | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Parking Area Expansion | | | | | | | | | |
| Less than 12 spaces or <40% of Paved Area | | | | | | | ✓(a) | ✓(a) | |
| Expansion of ≥ 40% of Paved Area or 12 spaces or more | | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Building Expansion/Reconstruction | | | | | | | | | |
| < 50% of Existing Floor Area | ✓(a,b) | ✓(a) | | | | | | ✓(a) | |
| ≥ 50% of Existing Floor Area | ✓(a,b) | ✓(c) | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

(a) For expanded/reconstructed portion only

(b) Exception: Maximum front setbacks should be met to the extent practical as determined by the Administrator.

(c) For expansions, reconstruction areas and all other walls facing public streets

13.2 GENERAL PROVISIONS

13.2.1 APPEALS AND MODIFICATIONS

- A. Board of Adjustment:** The Board of Adjustment shall hear and decide changes of use from any land owner (i) to make a change in use of a nonconforming use to a different, less-intense nonconforming use; (ii) to make a change in location of a nonconforming use of land to another location on the same property; or (iii) allow the replacement of a structure with a nonconforming use.
- B. Criteria for Approval:** The Board of Adjustment may only grant a change for a nonconforming use or replacement of a nonconforming structure which has been destroyed after having first held a public hearing and having determined that:
1. Said change will be more suitable and appropriate for the lot(s) on which it is located than the existing situation; and,
 2. The proposed change will have a less harmful effect than the existing situation on the properties surrounding the lot(s) in question; and,
 3. The decision to grant the change will be in harmony with the general purpose and intent of this ordinance and will not be injurious to the neighborhood or otherwise be detrimental to the public welfare.
- C. Conditions of Approval:** The Board of Adjustment, in granting such changes, may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms upon which the change was granted, shall be deemed a violation of this ordinance and shall be subject to enforcement provisions as prescribed per Chapter 16, Violations and Penalties.

13.2.2 UNSAFE STRUCTURES

- A. Deficiencies Due to Lack of Maintenance:** Any structure or other development of land, or portion thereof, devoted to a nonconforming use or having a nonconforming feature that is declared unsafe by the building inspector because of lack of repairs and maintenance shall not be restored, repaired, reconstructed, or used except in conformity with the provisions of this ordinance.
- B. Other Deficiencies:** Any structure or other development of land, or portion thereof, devoted to a nonconforming use or having a nonconforming structure that is declared unsafe by the building inspector, but not because of lack of repairs and maintenance, may be repaired and restored subject to the requirements of Sections 13.5.2 and 13.5.3 below. A "Schedule of Repairs" shall be submitted to the Administrator within 30 days of notice.

13.2.3 DISCONTINUANCE

A nonconforming use of a building or premises which has been discontinued shall not thereafter be returned to such nonconforming use except in accordance with the provisions of this section.

- A. Determination of Discontinuance:** A nonconforming use shall be presumed discontinued when any of the following has occurred:
1. The owner has, in writing or by public statement, indicated intent to abandon the use.
 2. A conforming use has replaced the preceding nonconforming use.
 3. All of the buildings or structures on the subject property housing the nonconforming use have been removed.

4. The owner has physically changed the building or structure, or its permanent equipment, in such a way as to clearly indicate a change in use or activity to something other than the nonconforming use.
5. Any basic utilities including water, electric and sewer service are disconnected by the utility provider.
6. The property, structure or use has been vacant or inactive for a continuous period of more than 180 days.
 - i. This may be implied from acts or the failure to act, including, but not limited to: the removal of and failure to replace the characteristic equipment and furnishings; lack of utility consumption necessary to maintain the use at an operable level; documented vacancy; or other circumstances.
 - ii. If operations have ceased for more than 180 consecutive days, the presence of characteristic equipment and furnishings is not, in and of itself, sufficient to establish the continuity/operation of the use.
 - iii. The mere vacancy of a structure for a period exceeding 180 consecutive days that was initially constructed as a single-family dwelling and whose most recent use was as a single-family dwelling shall not constitute a discontinuance of the use.

