

Section 96. Nonconformities.

96.1 GENERAL APPLICABILITY

A. **Purpose and Scope.**

1. General

In the provisions established by this ordinance, there exist uses of land, structures, lots of record, and signs that were lawfully established before this ordinance was adopted or amended, that now do not conform to its terms and requirements. The purpose and intent of this article is to regulate and limit the continued existence of those uses, structures, lots of record, and signs that do not conform to the provisions of this ordinance, or any subsequent amendments.

2. Permit Nonconformities to Continue until Removed, but Not Encourage Survival

It is the intent of this ordinance to permit most of these nonconformities to continue until they are removed, but not to encourage their survival except under the limited circumstances established in this article. The provisions of this article are designed to curtail substantial investment in nonconformities.

B. **Authority to Continue.**

Nonconformities are allowed to continue in accordance with the requirements of this article, and are encouraged to receive routine maintenance as a means of preserving safety and appearance.

C. **Determination of Nonconformity Status.**

In all cases, the burden of establishing that a nonconformity lawfully exists shall be the responsibility of the owner of the land on which the alleged nonconformity is located.

D. **Property Minor Repairs and Maintenance.**

Minor repairs and normal maintenance that are required to keep nonconforming uses, structures, lots of record, and signs in a safe condition are permitted, provided the minor repair or maintenance does not extend, expand, or enlarge the nonconforming use, structure, lot of record, or sign. For the purposes of this section, "minor repair or normal maintenance" shall mean:

1. Repairs that are necessary to maintain a nonconforming use, structure, lot of record, or sign in a safe condition; and
2. Maintenance of land areas to protect against health hazards and promote the safety of surrounding uses.

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E. Change of Tenancy or Ownership.

Changes of tenancy, ownership, or management of an existing nonconformity are permitted, but the nonconforming situation shall continue to be subject to the requirements of this section.

96.2 NONCONFORMING USES

A. GENERAL

Nonconforming uses are declared generally incompatible with the permitted uses in the zoning district in which they are located and with the provisions of this ordinance. Nonconforming uses shall be subject to the standards in this section.

B. CHANGE OF USE

1. Use of Land

A nonconforming use of land shall not be changed to any use other than one permitted in the zoning district.

2. Use of Structure

A nonconforming use of a structure and premises may be changed to another nonconforming use if:

- (a) No significant structural alterations are made; and
- (b) The proposed new nonconforming use is equal or more in character with the uses normally permitted in the zoning district than the previous nonconforming use.

C. EXPANSION AND ENLARGEMENT

1. Except in accordance with this subsection, a nonconforming use shall not be enlarged, expanded in area occupied, or intensified.
2. An existing nonconforming use may be enlarged into any portion of the structure in which it is located provided the area proposed for expansion was clearly designed and intended for such use before the date the use became a nonconformity.
3. A nonconforming single-family detached dwelling use may be enlarged, expanded in area, or altered provided the enlargement, expansion, or alteration shall comply with the dimensional and minimum yard standards in the base zoning district where located, to the maximum extent practicable.

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D. NONCONFORMING MOBILE/MANUFACTURED HOMES

Existing lawfully-established nonconforming mobile or manufactured homes constructed prior to 1976 may be replaced with a conforming manufactured home, modular home, or site-built home, subject to the requirements found in Section 112 Site Plans or in conjunction with a Zoning Permit.

E. RELOCATION ON LOT

A nonconforming use of land shall not be relocated or significantly rearranged on the same lot, in whole or in part, unless it thereafter conforms to this ordinance.

F. DISCONTINUANCE OR ABANDONMENT

Once a nonconforming use has been vacated, abandoned, ceased to operate, or otherwise discontinued for a period of 180 days or longer, it shall not be re-established and shall only be replaced with a conforming use. Efforts to renovate or repair the use are not considered a vacancy, abandonment, cessation, or discontinuance, provided all appropriate development approvals are obtained, and provided the renovation or repair is completed within 180 days from its commencement, and the use is re-established within 30 days after completion of the renovation or repair. Failure to complete the renovation or repair within 180 days or re-establish the use within 30 days after completion of the renovation or repair shall constitute discontinuance, and a nonconforming use shall not be reestablished.

