

Section 19 Nonconforming Lots, Uses and Buildings

19.1 Purpose

Zoning regulations established by the adoption of this ordinance or amendments to this ordinance may cause properties and uses which were lawful prior to the adoption of certain regulation to not meet requirements after adoption of the regulations. The purpose of this Section is to establish procedures and regulations for the use of those properties or structures which are in conflict with the requirements of this ordinance. It is not the intent of this Section to encourage the continuance of nonconformities which are out of character with the standards of the zoning district. It is the intent of this Section, however, to allow certain nonconforming situations to continue as legal exceptions to this ordinance.

19.2 Grandfathered Uses, Structures, and Plans

(Generally applies to situations involving the transition between the pervious ordinances and the merged ordinance)

1. Unless specified below, Any use, building, development plan, or site plan which was lawfully existing prior to the effective date of this ordinance (January 1, 1994), and not considered a nonconformity prior to the effective date of this ordinance, may continue or be reconstructed as a conforming use from the original adoption of the merged Durham Zoning Ordinance, even though the use, lot, or, building may not conform with the provisions of this ordinance for the district in which it is located. Grandfathered uses, structures and plans may continue as long as they remain otherwise lawful. Structures may be enlarged using standard procedures found in this ordinance, provided that the enlargement shall be in conformance with the dimensional and parking requirements of this ordinance which are in effect at the time of the enlargement. The Grandfathering provisions of this Section do not apply to:

- a. Uses and buildings which were in violation of the zoning requirement existing at the time of the effective date of this ordinance. These uses will be considered continuing violations, they may not be replaced and must be corrected to meet current ordinance standards.
- b. Nonconforming signs are required to meet all the requirements of the Sign Section of this ordinance.
- c. *City Jurisdiction*: Uses and/or activities which were not clearly allowed in the zoning code as it existed prior to the adoption of the merged ordinance [Sept 1993] for reasons which may include but are not limited to the following: the use was not specifically listed in the code; the activity was not specifically described in the nearest use that was listed; or the activity as conducted was broader than what was specifically described in the code. Such activities shall, if interpreted as legally conforming as of the time of the merged ordinance took effect, be considered as nonconforming uses under this code.
- d. Junkyards and salvage yards. Existing junkyards and salvage yards on parcels with zoning that permits the use, which were in operation prior to January 1, 1994, and therefore do not comply with the provisions above, shall have until January 1, 2006, to be enclosed by a fence 8 feet high, measured from the lowest point of grade and therefore screened from view. The fence shall be maintained in good condition. No stored materials shall be visible from ground level immediately outside the fence.
- e. Vehicle repair shops. Those vehicle repair shops that are determined to be nonconforming, though they have appropriate zoning, shall be required by January 1, 2006 to provide an opaque screen (a fence or wall at least 6 feet but no more than 8 feet in height, with a vegetative cover that, at maturity, covers 75% of the fence or wall, between the fence or wall and the property line) to fully screen the operations of the vehicle repair shop. Such fences shall not be located within any sight distance triangles at any intersection, but shall be set back to provide unimpeded vision clearance for vehicular traffic.

Those vehicle repair shops located on parcels that do not permit this use but which were in operation prior to January 1, 1994, shall have until January 1, 2009, to come into full compliance with all requirements of the Zoning Ordinance or shall be required to cease operation

If a grandfathered use is changed to a use which conforms to the provisions of this ordinance, it may not be changed back to a grandfathered use. If a grandfathered use is abandoned, it may not be reestablished

2. *Uses Requiring A Major or Minor Use Permit*: Buildings or uses which lawfully existed at the time of the effective date of this ordinance which would require the issuance of a use permit, or site plan approval, may continue as a conforming use without the use permit or site plan. However, any future expansion of the building or use in excess of 15% of the gross floor area or site size (measured from the size of the building or use at the time of ordinance adoption) requires the application for a use permit and/or site plan approval in conformance with procedures found in this ordinance. In order to grant a permit, the approving authority shall find that: there is adequate access, the activity or improvements will be compatible with the surrounding properties, and that any other factors found to be relevant to the case are handled in a satisfactory manner.
3. *Prior Approvals*: Approved site plans, special exceptions, variances, and subdivisions which are in compliance prior to the effective date of this ordinance (January 1, 1994) are grandfathered and development shall be allowed in conformance with the approval. Site plans shall expire in 24 months if no significant improvements are made on the site.

