

PART 8
NONCONFORMITIES

Section 8.1 **Purpose and Applicability**

The purpose of this section is to regulate and limit the continued existence of uses and structures established prior to the effective date of this Ordinance or any amendment subsequent thereto that do not conform to this Ordinance. Any nonconformity created by a change in the classification of property or the text of this Ordinance shall be regulated by the provisions of this section. Many nonconformities may continue and in certain circumstances may make limited expansions, but the provisions of this section are designed to limit or curtail substantial investment in nonconformities and to bring about eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of this Ordinance.

While the intent of this section prefers the eventual elimination of nonconforming uses, the City Council hereby finds that zoning in Lincolnton has generally not been successful in eliminating non-conformities, particularly viable one, and that the public interest may be better served by allowing limited expansions of certain nonconformities whereby the impact of the nonconformity on surrounding and uses is lessened.

Section 8.2 **Nonconforming Uses Other Than Manufactured Home Parks, Signs, and Junk Yards**

- 8.2.1** Non-conforming uses of land or structures, and nonconforming structures that contain nonconforming uses, may continue only in accordance with the provisions of this section.
- 8.2.2** Normal structural repair and maintenance may be performed to allow the continuation of a nonconforming use (except as required in Section 8.2.5 of this Ordinance).
- 8.2.3** A nonconforming use shall not be expanded, nor shall a nonconforming use be enlarged by additions to the structure in which the nonconforming use is located (either attached or detached) except pursuant to Subsection 15.5.3 of this Ordinance. Any occupation of additional lands beyond the boundaries of the lot on which said nonconforming use is located is prohibited. An existing nonconforming residential use may, without hearing before the Board of Adjustment be enlarged or altered, or be permitted in the R-8 District, provided that no additional dwelling units result therefrom. Any such residential enlargement or alteration shall be in compliance with all yard requirements of such structures as required in the R-8 District.
- 8.2.4** When a nonconforming use has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
- 8.2.5** If a nonconforming use is abandoned for one hundred eighty (180) days or more, the use shall not be allowed to re-establish. All new uses in said structure shall thereafter be conforming. If said use is destroyed (i.e., received damage to an extent of more than sixty percent (60%) of its replacement cost at the time of destruction), it may only be allowed to re-establish in accordance with a permit issued by the Board of Adjustment as set forth in Section 15.5 of this Ordinance.
- 8.2.6** A nonconforming use may not be changed to a different nonconforming use except in accordance with a permit issued by the Board of Adjustment after

having followed certain procedures and having made certain findings as set forth in Section 15.5 of this Ordinance.

- 8.2.7** Notwithstanding any other provision of Section 8.2 of this Ordinance a nonconforming manufactured home not located in a manufactured home park may be replaced with another manufactured home provided:
- a.** the replacement manufactured home either, (i) meets all the minimum requirements for a “Class A” manufactured home, or (ii) meets all the minimum requirements for a “Class B” manufactured home plus “criteria (d)” of a Class A manufactured home, as set forth in Part 4 of this Ordinance;
 - b.** the replacement manufactured home is placed on the lot in a manner which meets all the setback requirements of the zoning district in which it is to be located or the requirements of the R-8 District, whichever is greater;
 - c.** that the replacement manufactured home is placed on the lot within one-hundred and eighty (180) days following removal of the existing manufactured home;
 - d.** upon replacement of the existing manufactured home, the property will conform to Subsection 5.7.1 of this Ordinance; and
 - e.** the property is not located in any HO-Historic Overlay District.

Section 8.3 Nonconforming Structures

- 8.3.1** A nonconforming structure devoted to a use permitted in the zoning district in which it is located may continue only in accordance with the provisions of this section.
- 8.3.2** Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.
- 8.3.3** A nonconforming structure may not, under any circumstances, be enlarged or altered in a way that increases its nonconformity.
- 8.3.4** If a nonresidential nonconforming structure is destroyed to an extent of more than sixty (60) percent of its replacement cost at the time of destruction, it may be rebuilt in a nonconforming manner only if a permit for such construction has been issued by the Board of Adjustment in accordance with Section 15.5 of this Ordinance. A residential structure which is destroyed to an extent of more than sixty (60%) percent of its replacement cost at the time of destruction may be reconstructed on the lot. If the structure can be placed on the lot in a conforming manner, it shall.
- Otherwise, the residential structure shall be placed in a manner most in conformance with all applicable regulations contained in this Ordinance. A building permit for reconstruction must be secured no later than one-hundred and eighty (180) days from the date of destruction of such residential structure.
- 8.3.5** Should a nonconforming structure be moved for any distance on the lot of record, it shall be placed in a manner most in conformance with this Ordinance.

Section 8.4 Nonconforming Accessory Structures and Uses

A nonconforming accessory use or accessory structure may be expanded only if the nonconforming features of that use or structure are not expanded so as to increase the degree of nonconformity.