G. ACCESSORY USES

Once a nonconforming principal use is discontinued, all associated accessory uses shall cease operations within 30 days.

H. RECONSTRUCTION AFTER CASUALTY DAMAGE

1. Destruction or Damage beyond 50 Percent of Value
 - (a) If a structure housing a nonconforming use is damaged or destroyed, by any means, to an extent more than 50 percent of its fair market value or assessed value, whichever is lower, at the time of damage or destruction, it shall only be restored in a manner that conforms to the provisions of this ordinance.
 - (b) New construction (including the establishment of off-street parking, landscaping, signage, and other site features) shall be in accordance with the requirements of this ordinance.
2. Damage of 50 Percent or Less of Replacement Value
 - (a) If a structure housing a nonconforming use is damaged or destroyed, by

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any means, to an extent of 50 percent or less of its fair market value or assessed value, whichever is lower, at the time of damage or destruction, it may be rebuilt to its previous form if a Building Permit for such repair or restoration is obtained within 180 days of the casualty damage, and repair or restoration is actually begun within one year after the date of such partial damage or destruction and is diligently pursued to completion.

- (b) No repair or restoration of a structure housing a nonconforming use shall increase the degree of nonconformity.

I. NONCONFORMING USE OF PART OF A STRUCTURE

A nonconforming use in one part of a structure shall not affect the status of conforming uses in other parts of the same structure.

96.3 NONCONFORMING STRUCTURES

A. RELATIONSHIP WITH NONCONFORMING USES

A nonconforming principal structure containing a conforming use may only continue in accordance with the provision of this section. Nonconforming structures housing nonconforming uses may only continue in accordance with the standards in Section 96.2, Nonconforming Uses.

B. ENLARGEMENT

A nonconforming structure shall not be enlarged or expanded in any way that increases the degree of nonconformity. (For example, a structure that has a five-foot side yard setback where the ordinance requires a ten-foot side yard setback cannot be enlarged so as to further encroach into the side yard setback.) Expansion of the structure in a way that complies with applicable dimensional standards or that decreases the degree of nonconformity is permitted.

C. RELOCATION

A nonconforming structure shall not be moved, in whole or in part, to another location on or off the parcel of land on which it is located, unless upon relocation it conforms to the requirements of this ordinance.

D. RESTORATION AFTER CASUALTY DAMAGE

1. Destruction or Damage beyond 50 Percent of Value

- (a) If a nonconforming structure (or portion of a structure) other than a single-family detached dwelling is damaged or destroyed, by any means, to an extent more than 50 percent of its fair market value or assessed value, whichever is lower, at the time of damage or destruction, it shall only be restored in a manner that conforms to the provisions of this ordinance.
- (b) If a nonconforming structure (or portion of a structure) used as a single-family detached dwelling is damaged or destroyed, by any

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means, to an extent more than 50 percent of its fair market value or assessed value, whichever is lower, at the time of damage or destruction, and the same size structure could not be rebuilt on the lot without encroaching into required building setbacks, the structure may be rebuilt within the same footprint as the damaged or destroyed structure.

- (c) New construction (including the establishment of off-street parking, landscaping, signage, and other site features) shall be in accordance with the requirements of this ordinance.

2. Damage of 50 Percent or Less of Value

- (a) If a nonconforming structure is damaged or destroyed, by any means, to an extent of 50 percent or less of its fair market value or assessed value, whichever is lower, at the time of damage or destruction, it may be rebuilt to its previous form if a Building Permit for such repair or restoration is obtained within 180 days of the casualty damage, and repair or restoration is actually begun within one year after the date of such partial damage or destruction and is diligently pursued to completion.
- (b) In no event shall repair or restoration increase the degree of nonconformity.