13.3 NONCONFORMING PLANS

13.3.1 APPROVED SITE SPECIFIC PLANS

- A. **Previously-Approved Plans Grandfathered:** Any site specific plan (including but not limited to master plans, preliminary plats, final plats, conditional district plans, special use permit plans) for the development of property and/or construction of a building which has been submitted as part of a complete application submittal to the City of Wilson for development and/or construction, but does not conform to this ordinance and has not expired, may be developed and/or constructed in accordance with the ordinance, rules, and regulations, including any conditions imposed upon approval. Any plan approved prior to the adoption of this ordinance, but which conforms to its provisions, shall be administered, interpreted, amended and implemented in accordance with the provisions of this ordinance. Any conditions imposed as part of a previously-approved Special Use Permit or Conditional Use Permit shall continue as approved. Approved Conditional Use Rezoning Plans and Subdivision Preliminary Plans, with or without multi-year phasing schemes, shall continue to regulate the development as approved as long as sufficient progress is made according to the terms of the ordinance under which the plans were approved.
- B. **May Choose New Ordinance:** A property owner with an approved site specific plan, as identified above, may elect to develop such property and/or construct such building in accordance with the terms and provisions of this ordinance in lieu of the rules and regulations upon which the plan was approved. The Administrator shall notify the property owner in writing of any additional required procedures or modifications which may be necessary in order for the plan to conform to the ordinance.
- C. **Amendments or Modifications of Previously-Approved Plans:** Any amendment or modification to an approved site specific plan, which would have required approval pursuant to the ordinance, the rule or regulation by which the

plan was originally approved, shall be reviewed and considered in accordance with the terms and provisions of this ordinance as if it were an amendment or modification to a plan originally approved under this ordinance.

- D. Maximum Build-Out Period:** If construction is not begun under such an outstanding permit within a period of 1 year subsequent to the passage of this ordinance, or where it has not been completed within 2 years subsequent to passage of this ordinance, any further construction or use shall be in conformity with the provisions of this ordinance.

13.3.2 VESTED RIGHTS

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

13.4 NONCONFORMING LOTS

13.4.1 DEFINITION AND APPLICABILITY

A nonconforming lot is a lot that was lawfully created prior to the effective date of this ordinance, but that does not meet the dimensional requirements of Chapter 2 for the zoning district in which it is located. A nonconforming vacant lot of record is one that was recorded by plat or description in the Office of the Register of Deeds of Wilson County prior to the adoption of this chapter or prior to the time that the lot was brought into the city's jurisdiction. This definition shall not be interpreted to include recorded lots that were in violation of any prior subdivision regulations of the City of Wilson and which will remain in violation.

13.4.2 STANDARDS

- A. Lot May Be Developed:** Except as provided in Sections 13.4.2.B and 13.4.2.C, below, a nonconforming vacant lot may be developed for any of the uses permitted by these regulations in the district in which it is located, provided that any use, development, required feature (parking, buffers, etc.), and/or structure meets all applicable yard and setback requirements for the district in which the lot is located. A variance shall not be required for substandard lot width or lot size for such lots of record.

B. Lots to Be Combined, If Possible

1. A nonconforming vacant lot shall not be developed if it can be combined with an adjoining under the same ownership on or after the effective date of these regulations in order to create a single conforming or substantially conforming lot. For the purposes of this section, "adjoining" shall be deemed to mean the sharing of one or more common lot lines and access to both lots can be provided by the same street without crossing that street. All other minimum requirements for the particular land development district and proposed use must be met or a variance obtained from these requirements through an action of the Board of Adjustment. This shall include meeting the requirements for additional lot size for increased densities of residential development (duplexes, multi-family dwellings, etc.).
2. For lots that are nonconforming because they do not meet the minimum required lot width or square footage requirements, the above combination or recombination of lots shall not be required if the lot is no less than 90% of the minimum requirements.

3. Where a nonconforming lot was created by public taking action or as a result of a court order, the above combination or recombination of lots shall not be required.
- C. **Exceptions for Previously Approved Plats:** A nonconforming lot may be developed if, at the effective date of this ordinance, the lot is located in (i) a subdivision that had received preliminary plat approval; or (ii) a subdivision in which had received final plat approval.
- D. **Existing Structures on Non-Conforming Lots:** Any structure on a nonconforming occupied lot may be occupied, without expansion, by a conforming use or may be improved or expanded in accordance with the standards listed in this section. Structural alterations or remodeling of structures on nonconforming lots required by an authorized public official shall be permitted. Routine maintenance shall also be permitted so long as no expansion of the nonconformity occurs as a result of the maintenance.
- E. **Expansion of Structures:** Any improvement or expansion of any structure on a nonconforming occupied lot must comply with all other minimum requirements of this ordinance or a variance must be obtained from these requirements through an action of the Board of Adjustment. This shall include meeting the requirements for additional lot size for increased densities of residential development (duplexes, multi-family dwellings, etc.).