Section 8.5 Nonconforming Lots

8.5.1 Except as provided in Section 8.5.2 of this Ordinance, in any district where a lot has been recorded with the Lincoln County Office of the Register of Deeds, and is not in violation of the Zoning Ordinance of the City of Lincolnton, North Carolina prior to the effective date of this Ordinance, and such lot does not comply with the minimum lot area and width requirements for the zoning district in which such lot is located, such lot may be used for any use permitted in that zoning district provided that the principal and accessory structures meet all applicable front, side, and rear yard requirements for that zoning district as provided in this Ordinance.

8.5.2 If two or more adjacent unimproved lots, neither one of which meet the lot width and/or area requirements of the zoning district in which they are located are of single ownership and are of record at the time of adoption of this Ordinance or any amendment thereto, and if these lots, in combination, met the dimensional requirements established for lot width and area, the lands involved shall be deemed to be an undivided lot. For the purpose of this Ordinance, said lot(s) shall be used or sold by the owner and all future assigns in a manner that is in compliance with lot, width, and area requirements or as otherwise provided in this Ordinance.

Section 8.6 Screening and Landscaping

In accordance with Subsection 5.2.5 of this Ordinance, certain lots are required to provide screening. All such lots shall be required to install such screening within seven (7) years after the effective date of this Ordinance except as provided in Subsection 5.2.5 and except where such screening would encroach upon the required sight triangle as described in Section 5.8 of this Ordinance. Nothing in this Ordinance shall require any uses which is required to dedicate land used for parking for screening purposes to provide additional off-street parking and/or loading to compensate for those areas so dedicated unless an expansion of the principal use is requested. No expansion of a use can occur unless all required screening, off-street parking and loading requirements and all other requirements of this Ordinance have first been met.

Section 8.7 Nonconforming Off-Street Parking and/or Loading

On any lot which contains a use which does not comply with the off-street parking and loading regulations contained in Part 10 of this Ordinance, a certificate of occupancy shall not be issued for an external expansion of any principal building or accessory structure on said lot which would result in a need to increase the number of off-street parking and/or loading spaces required until all such off-street parking and loading requirements and all other applicable requirements of this Ordinance have first been met. A change in the principal use can occur, however, provided that no external expansion in the principal building occurs and also that the required number of off-street parking and loading spaces is the same or less than the former use.

Section 8.8 Nonconforming Manufactured Homes (Mobile Home Parks)

Any manufactured home park which is not constructed in accordance with the standards set forth in Section 11.3 of this Ordinance and/or is a use which is not a use permitted in the district in which it is located, shall be allowed to continue in operation for a period of ten (10) years following the effective date of this Ordinance.

Thereafter, said manufactured home parks shall either:

- a. cease operation and all manufactured homes shall be removed; or
- b. be reconstructed to conform to the following requirements:
 1. Space dimensions and sizes shall be dictated by on-site sewage disposal standards contained in Lincoln County's Environmental Health Regulations. Otherwise no setback, minimum lot size, or other dimensional requirements shall apply.
 2. No manufactured home shall be placed in a manufactured home park unless it meets the standards of either Class A Manufactured Home or Class B Manufactured Home as defined in Part 4 of this Ordinance.
 3. The location of each manufactured home stand must be at an elevation, distance and angle in relation to the adjacent access drive so that placement and removal of the manufactured home is practical by means of customary moving equipment. All manufactured homes shall have a continuous brick, cinder block, concrete block, stucco, stone, or other masonry-type underpinning or other skirting specifically manufactured for manufactured homes, or pressure treated wood (but plain standard surface pressure treated plywood is not acceptable), unpierced except for required ventilation and an access door. Such underpinning and skirting shall be installed under all elements of the manufacture home. Each manufactured home in the park shall conform to North Carolina Department of Insurance Standards for tie-down requirements. All replacement skirting in nonconforming manufactured home parks shall be of a non-reflective type.
 4. Section 11.3.10 of Part 11 (Manufactured Home Parks) shall apply.
 5. Each manufactured home park shall have a space number affixed either to the manufactured home or on a post or stand made of durable material. The number shall be set at a location as to clearly indicate the space to which it is assigned.
 6. Interior streets must be sufficient to carry normal traffic entering and leaving the manufactured home park.
 7. Section 11.3.16 of Part 11 (Manufactured Home Parks) shall apply.
 8. Section 11.3.17 of Part 11 (Manufactured Home Parks) shall apply.
 9. Section 11.3.28 of Part 11 (Manufactured Home Parks) shall apply.
 10. Where a manufactured home park is adjacent to a public street or road, street landscaping shall be required as follows:

- i. Said landscaping shall be provided in a designated landscaped area, which shall include, as width, at least the first twelve feet of the front yard and side yard as measured from the street right-of-way line.
- ii. Landscaping shall consist of, at a minimum, four small trees and twelve shrubs or four large trees per one hundred (100) linear feet of lot frontage on street right-of-way. No part of the landscaped area shall be left as bare soil.
- iii. In the event that unusual topography or size of a parcel to be developed would make strict adherence to these requirements serve no meaningful purpose or would make it physically impossible to install and/or maintain the required screen, the provisions of Section 5.2.4 of this Ordinance shall apply.