19.3 Nonconformities Defined

(Generally applies to situations resulting from amendments made to this ordinance after January 1, 1994)

A nonconformity shall be any property, use, or structure not grandfathered under Section 19.2 or which as a result of amendments to this ordinance or a preexisting condition, does not meet the current standards of the ordinance.

1. A nonconforming lot shall be any legally established parcel which does not conform to the current area or dimensional requirements of the zoning district in which it is located.
2. A nonconforming use shall be any land use or type of residential use which was legally established but has become a prohibited use in the district in which it exists.
3. A nonconforming improvement or structure shall be any legally established improvement, building or structure which fails to meet current ordinance standards for setback, height, or similar factors.
4. Any lawful lot, use, or structure which lawfully existed prior to any amendments to this ordinance which made it nonconforming may continue unless the nonconforming use is a junkyard, or vehicle repair shop, in which case it must comply with the provisions of this ordinance governing the amortization of such a nonconforming use. Reconstruction, alterations, and expansions are subject to the provisions of this Section.

19.4 Board of Adjustment Procedures for Nonconformities

In certain circumstances, a special use permit may be required from the Board of Adjustment in accordance with procedures and hearings specified elsewhere in this ordinance (Section 13). As a result of its findings, the Board of Adjustment may either: 1) approve a special use permit, 2) not approve a special use permit, or 3) approve a special use permit with conditions.

19.5.1 General Standards

1. The creation of a lot with a width or area smaller than allowed by existing zoning requirements is prohibited, except by governmental action, such as a road widening or an officially adopted housing program. Where governmental action has reduced the size of a lot, construction, reconstruction, and additions shall be considered under the standards for nonconforming lots set forth in this subsection. Notwithstanding this prohibition, the creation of a lot that does not meet ordinance requirements is allowed where such lot is comprised of one or more legal nonconforming lots that are being enlarged to create a lot that more closely meets ordinance standards.
2. Relationship with other provisions. Where a nonconforming lot is governed by both these provisions and other provisions specifically addressing nonconforming lots in the zoning or subdivision ordinance, the stricter of the applicable provisions shall apply.

19.5.2 Residential Lots City Version

1. In order for a single family structure to be built on a legal nonconforming lot where such single family structure is an allowed use, the lot shall be increased in width and/or size to meet current ordinance requirements. However, enlargement is not required if the lot has a width of at least 50 feet and falls into either category (a) or (b) described below. The applicant shall produce all information required to make these determinations, including documents that show the creation of the lot through deed or plat.
 - a. A legal nonconforming single family lot may be developed without a use permit if all of the following criteria are met:
 1. It is located on an already-built street, and has either City water/sewer, or approval from the Durham County Health Department for well and septic use;
 2. It is not part of a development in which a new subdivision plat or site plan is being approved to allow development of the subject lot and adjacent lots;
 3. It is not bisected by lot lines or parcel lines such that development will result in a building being placed on a lot line;
 4. It is not more than 20% smaller or narrower than lots that front on the same street and are within 150 linear feet of the subject lot, measured from each side property line; and
 5. It is not owned by an owner who, as of January 1, 1994, owned 3 or more adjacent nonconforming lots, including the subject lot.
 - b. A legal nonconforming single family lot may be developed if it receives a minor special use permit from the Board of Adjustment. Lots that do not fall into category (a) above may be considered for such a use permit. In addition to making the findings normally required for such permit, the Board shall also find that one of the 3 findings below are also met:
 1. the general area around the subject lot is developed and the size of the lot to be developed is reasonably consistent with the general pattern of surrounding development; or
 2. the general area around the subject lot is developed and the building to be constructed will not substantially impact surrounding development in a negative manner; or
 3. it would be unreasonable or cause undue economic hardship to not allow development of the subject lot. Factors to be considered include but are not limited to ownership history; prior development approvals regarding the subject lot or surrounding lots; economic investments; and the purposes to be served by requiring compliance with lot size requirements.