E. DETERIORATED AND DILAPIDATED STRUCTURES

If a nonconforming structure becomes physically unsafe or unlawful due to lack of repairs or maintenance and is declared unsafe or unlawful by a building inspector due to its physical condition, the structure shall not be restored, repaired, or rebuilt except in conformity with this Ordinance. This provision shall not prevent strengthening or restoring an unsafe structure (or portion of a structure) to a basically safe condition under orders from any official charged with protecting the public health and safety.

96.4 NONCONFORMING LOTS OF RECORD

A. GENERAL

No use or structure shall be established on a nonconforming lot of record except in accordance with the standards in this section.

B. STATUS OF STRUCTURES ON NONCONFORMING LOTS

1. Conforming structures legally established on a nonconforming lot before (insert the effective date of this ordinance) may be continued, enlarged, extended, reconstructed, or structurally altered in any way that is in conformance with the standards of this ordinance.
2. Nonconforming structures legally established on a nonconforming lot before (inset the effective date of this ordinance) may be continued,

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enlarged, or redeveloped only in accordance with the standards in Section 96.3, Nonconforming Structures.

C. DEVELOPMENT OF UNIMPROVED LOTS IN SINGLE-FAMILY RESIDENTIAL DISTRICTS

In the single-family residential (R, RA and RS) zoning districts, notwithstanding limitations imposed by other provisions of this ordinance, a single-family detached dwelling and customary accessory structures may be developed on any single lot of record legally existing before the effective date of this ordinance. This provision applies even if the lot of record fails to comply with the standards for area or width in the district where located. Development of a single-family detached dwelling on the lot of record shall comply with the other standards in the district where located, to the maximum extent practicable.

D. COMBINATION OR RECOMBINATION REQUIRED

Where a vacant nonconforming lot abuts another lot of record (whether conforming or nonconforming) held in the same ownership on or subsequent to the effective date of this ordinance, such lots shall be combined or recombined as necessary to form a single conforming lot or two or more conforming lots.

E. DEVELOPMENT OF IMPROVED LOTS IN RESIDENTIAL DISTRICTS AFTER CASUALTY

If a legally established single-family attached or detached dwelling on a nonconforming lot in a single-family residential (R, RA and RS) zoning district is damaged or destroyed, by any means, to an extent more than 50 percent of its structural replacement cost at the time of damage or destruction, the dwelling may be rebuilt within the same footprint as the damaged or destroyed dwelling even though the lot does not meet the minimum lot area or lot width requirements.

F. GOVERNMENTAL ACQUISITION OF LAND IN A RESIDENTIAL DISTRICT

Governmental acquisition of a portion of a lot for a public purpose that results in a reduction in lot width or lot area below that required in the district where located shall not render the lot nonconforming.

G. CHANGE OF NONCONFORMING LOT

A nonconforming lot may be increased in area, width, or both, through a combination or lot line adjustment in accordance with the Subdivision Ordinance, to make the lot less nonconforming.

96.5 CORRECTION OF NONCONFORMING SITE FEATURES

A. GENERAL

The remodeling or expansion of buildings or structures shall be subject to this section's requirements for correction of any on-site nonconforming off-street parking, landscaping, perimeter buffer, screening, and signage.

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B. INTERIOR AND EXTERIOR REMODELING OF BUILDINGS OR STRUCTURES

If a Building Permit is required for interior or exterior remodeling or redevelopment of a building or structure, the remodeling or redevelopment shall require correction of existing on-site nonconforming off-street parking, landscaping, perimeter buffer, screening, and signage in accordance with this section.