A manufactured home park that is a nonconforming use may continue after the ten (10) year period only if it conforms or is improved to conform to the requirements of Section 11.3 of this Ordinance. Provided however, no such manufactured home park, as long as it remains a nonconforming use shall be allowed to occupy lands beyond the boundaries of the tract on which it was located at the time it became nonconforming except to comply with the requirements of Section 11.3 of this Ordinance. In no case shall any nonconforming manufactured home park either nonconforming as a use or nonconforming due to the standards of this Ordinance be allowed an increase in the number of manufactured home spaces unless it shall first become both a conforming use and conforming to the standards of 11.3 of this Ordinance.

In meeting the requirements of Section 11.3 certain requirements in that Section are waived for nonconforming manufactured home parks in bringing them into conformance with this Ordinance. Those requirements waived are as follows:

1. Section 11.3.1 Occupancy
2. Section 11.3.2 Minimum Park Area
3. Section 11.3.12 Public Road Frontage of Park
4. Section 11.3.13 Ingress and Egress

8.8.1 During the period nonconforming manufactured home parks are allowed to continue in operation as provided for in Section 8.8 the following requirements shall be met:

- a. Any expansion of said manufactured home parks (this is only permitted where a manufactured home park is a conforming use) shall conform to Section 11.3 of this Ordinance;
- b. If the park ceases operation for a period of greater than ninety (90) days it shall only be re-established in accordance with Part 11 of this Ordinance (cessation of operation occurs when wither all manufactured homes have been removed or when a manufactured home park is closed by a public authority due to violation of law), and
- c. When a space vacancy occurs or when one manufactured home is replaced with another manufactured home, the replacement manufactured home shall meet the requirements of either Class A or Class B manufactured homes as defined in Part 4 of this Ordinance.

Section 8.9 Nonconforming Signs

- 8.9.1** All existing on-premises free-standing signs that exceed the maximum sign face size, sign height, maximum number of signs, or spacing requirements of this Ordinance shall be brought into compliance with the requirements of this Ordinance or removed entirely, which means the entire sign and any associated equipment, within ten (10) years of this effective date of this Ordinance.
- 8.9.2** When two or more signs are made nonconforming because of not adhering to spacing requirements, the age of permit shall determine which sign shall be removed; the sign with the oldest valid permit shall be permitted to stay.
- 8.9.3** Signs not permitted in a zoning district:
- a. "Advertising signs within the City Extraterritorial Jurisdiction shall be allowed to continue as nonresidential nonconforming structures as described in Section 8.3 of this ordinance."
 - b. If a sign is not permitted use, but is an identification sign for a lawful nonconforming use, said sign may be used for as long as the nonconforming use is allowed to continue; except that said sign, within ten (10) years following the effective date of this Ordinance or the date such use became nonconforming due to some later amendment to this Ordinance, shall at a minimum meet all the requirements for such sign as specified for the next descending zone (20.1.7) permitting such use.
- 8.9.4** All other Nonconforming Signs not provided for otherwise in Section 8.9 of this Ordinance and prohibited by Section 9.8 of this Ordinance shall be removed entirely or otherwise brought into conformance with this Ordinance, whichever is applicable, within six (6) months of the effective date of this Ordinance, except that portable signs shall be removed entirely or otherwise brought into conformance with this Ordinance, whichever is applicable, within one (1) year of the effective date of this Ordinance.

Section 8.10 Exceptions To Required Removal After A Specified Period of Time
("Amortization")

- a. Nonconforming signs which contain, in lieu of any other copy, otherwise lawful, noncommercial copy that does not direct attention to a business operated for profit, or to a commodity or service for sale, provided said sign complies with the size, height, lighting, spacing and setbacks requirements of this Ordinance shall not be subject to the requirements of Subsection 8.9.3
- b. Normal maintenance of all nonconforming signs, including necessary nonstructural repairs, incidental alterations, or copy alterations which do not extend or intensify the nonconforming features of the sign, shall be permitted during the amortization period for such sign. However, no structural alteration, enlargement, or extension shall be made to a nonconforming sign unless the alteration, enlargement, or extension of the nonconforming features of the sign or by an order of the Administrator to ensure the safety of the structure.

Section 8.11 Nonconforming Junkyards

Any junkyard less than one (1) acre in area and located in a district not permitting junkyards shall be removed entirely within four (4) years from the effective date of this Ordinance. Any junkyard one (1) acre or more in area and located in a district not permitting junkyards may remain in accordance with the provisions of this Part, provided however, Subsection 15.5.3 shall not apply to junkyards. Any junkyard that does not meet the setback requirements for outdoor storage upon the effective date of this Ordinance shall meet such requirements within two (2) years of such effective date. For the purpose of this Section the area of a junkyard shall be the area within the continuous external boundary formed by the limits of the ground surface covered by junk materials.