

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.

While the term nonconformity is a general one, for the purposes of this Ordinance, nonconformities may be further defined as belonging to one of the following types:

TYPE OF NONCONFORMITY	Section
•Nonconforming land/lots	14-5
•Nonconforming use of premises	14-6
•Nonconforming characteristics of use	14-7
•Nonconforming mobile homes, mobile home parks	14-8, 14-9

Uses which require a conditional use permit under the terms of this Ordinance are considered a conforming use.

Section 14-2 How to use this chapter

Each of the nonconformities listed in the above table is handled in a section below. Definitions of certain terms that appear in this Chapter are also listed below for the reader's convenience.

Section 14-3 Definitions of terms used frequently 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 has been modified so as to cause 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.

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 as set forth in this Ordinance.

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 to either 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 but not conforming to the provisions herein. Nonconforming features included but are not limited to: physical features of development that exceed allowable maximum standards (floor area, height, etc.) or that fall short of minimum standards (open space, setback, off-street parking, landscaping, lighting, etc.)

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

Structure- A combination of material to form a construction for use, occupancy, or ornamentation whether installed on, above or below the surface of land or water.

Section 14-4 Intention

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

1. 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;
2. to encourage the cessation (stopping) of those nonconformities, the negative effects of which cannot otherwise be mitigated; and,
3. 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

- Subdivision
Nonconforming land may not be subdivided except for purposes and in a manner conforming to district regulations.
- 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 zone related development requirements.
- 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.
- 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.
- Lots 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 (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. To the greatest extent possible, the new lot lines shall be established such that the setbacks for the existing structure meets the setbacks for the Medium Density Residential Open Space subdivision. In no case shall a setback of less than 5 feet be established for existing structures.
3. 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.
4. A note shall be placed on the plat to be recorded stating that the lots were created using this section of the Zoning Ordinance.

Section 14-6 Nonconforming use of premises (land with or without structures)

A. Limitations

There shall be no enlargement, increase 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 use ceases for more than six (6) months, subsequent use of the land must conform to district regulations.

C. Changing from one nonconforming use to another

The owner/operator of a nonconforming use may change to another nonconforming use of the same or lesser intensity, however, approval must be obtained from the Planning & Zoning Commission acting as a Board of Adjustment. The burden of proof of showing that the new nonconforming use is the same or lesser intensity than the existing nonconforming use will rest completely with the applicant. A process similar to that used in conditional use permitting will be used when changing from one nonconforming use to another. Accordingly, the Planning & Zoning Commission acting as a Board of Adjustment may impose conditions upon the proposed use.

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 such reconstruction takes place within one year 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 in Limited or General Industrial Zones

Single family detached structures that exist in either the limited or general industrial zones may be enlarged provided the dimensional standards of the zone are met.

Section 14-7 Nonconforming characteristics of uses

Nonconforming characteristics of use, for example, inadequate parking and loading facilities, inappropriate landscaping, lighting, emissions, 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 without either a Certificate of Nonconformity Adjustment or approval by the Board of Adjustment.

Section 14-8 Nonconforming manufactured homes

Nonconforming manufactured homes on private lots may be removed and replaced provided that the replacement mobile home is no older than 1976 and meets the design and installation standards for individual manufactured homes in Chapter 4.

Manufactured homes must be replaced with a unit equal to, or greater than, the size of the manufactured home being replaced.

Section 14-9 Nonconforming manufactured home parks

All manufactured home parks made nonconforming by this Ordinance and not operating under a conditional 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 Supervisor's office will be utilized as verification reflecting the number of lots the individual paid taxes on.

Section 14-10 Applying for a Certificate of Nonconformity Adjustment

When the adoption of this Ordinance creates a nonconformity and the owner/operator of that nonconformity desires to expand or alter 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.

Steps in the nonconformity adjustment process are:

1. Application
An application for a nonconformity adjustment will be considered by the Zoning Administrator upon the filing of a form entitled "Request for Nonconformity Adjustment", available within the Office of the Cabarrus County Zoning Administrator.
2. Notification of neighboring landowners
All landowners adjoining to any degree (including lying across roadways) the site of the nonconformity will receive notification of the filing of the request for a Certificate of Nonconformity Adjustment and given an opportunity, should they desire, to comment on the nonconformity within seven (7) days of the date of filing.
3. Decision by Zoning Administrator
Within 30 days of the date of receipt of a request for a nonconformity adjustment, the Zoning Administrator will either approve or deny the request. His decision to approve may be based upon the applicant agreeing to site changes. The decision to approve or deny will be made based on the following criteria:
 - a. Noise- Does the nonconformity create noise above and beyond levels considered normal to the area?

- b. Traffic- Does 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 nonconformity generate any other negative effects including but not limited to: dust, air pollution, foul smell, etc.?
 - d. Surrounding property values- Does the nonconformity detract from the prevailing property values?
 - e. Aesthetics- Does the nonconformity compliment or detract from the overall aesthetic character of the area?
4. Changes to the nonconformity
The Zoning Administrator will determine what the nonconformity operator/owner must do to the property for certification. For example, landscaping or fencing may be required or a shift of operations away from adjoining properties may be stipulated.
5. Decision by the Zoning Administrator
- a. Denial
If the Zoning Administrator, after an analysis of the facts of the situation, finds the nonconformity cannot be adjusted, it will be handled as such and subject to those provisions of this Ordinance which deal with unreformable nonconformities. If an application is denied, the applicant may petition the Planning & Zoning Commission, acting as a Board of Adjustment, for a review of the Zoning Administrator's decision within 30 days.
 - 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.

Section 14-11 Revocation of a Certificate of Nonconformity Adjustment

Certificates are issued based for an indefinite period, however, may be revoked upon Certificate-required conditions not being maintained. For example, a nonconforming use that has been adjusted through installation of a landscape buffer could be revoked if the buffer were not maintained and ceased to be.