1. Off-Street Parking, Landscaping, Perimeter Buffers, and Screening

- (a) **25 Percent or Less of Structure Value**
Remodeling in any continuous twelve-month period that costs 25 percent or less of the current fair market or assessed value of the structure (at the option of the applicant) shall not require any correction of the nonconforming site aspects.
- (b) **More Than 25 Percent but Less Than 75 Percent of Structure Value**
Remodeling in any continuous twelve-month period that costs more than 25 percent but less than 75 percent of the current fair market or assessed value of the structure (at the option of the applicant) shall require that a corresponding percentage of the off-street parking, landscaping, perimeter buffer, and screening standards of this ordinance be installed or upgraded on the site, until the site achieves 100 percent compliance. (For example, if a site has 20 of 30 required parking spaces (66 percent of the required parking) and the cost of the remodeling is 30 percent of the value of the building, then 30 percent of the total amount of required off-street parking, or nine spaces, shall be provided.
- (c) **75 Percent or More of Structure Value**
Remodeling in any continuous twelve-month period that costs 75 percent or more of the current fair market value or assessed value of the structure (at the option of the applicant) shall require 100 percent compliance with the off-street parking, landscaping, perimeter buffer, and screening standards of this ordinance.
- (d) **Five or Fewer Additional Parking Spaces**
When five or fewer additional off-street parking spaces are required under this subsection as a result of a remodeling project, such additional off-street parking is not required to be installed.

2. Signage

Remodeling in any continuous twelve-month period that costs more than 25 percent of the current fair market or assessed value of the structure (at the option of the applicant) shall require 100 percent compliance with the signage standards of this ordinance.

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3. Physically Constrained Properties-Comply to Maximum Extent Practicable

Where full compliance with the requirements of this subsection is precluded by a lack of sufficient developable area due to the size and layout of existing development and/or the presence of significant wetlands, floodplains, watercourses, steep slopes, or other significant environmental constraints on development, compliance shall be to the maximum extent practicable, as determined by the Development Services Director.

4. Determination of Remodeling Cost and Structure Value

For purposes of determining when a correction is required by this subsection, the cost of the remodeling shall be as shown on the approved Building Permit application. Fair market value shall be based on a market appraisal performed by a certified appraiser, at the applicant's expense. Assessed value shall be based upon information in the Onslow County Tax Office.

C. ADDITIONS AND EXPANSIONS OF BUILDINGS OR STRUCTURES

Additions and expansions to buildings or structures shall require correction of existing on-site nonconforming off-street parking, landscaping, perimeter buffer, screening, and signage in accordance with this subsection.

1. Off-Street Parking, Landscaping, Perimeter Buffers, and Screening
 - (a) Expansion of 50 Percent or Less of Gross Square Footage over Five Years Expansions in any continuous five-year period that result in a 50 percent or less increase in the gross square footage of the existing structure (measured at the beginning of the five-year period) require that a corresponding percentage of the off-street parking, landscaping, perimeter buffer, and screening standards of this ordinance be installed or upgraded on the site, until the site achieves 100 percent compliance. (For example, if the addition is 25 percent of the area of the existing structure and the site contains only 50 percent of the required landscaping, 25 percent of the required landscaping for the entire site must be provided, thereby bringing the landscaping on the site to 75 percent of the total required.) Existing landscaping on the site shall be retained or replaced but shall not count toward the required percentage of new landscaping.
 - (b) Expansion of Greater than 50 Percent of Gross Square Footage over Five Years Expansions in any continuous five-year period that result in a greater than 50 percent increase in the gross square footage of the existing structure (measured at the beginning of the five-year period) require the entire property to meet all of the off-street parking, landscaping, perimeter buffer, screening, and signage standards of this ordinance.

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2. **Signage**
Any expansion shall require 100 percent compliance with the on-premise signage standards of this Ordinance.
3. **Physically Constrained Properties-Comply to Maximum Extent Practicable**
Lands that are physically constrained (due to limited size, topography, or other environmental considerations) from complying with these provisions shall comply to the maximum extent practicable as determined by the Development Services Director.

