

Article 6: Nonconformities

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Division 6.1: Nonconforming Uses

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6.1.10 Purpose

This article provides for the removal and termination of illegal nonconformities and the regulation of legal nonconforming uses, structures, sites, and signs, and specifies those circumstances and conditions under which legal nonconformities are permitted to continue or expand.

6.1.20 Intent

Where uses, structures, or sites legally existing on the effective date of this Development Code, or any subsequent amendment thereto, are not in conformity with the provisions of this Article, it is the intent of this section to declare such features within the Town to be nonconforming.

The Town recognizes that nonconformities vary in the degree of conflict, annoyance, incompatibility, or hazard to the community. It is the policy of the Town to bring such features into conformance with this Development Code as quickly as possible, and as is reasonably practicable without unduly disrupting the rights of the landowner or the community.

6.1.30 Continuing Existing Uses

Any use existing at the time of the enactment of this chapter which does not conform with the provisions of this Development Code for the district in which it is located shall be deemed to be a nonconforming use and may be continued only as hereinafter specified.

6.1.40 Change of Use

A nonconforming use shall not be changed to another nonconforming use.

6.1.50 Abandonment of Use

- A. As defined herein, a use shall be deemed to have been abandoned when it has been discontinued, whether temporarily or permanently, with or without the intent to abandon, for a period of 60 days or more.
 - B. A nonconforming use of a structure, building, or land which has been declared abandoned shall not thereafter be reestablished except in conformity with the provisions of this Development Code.
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6.1.60 Extensions

A nonconforming use of land or building shall not be enlarged, intensified, or extended in such a way except in conformity with this Development Code, except a nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Development Code, but no such use shall be extended to occupy any land outside such building.

6.1.70 Illegal Use

The temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

Division 6.2: Nonconforming Structures

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6.2.10 Intent

Where structures or buildings legally existing on the effective date of this Development Code or any subsequent amendment thereto, are not in conformity with the provisions of this Development Code, it is the intent and purpose of this division to declare such buildings and structures within the Town to be nonconforming.

6.2.20 Repairs, Alterations, and Maintenance

Any nonconforming building or structure that is renovated, repaired, altered, or otherwise improved by more than 60 percent of its reasonable replacement value at the time of renovation, repair, or alteration shall be brought into conformance with landscaping, buffering, sign, lighting, access, and parking requirements. Architectural design changes required to bring the site into conformity with the requirements of this Development Code shall be in proportion to the alterations proposed by the applicant. The provisions of this section shall not apply to any single-family dwelling used for residential purposes.

6.2.30 Restoration of Damaged Structures

- A. Any nonconforming building or structure, including signs, damaged more than 50 percent of their reasonable replacement value at the time of damage by fire, flood, explosions, wind, earthquake, war, riot or other act, shall not be restored or reconstructed and used except in conformity with the requirements of this Development Code and all rights as a nonconforming use are terminated. The provisions of this subsection shall not apply to any single family dwelling residence used for residential purposes.
- B. For purposes of this section, the percentage of damage for buildings shall be calculated by dividing the estimated cost of restoring the building as nearly as possible to its condition prior to the occurrence, by the appraised value of the building (excluding the value of the land) immediately prior to the occurrence.
- C. The percentage of damage for other structures shall be calculated by dividing the estimated cost of restoring the structure (or sign) by its reasonable replacement cost.

6.2.40 Reconstruction

A nonconforming structure shall not be demolished and rebuilt as a nonconforming structure, except a nonconforming structure listed in the "Beaufort County Above Ground Historic

Resources Survey Beaufort County, South Carolina" (amended 1997) may be allowed to be rebuilt within the original (pre-demolition) footprint.

6.2.50 Extensions

A nonconforming building shall not be enlarged, intensified, or extended in such a way except in conformity with this Development Code except as follows:

- A. In cases where the primary building on a lot is nonconforming solely as a result of a setback encroachment, additions to the structure can be allowed, provided the new addition does not project into the setback. If a proposed addition would encroach into the same setback that already had been encroached upon, the addition can be allowed, provided that it projects no further into the setback than the existing structure, and in no way extends past the line of the existing structure. This section does not apply to a nonresidential use which adjoins a residential use on the side of the lot having the setback nonconformity (See Figure 6.2.50.A, Permitted Extensions for Nonconforming Buildings).
- B. Reserved.