13.5 NONCONFORMING USES & STRUCTURES

13.5.1 DEFINITION AND APPLICABILITY

- A. **Nonconforming Use:** A nonconforming use is a use of land, buildings, or structures that was lawfully established prior to the effective date of this ordinance, or a subsequent amendment thereto, but does not conform to the use regulations of Chapter 2 for the zoning district in which it is located. This definition includes open uses of land (e.g., storage yards and golf driving ranges) as well as the structures that contain nonconforming uses. The nonconformity may result from the adoption of this ordinance or any subsequent amendment.
- B. **Nonconforming Structure:** A nonconforming structure is a physical feature or characteristic of a use, building, structure, or other development of land that was lawfully established prior to the effective date of this ordinance, but does not conform to dimensional, design, locational, or other requirements of this ordinance. This also includes nonconforming features such as bufferyards, landscaping, mechanical and utility structures, and parking. The nonconformity may result from adoption of this ordinance or any subsequent amendment.

13.5.2 STANDARDS FOR NONCONFORMING USES

- A. **Continuation Permitted:** Any legally-established nonconforming use may be continued subject to the standards listed in this chapter. Expansions of such uses are permitted only in accordance with Section 13.5.2.B, below. Once a nonconforming use is discontinued as per Section 13.2.3, above, it may not later be reestablished or converted to any other nonconforming use.
- B. **Expansion of Use:** Except as otherwise stated below, no building or structure devoted to a nonconforming use shall be enlarged, extended, reconstructed, moved, or structurally altered unless such building or structure is thereafter devoted to a conforming use. However, routine maintenance of any structure containing a nonconforming use is permitted. Buildings housing nonconforming uses may be

expanded, to include demolition and expanded reconstruction, upon the issuing of a Special Use Permit by the Board of Adjustment provided that all of the following conditions are met:

1. The lot on which the use is located has an area of 20,000 square feet or greater (not applicable to single-family residential uses);

The expansion, or cumulative expansions, to the building(s) containing the nonconforming use may not exceed 20% of the gross floor area of said building(s); and

2. The expansion, or cumulative expansions, of the use on the lot itself may not exceed 20% of the lot area occupied by such use.

C. Damage or Destruction

1. When a building or structure devoted to a nonconforming use is damaged to the extent of more than 60% of the property's "total improvements full market value" as shown on the county tax records at the time of such damage, such a building, if restored, shall thereafter be devoted to conforming uses.
2. If a building or structure devoted to a nonconforming use is damaged to a lesser extent than designated above, it may be repaired and continued in accordance with this ordinance provided that any such repair does not increase the degree of any nonconformance and a building permit for the reconstruction or repair work is obtained within 180 days of the date of such damage.

13.5.3 STANDARDS FOR NONCONFORMING STRUCTURES

A. Continuation Permitted: Any legally-established nonconforming structure may be continued subject to the standards listed in this section. However, once a nonconforming structure is made conforming, it may not later be altered, modified or expanded in violation of this ordinance.

B. Expansions of Structure: A nonconforming principal building may be enlarged, extended, or structurally altered only if such enlargement, extension, or structural alteration complies with all of the following requirements:

1. The use of the building must be a conforming use or a single-family residential use;
2. The enlargement, extension, or structural alteration may extend or project no further than the legally-established building line(s) of the subject building;
3. The enlargement, extension, or structural alteration may not encroach into required building perimeter landscaping areas, parking lot landscaping areas or any required buffer yards.
4. The enlargement, extension, or structural alteration shall create no additional nonconforming features;
5. If the subject building lies in a historic district, the enlargement, extension, or structural alteration shall comply with all applicable requirements of that district; and
6. If the subject building, and/or its proposed enlargement, extension, or structural alteration, lies in a special flood hazard area, the enlargement, extension, or structural alteration shall comply with all applicable requirements of Section 12 of this ordinance.