2. Side yard requirements for single family residential development on nonconforming lots that do not meet lot width requirements shall be reduced as follows. Each side yard shall be at least 80% of the required side yard for the zone in which the lot is located, but in no case shall be less than 6 feet for lots that have a width of 55 feet or less, or less than 8 feet for lots more than 55 feet wide. With the exception of such side yard requirements all other City and County requirements shall be complied with.

19.5.2 Residential Lots County Version

1. In order for a single family structure to be built on a legal nonconforming lot where such single family structure is an allowed use, the lot shall be increased in width and/or size to meet current ordinance requirements. However, enlargement is not required if the lot has a width of at least 50 feet and falls into either category (a) or (b) described below. The applicant shall produce all information required to make these determinations, including documents that show the creation of the lot through deed or plat.
 - a. A legal nonconforming single family lot may be developed without a use permit if all of the following criteria are met:
 1. it is located on an already-built street, and has either City water/sewer, or approval from the Durham County Health Department for well and septic use;
 2. it is not part of a development in which a new subdivision plat or site plan is being approved to allow development of the subject lot and adjacent lots;
 3. it is not bisected by lot lines or parcel lines such that development will result in a building being placed on a lot line;
 4. it is not more than 20% smaller in area or narrower in width than lots that front on the same street and are within 150 linear feet of the subject lot, measured from each side property line; and
 5. it is not owned by an owner who, as of January 1, 1994, owned 3 or more adjacent nonconforming lots, including the subject lot.
 - b. A legal nonconforming single family lot may be developed if it receives a minor special use permit from the Board of Adjustment. Lots that do not fall into category (a) above may be considered for such a use permit. In addition to making the findings normally required for such permit, the Board shall also find that one of the 3 findings below are also met:
 1. the general area around the subject lot is developed and the size of the lot to be developed is reasonably consistent with the general pattern of surrounding development; or
 2. the general area around the subject lot is developed and the building to be constructed will not substantially impact surrounding development in a negative manner; or
 3. it would be unreasonable or cause undue economic hardship to not allow development of the subject lot. Factors to be considered include but are not limited to ownership history; prior development approvals regarding the subject lot or surrounding lots; economic investments; and the purposes to be served by requiring compliance with lot size requirements.
2. To develop lots that do not meet lot width requirements, the following applies: The sum of the width of the 2 side yards of a nonconforming lot of record shall be at least 30 percent of the lot width. The minimum side yard of a nonconforming lot of record shall be 12 percent of the lot width. In addition to these requirements, the following minimums apply: If the nonconforming lot of record exceeds a width of 55 feet, then each side yard shall be a minimum of 8 feet wide. If the nonconforming lot of record is 55 feet wide or less, each side yard shall be a minimum of 6 feet wide.

19.5.3 Nonresidential Lots

Where otherwise allowed by the zoning code, a non single family structure may be constructed on a legal nonconforming lot only upon the issuance of a use permit by the Board of Adjustment. The Board shall issue such a permit if it finds that the structure meets all requirements for issuance of a minor special use permit, and finds, in addition, that the proposed structure will not negatively impact the surrounding area or surrounding development in any manner.

