

## **ARTICLE VIII. NONCONFORMITIES**

### **Section 800. Purpose.**

It is the purpose of this Article to provide for the regulation of nonconforming structures, lots of record and uses, and to specify those circumstances and conditions under which such nonconformities shall be permitted to continue. It is necessary and consistent with the regulations prescribed by this Ordinance that those nonconformities that adversely affect orderly development and the value of nearby property not be permitted to continue without restriction.

Nonconformities are existing uses, lots, buildings and structures that were previously lawful, but that would be prohibited or subject to more stringent regulation under the zoning districts and related requirements established by this Ordinance or subsequent amendments.

- A.** Legally established buildings, structures and uses in existence at the time of adoption of this Ordinance shall be permitted to continue subject to the provisions of this Article.
- B.** Uses that were illegally established prior to the adoption of this Ordinance shall remain illegal and be subject to penalties and remedies that are pursued.

It is the intent of this Ordinance that legal nonconformities, as described in “A” above, be allowed to continue, in accordance with the requirements of this Article, but not be enlarged or used as the grounds for additional nonconformities. This Article provides for the regulation of legally nonconforming lots, uses, buildings and structures; specifies the conditions under which a legal nonconformity can be continued, expanded or modified; and the circumstances under which a legal nonconformity shall be terminated

### **Section 801. Definitions .**

**Nonconformity.** Any land use or physical design of development, structure, or lot of record legally established prior to the effective date of this Ordinance, or subsequent amendment to it, which would not be permitted by, or is not in full compliance with, the regulations of this Ordinance.

**Nonconforming Use.** An activity using land, buildings, and/or structures for purposes which were legally established prior to the effective date of this Ordinance, or subsequent amendment to it, and which would not be permitted to be established as a new use in the zone in which it is located by the regulations of this Ordinance.

**Nonconforming Structure or Development Site.** Any structure or development site, established prior to the effective date of this Ordinance or subsequent amendment to it, which does not fully comply with the standards of this Ordinance.

**Nonconforming Lot of Record.** Any validly recorded lot which at the time it was recorded fully complied with all applicable laws and ordinances, but which does not fully comply with the lot requirements of this Ordinance concerning minimum area, minimum lot width, or minimum street frontage.

**Section 802. Authority to Continue Legal Nonconformities.**

**802.01.** Except as otherwise provided in this Article, any nonconforming lot, use, or structure lawfully existing on the effective date of this Ordinance, or subsequent amendment thereto, may be continued so long as it remains otherwise lawful.

**802.02.** No nonconformity shall be enlarged upon, expanded, or extended unless such alteration is in full compliance with all requirements of this Ordinance, except as noted in this Section. Normal maintenance and incidental repair of nonconformity shall be permitted, provided that this does not violate any other section of the Article.

**A.** Nothing in this Article shall be deemed to prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition; provided that such restoration is not otherwise in violation of the various provisions of this Section prohibiting the repair or restoration of partially damaged or destroyed structures.

**B.** An extension, for the exclusive purpose of providing required off-street parking or loading spaces, involving no structural alteration or enlargement of such structure, shall not be deemed an expansion of nonconformity, subject to the restrictions of this Article.

**C.** Nothing in this Article shall be interpreted to prohibit routine maintenance, restoration of a structure to a safe condition, and/or internal renovations, provided the total value of such activities does not exceed 50% of the appraised value of the structure as determined by the Talladega County Tax Assessor.

**802.03.** No nonconformity shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

**802.04.** Regardless of any other provision of this Article, no use or structure which is accessory to a principal nonconforming use or structure shall continue after such principal use or structure shall have ceased or terminated, unless it shall thereafter conform to all regulations of this Ordinance.

**802.05.** The burden of establishing the nonconforming status of any structure or land use under the terms of this Article, in all cases, shall be upon the owner of such nonconformity and not upon the City of Lincoln.

## **802.06. Termination of Nonconformities.**

### ***A. Termination of a nonconforming use shall occur if:***

1. the structure or premise occupied by the nonconforming use becomes and remains vacant for a period of six (6) months, or
2. the structure or premise is occupied by a use that is permitted in the zoning district in which such structure or premises is located.

Thereafter, the use of said structure or premise shall conform to the use regulations of the district in which such structure or premise is located, regardless of the intent of the owner or occupant.

***B. Changes and Reversions to Nonconforming Uses Prohibited:*** A nonconforming use of land, buildings or structures shall not be changed to another nonconforming use. A nonconforming use of land, buildings or structures that is changed to a conforming use shall not be permitted to revert to a nonconforming use.

***C. Termination of Use of Nonconforming Buildings and Structures:*** Any nonconforming use of buildings and structures that has been discontinued for any reason for a period of six (6) consecutive months shall not be reestablished. The future use of the building or structure shall comply with all applicable regulations.

***D. Termination Required by Modification.*** A development site that is nonconforming by physical design (i.e., insufficient parking, landscaping, setbacks, etc.), may be utilized for any land use which is permitted at that location. However, any permits for additional floor area, or the replacement of any structure on the development site, shall be contingent upon bringing the entire site into conformity with all requirements of this Ordinance.