C. Damage or Destruction:

1. When a nonconforming structure is damaged to the extent of more than 60% percent of the property's "total improvements full market value" as shown on the county tax records at the time of such damage, such a structure, if restored, shall thereafter conform to all applicable development standards contained in this ordinance.
2. If a nonconforming structure is damaged to a lesser extent than designated above, it may be reconstructed or repaired having the same nonconforming feature(s) as before the damage, or having those same features being more conforming (but still nonconforming) than before the damage, provided that a building permit for the reconstruction or repair work is obtained within 180 days of the date of such damage.

13.5.4 STANDARDS FOR NONCONFORMING ACCESSORY USES AND STRUCTURES

- A. **Legal Expansions Permitted:** A nonconforming accessory structure may be expanded only if the expansion does not increase the nonconforming condition of the structure.
- B. **Must Terminate When Principal Use/Structure is Terminated:** No nonconforming accessory use shall continue after the principal use or structure is terminated by abandonment, damage, or destruction unless such accessory use is made to conform to the standards for the zoning district in which it is located. No nonconforming accessory structure shall become or replace any terminated principal nonconforming structure.

13.6 NONCONFORMING MANUFACTURED HOMES AND MOBILE HOME PARKS

13.6.1 NONCONFORMING MANUFACTURED HOUSING ON INDIVIDUAL LOTS

- A. **Replacement Home:**
 1. A nonconforming manufactured home on an individual lot outside of a manufactured home park may only be replaced with a unit no less conforming to the dimensional standards of the respective district.
 2. Double-wide units may only be replaced with equivalently sized units or larger (no single-wide units permitted).
 3. Replacement units shall meet all applicable standards of Section 12.3 Flood Damage Prevention.
- B. **Expansions Prohibited:** A nonconforming manufactured home on an individual lot may not be enlarged or altered externally in any way except where such alteration is required by law or an order from the Building Inspector, Fire Chief or the Administrator to ensure the safety of the structure, or where such alteration increases the degree of conformance of the home.
- C. **Routine Maintenance Permitted:** Routine maintenance of such manufactured housing is permitted so long as no expansion of the nonconformity occurs as a result of the maintenance.

13.6.2 NONCONFORMING MANUFACTURED HOME PARKS AND HOUSING WITHIN PARKS

- A. **Continuation Permitted:** Manufactured home parks which are nonconforming, either as to use or development standards, may continue to operate provided that

number of manufactured homes on the property does not drop to less than 2 for more than 6 months.

- B. Replacement of Units:** Replacement of manufactured housing units is permitted as follows:
1. Only existing spaces as of the effective date of this ordinance may be used. No additional spaces may be created or occupied.
 2. Replacement units may not increase the degree of nonconformity of setbacks from streets, property lines, structures, or watercourses.
 3. Replacement units shall meet all applicable standards of Section 12.3 Flood Damage Prevention.

13.7 NONCONFORMING SIGNS

13.7.1 STANDARDS

- A. Determination of Nonconformity:** Existing signs which do not conform to the specific provisions of the ordinance may be eligible for the designation "legal nonconforming" provided that:
1. Such signs are properly maintained and do not in any way endanger the public.
 2. The sign was installed in conformance with a valid permit or variance, or complied with all applicable laws on the date of adoption of Chapter 11 of this ordinance.
- B. Loss of Legal Nonconforming Status:** A legal nonconforming sign may lose this designation if:
1. The sign is relocated or replaced.
 2. The structure or size of the sign is altered in any way. This does not refer to change of copy or normal maintenance.
 3. The sign is an independent freestanding structure that has been unused for a period of 180 days.
- C. Maintenance and Repair of Nonconforming Signs:** The legal nonconforming sign is subject to all requirements of this ordinance regarding safety, maintenance, and repair. However, if the sign suffers more than fifty (50) percent damage or deterioration, as based on appraisal, or requires maintenance and/or repair to the extent that a Building, Electrical, Zoning or other permit is required to legally perform such maintenance and/or repair, it must be brought into conformance with this ordinance or removed.
- D. Signs Associated with Nonconforming Uses:** New signs related to legally established nonconforming uses may be erected provided they comply with the sign requirements of the district in which the use is located