19.6 Nonconforming Uses

1. For any nonconforming use, floor area may not be enlarged, residential density may not be increased, and lot coverage may not be increased.
2. A nonconforming use may be continued (though for some uses, the period of time within which the use may be continued may be limited.) and may be changed to a use which is allowed by the zoning district. A nonconforming use may not be changed to another nonconforming use.
3. Any nonconforming use which is discontinued for a period of 6 consecutive months or longer may not be reestablished. The only use permitted after that time shall be a use which is allowed in the zoning district. If the nonconforming use operates without any structural components, the use may not be reestablished if it is discontinued for a period of 30 days or longer.
4. A nonconforming use may not be relocated to another portion of a lot.
5. A nonconforming use which is damaged or partially destroyed may be restored only if the damage is less than 50% of the tax value or, at the request of the property owner, the Inspections Department may determine the value in terms of replacement costs. If reconstruction is begun within 2 years after the damage occurs, the provision regarding a 6 month abandonment may be waived (Section 19.6.3).

6. No new structures may be constructed to be used as an accessory to a nonconforming use.

19.7 Nonconforming Improvements or Structures

Expansion of and improvements to nonconforming improvements or structures are allowed, subject to the restrictions listed below. For purposes of application of this section, a nonconforming structure that is part of a housing program initiated by a Governing Body and which has received a variance from setback requirements shall be considered a conforming structure.

1. A variance is required for the following:
 - a. expansions that increase the amount or nature of a nonconforming feature (e.g., an expansion to the front of a building in violation of front setbacks), or that create a nonconformity, except those described in 2(a) below. This includes increases in a building's height if the height is added to the portion of the building that is nonconforming;
 - b. the reconstruction of a nonconforming structure that has been destroyed by more than 50% of the appraised tax value as determined by the Office of the Tax Assessor or 50% of the replacement cost as determined by the Inspections Department;
 - c. the rebuilding of a nonconforming structure that does not fall into (b) above if such rebuilding is delayed by more than 2 years;
 - d. the expansion or reconstruction of a nonconforming improvement that is not a structure.
2. A special use permit is required for the activities listed below. In order to issue a special use permit the Board of Adjustment must find that both the existing nonconformity and the proposed expansion meet the requirements of 13.1.3.
 - a. expansion of a nonconforming feature which "squares off" the structure to bring it flush with an already-existing portion of the structure;
 - b. expansions which increase the floor area of an existing nonconforming structure by more than 25%.
3. Expansions which fall into both (1) and (2) above require both a special use permit and a variance.

19.8 Maintenance and Repair

Nothing in this Section shall prohibit the ordinary maintenance and repair of any nonconforming use or structure. Repairs required by the Durham Housing Code may also be made without a special use permit. Normal building permit procedures apply to any maintenance and repair activity.

19.9 Nonconformities Covered by an Amortization Period

Nonconformities covered by amortization periods, which may be adopted from time to time, shall be subject to the requirements and procedures of such amendments involving amortization. Nonconforming signs are subject to the provisions of Section 12 regarding sign amortization.

19.10 Amendments Which Establish Conforming Status

In some circumstances, a zoning amendment may grant conforming status to lots, uses, or structures which existed prior to the adoption of the amendment. In such cases, the lot, use, or structure shall be considered conforming if it can be proven that it existed prior to the amendment which granted conforming status.

19.11 Completion of Buildings

Buildings and improvements for which a building permit has been issued can be built in conformance with the regulations applicable when the permit was issued, as long as the building permit remains valid.

19.12 Completion of Development Activities Shown on an Approved Site Plan

As long as the zoning district of a property remains unchanged, and the site plan for the property remains valid (Section 17), development of the property shall be allowed in accordance with the site plan which was approved. This provision applies whether or not the site plan has been designated as a "site specific development plan" in conformance with Section 18, Vested Rights.

Zoning of the property may be changed prior to completion of development activities shown on an approved site plan. In such cases, the development of the property shall conform to the regulations of the new district unless the property has been "vested" in conformance with the requirements of Section 18, Vested Rights.

19.13 Pre-existing Industrial

Partially completed projects which were designated I-2 (Industrial 2 district) in the former City of Durham Zoning Ordinance which contain a building or buildings in excess of 120 feet (in height) at the time of the adoption of this ordinance (September 29, 1993), shall be allowed to construct additional buildings up to 145 feet in height subject to Site Plan approval without receiving a special use permit from the Board of Adjustment or the Governing Body.