96.6 NONCONFORMING SIGNS AND BILLBOARDS

A. GENERAL

No nonconforming sign or billboard shall be used, erected, altered, repaired, or relocated except in accordance with the standards of this section.

B. ENLARGEMENT OR ALTERATION

A nonconforming sign or billboard shall not be enlarged, expanded, or altered in any way that increases the degree of nonconformity.

C. RELOCATION OR REPLACEMENT

1. A nonconforming sign or billboard shall not be moved, in whole or in part, or replaced except to bring the sign into complete conformity with the requirements of this ordinance.
2. Nonconforming wall signage may be removed from a wall or facade to allow repair or maintenance of the wall or façade and then replaced.
3. In cases where a nonconforming wall sign is associated with a tenant located within an in-line shopping center or other multi-tenant building, the nonconforming wall sign may be removed for repairs or maintenance to the wall or façade, but the nonconforming sign shall be brought into compliance with the provisions of this ordinance when the tenant vacates the space.

D. ILLUMINATION

Illumination shall not be added for the benefit of any nonconforming sign or billboard.

E. ABANDONMENT

1. If a nonconforming on-premise sign advertises a business, service, commodity, accommodation, attraction or other enterprise or activity that has not been operated, conducted, or offered for a period of at least 180

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days, that sign shall be deemed abandoned and shall be removed or brought into compliance by the sign owner, landowner, or other person having control over the sign.

2. If a nonconforming billboard remains blank for a continuous period of 180 days, that sign shall be deemed abandoned and shall, within 30 days after such abandonment, be brought into compliance with this ordinance or be removed by the sign owner, owner of the land where the sign is located, or other person having control over the sign. For purposes of this subsection, a billboard shall be deemed "blank" if:
 - (a) It advertises a business, service, commodity, accommodations, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or
 - (b) The advertising message it displays becomes illegible in whole or substantial part; or
 - (c) The advertising message it displays has been removed. (For purposes of this subsection, the terms "Sign for Rent", "Sign for Lease", "Building for Rent", "Building for Lease", "Building for Sale", etc., shall not be deemed to be an advertising message).
3. On-premise signs advertising a use or structure that has been demolished or relocated to another site shall be removed within 60 days following such demolition or relocation. In the event an existing use or structure has been demolished or relocated to facilitate new construction, all signage associated with the new construction shall comply with the standards in Section 109. Sign Regulations.

F. MAINTENANCE, REPAIRS, AND RENOVATION

1. Nonconforming signs and billboards may be maintained, repaired, and renovated provided such activities are completed in accordance with the requirements in Section 109. Sign Regulations, and provided that the cost of repair or renovation within any twelve-month period does not exceed 50 percent of the replacement cost of the sign or billboard.
2. Nonconforming signs or billboards determined by the Director of Planning and Development Services to represent a danger to the public health or safety shall be immediately replaced or removed, and any replacement signage shall comply with all requirements of this ordinance.
3. No maintenance, repair, or renovation of a nonconforming sign or billboard shall increase the degree of nonconformity.

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G. RESTORATION AFTER CASUALTY DAMAGE

1. If a nonconforming sign or billboard (or portion of a sign or billboard) is damaged or destroyed, by any means, to an extent more than 50 percent of its structural replacement cost at the time of damage or destruction, it shall only be restored, repaired, or reconstructed in a manner that conforms to the provisions of this ordinance.
2. No restoration, repair, or reconstruction of a nonconforming sign or billboard shall increase the degree of nonconformity.

H. CHANGE IN ADVERTISED USE AND CHANGE OF COPY

If there is a change in use to the use, structure, or premises advertised by a nonconforming on-premise sign, the nonconforming sign shall be removed and may be replaced only by a sign that conforms to the provisions of this ordinance. Otherwise, the message of a nonconforming sign may be changed so long as doing so does not create any new nonconformity.

Sections 97-98. Reserved