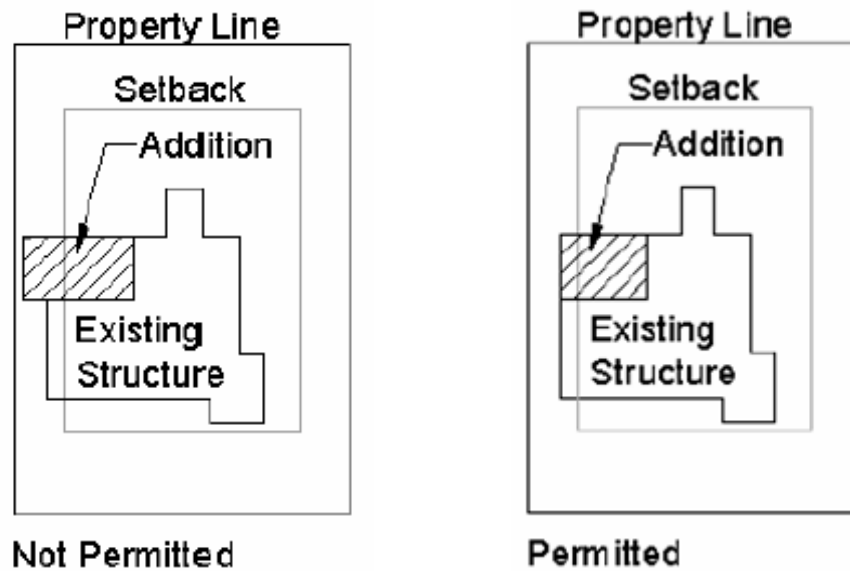


Diagram 6.2.50.A: Permitted Extensions for Nonconforming Buildings.

Division 6.3: Nonconforming Lots of Record

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6.3.10 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.
- 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 in area and/or width than the required minimum set forth in Article 3 (Specific to Zones), then the lot may be used just as if it were conforming.
- C. When the use proposed for a nonconforming lot is one that is conforming in all other respects, but the applicable setback requirements set forth in Article 3 (Specific to Zones) 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; and
 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 significant 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. Any lot or parcel of land resulting from any division shall comply with the zone minimum lot area and width standards.
- F. Unity of title shall be required for any construction or expansion where multiple nonconforming lots are used as a single parcel for development purposes. In consideration of the Town's issuance of a permit for such construction, the landowner shall agree to restrict such lots in the following manner:
 1. The property shall be considered as one parcel of land, and no portion of that parcel of land shall be sold, transferred, devised or assigned separately, except in its entirety as one parcel of land. Any further subdivision of the parcel of land shall comply with this Development Code. This condition, restriction and limitation shall be deemed a covenant running with the land, and shall remain in full force and effect and be binding upon any landowner, and heirs and assigns.
 2. A unity of agreement shall be recorded in the public records of Beaufort County acknowledging the above requirements and placing the required covenant upon the

land. Release of any recorded unity of title agreement must be approved by Beaufort County.

Division 6.4: Nonconforming Signs

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6.4.10 Nonconforming Signs

- A. Any sign constructed after the adoption date of this article and which is found to exist in violation of this article shall be declared to be illegally nonconforming and shall be removed after 30 days' notice. If the owner or lessee fails to remove the sign during the permitted time, then the Town Manager or his/her designate, or an independent contractor secured by the Town shall remove the sign and the ensuing charges shall be assessed to the owner or lessee.
- B. A nonconforming sign shall not be changed or replaced with another nonconforming sign, including changing the sign face, except for changeable copy signs.
- C. An existing nonconforming sign cannot be modified in any way aside from routine maintenance without bringing the sign into conformity with this section subject to the provisions outlined in subsection D.
- D. Any existing sign not meeting the requirements of this Development Code shall be brought into compliance with this Development Code before a business license will be issued for a new resident business. Any existing sign not meeting the requirements of this Development Code shall be brought into compliance with this section before a business name can be changed.
- E. Temporary nonconforming signs having obtained a sign permit before the adoption date of this Development Code, shall be permitted to remain for the life of the permit.
- F. Signs on awnings or canopies shall be removed when the tenant vacates the building.
- G. Nonconforming supports and brackets and unused signs must be completely removed before a new sign is installed. Any holes in the building must be appropriately patched.

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