## **Section 803. Nonconforming Vacant Lots of Record.**

When a lot exists that does not consist of sufficient land to comply with the lot, yard and setback requirements at the time of adoption of this Ordinance or any subsequent amendment, it shall be considered a nonconforming vacant lot of record.

Subject to the provisions of this Section, a nonconforming lot of record may be used for any principal use permitted in the zone in which the lot is located, provided that all other standards (i.e. setbacks, parking, etc.) can be met, or a variance meeting the standards of Section 803.02 can be granted. For any use which is to be served by an individual well and/or septic system, the nonconforming lot shall be of a size and design to meet the minimum requirements of the Talladega County Health Department regulations for such wells and septic systems.

**803.01. Effect of Single Owner.** If two or more contiguous vacant lots of record are in single ownership at the time of adoption of this Ordinance, or any subsequent amendment, and one or more of the lots is a nonconforming lot of record, then the land involved shall be considered an undivided tract of land. No portion of the tract of land shall be divided, sold or developed in a manner that diminishes the ability of all lots to comply with the requirements of this Ordinance or any subsequent amendment.

**803.02. Appeal to Build on Nonconforming Vacant Lot of Record.** A nonconforming vacant lot may be used as a building site for any use permitted in the zoning district in which the lot is located provided:

- A. Other requirements of this Ordinance are complied with; or
- B. Application is made to the Board of Zoning Adjustment for a variance from applicable requirements that can not be met.
- C. A variance for a nonconforming vacant lot of record shall conform, as closely as possible to the lot area, yard and building setback and other requirements and:
  - 1. The front yard setback shall not be less than the average of the setbacks of existing buildings within two hundred (200) feet on each side of the lot.
  - 2. At least one side yard shall not be reduced to less than ten (10) feet in width and the other side yard not less than five (5) feet in width;
  - 3. The rear yard setback shall not be less than twenty (20) feet, and
  - 4. No more than one principal use and building shall be allowed on a nonconforming vacant lot of record.

#### **Section 804. Nonconforming Developed Lot of Record.**

**804.01. Nonconforming Developed Lot of Record.** When the use complies with the requirements of the district in which the use is located, but the lot has been developed in a manner that does not comply with the lot, yard and setback requirements at the time of adoption of this Ordinance, or any subsequent amendment, it shall be considered a nonconforming developed lot of record.

**804.02. Expansion of Conforming Use.** Provided a proposed use is permitted in the zoning district in which the lot is located, the use, building or structure may be expanded, in accordance with all other requirements, within the buildable area defined by this Ordinance.

## **Section 805. Nonconforming Uses of Buildings and Structures.**

When a nonconforming building or structure and related uses exist at the time of adoption of this Ordinance, or any subsequent amendment, that does not comply with these regulations, that building or structure and related use shall be allowed to continue subject to the following conditions.

**805.01. Expansion of Nonconforming Use within an Existing Building or Structure.** The expansion of a nonconforming use within an existing building or structure shall be allowed provided the use will be expanded in a space contiguous with the existing use. The expansion shall be limited to within the existing building or structure. A nonconforming use shall not be expanded or relocated, in whole or part, to a non-contiguous part of a building or structure. All required on-site improvements, such as parking, loading and buffer areas shall be provided before the use is expanded within the building.

**805.02. Enlarging Nonconforming Principle Buildings and Structures Prohibited.** A nonconforming building or structure and related use shall not be enlarged, intensified, or altered in a manner that increases the nonconformity, but may be altered to decrease the nonconformity.

**805.03. Effect of Relocation.** If a use, building or structure is relocated on the existing site or moved to another location, the lot, use, building or structure shall comply with all zoning and applicable development regulations after it is moved.

## **Section 806. Construction Prior to Adoption or Amendment of Zoning Ordinance.**

Nothing in this Ordinance shall be interpreted as requiring a change in plans, construction, use or occupancy of land, buildings or structures for which approval has been granted and on which construction was lawfully begun and has been diligently continued prior to the adoption this Ordinance, or any subsequent amendment, that would make a use, building, structure or occupancy nonconforming.

- A. Construction shall mean the erection and fastening of building materials in a permanent manner in accordance with approved plans.
- B. Where demolition and removal of an existing building has begun in preparation for rebuilding, or where excavation has begun for building, construction shall be deemed to have begun provided the work is diligently continued.
- C. The storage of building materials or location of a temporary office on a lot shall not be deemed as having begun construction.

## **Section 807. Repair and Restoration of Nonconforming Buildings and Structures.**

**807.01.** Nothing in this Ordinance shall:

- A.** Prevent the continuous maintenance, internal renovations, strengthening, or restoration of any building or structure to a safe and sanitary condition; or
- B.** Prevent repairs ordered by a proper authority charged with the duty of protection of health and safety.

**807.02.** A nonconforming building, structure or use shall not be rebuilt or restored, except in conformance with the provisions of this Ordinance, after being damaged by natural acts (e.g. fire, wind, flood, etc.) to the extent of fifty (50) percent or more of the appraised value at the time the damage occurred. If a nonconforming building is damaged less than fifty (50) percent of its appraised value at the time of damage it may be rebuilt or restored and used provided the rebuilding or restoration is started within six (6) months following the date of such damage and that restoration work is diligently continued. A request for extension of the start of rebuilding or restoration may be requested of the Planning Commission, provided said request is made within the initial six (6) month period.