

SECTION 14. NONCONFORMING USE STANDARDS

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14.1 PURPOSE

The purpose of this Section is to provide for the regulation of nonconforming buildings, structures, lots or uses; and to specify those circumstances and conditions under which nonconforming buildings, structures and uses may be continued or shall be eliminated.

The districts established in this ordinance are designed to guide the future use of land in Hendersonville by encouraging the development of desirable residential, commercial, and industrial areas with appropriate groupings of compatible and related uses and thus promote and protect the public health, safety, and general welfare.

As a necessary corollary, in order to carry out such purposes, nonconforming uses which adversely affect the development of such areas must be subject to certain limitations. The provisions governing nonconforming uses set forth in this article are therefore established to contain the existing undesirable conditions resulting from such incompatible nonconforming uses, which are detrimental to the achievement of such purposes. While such uses are generally permitted to continue, this ordinance is designed to restrict any expansion of such uses beyond the site which the use occupied upon the effective date of this ordinance.

In the case of buildings or other structures not complying with the bulk regulations of this ordinance, the provisions governing non-complying buildings or other structures set forth in this article are established in order to permit the continued use of such buildings or other structures, but to limit the creation of additional noncompliance or an increase in the degree of noncompliance.

These provisions are thus designed to preserve the character of the districts established in this ordinance in light of their suitability to particular uses, and thus to promote the public health, safety, and general welfare.

14.2 GENERAL STANDARDS OF APPLICABILITY

A. Authority to Continue

Any structure, lot, or use that existed as a lawful nonconformity at the time of the adoption of this Ordinance, and any building, structure, lot or use that has been made nonconforming because of the terms of this Ordinance or its subsequent amendments, may continue subject to the provisions of this Section so long as it

remains otherwise lawful. A structure or use that is illegal at the time of the adoption of this Ordinance, remains illegal if it does not conform with each and every requirement of this Ordinance, as described in Section 1.5A (Existing Illegal Uses and Structures)

B. Burden on Property Owner to Establish Legality

In all cases, the burden of establishing the legality of a nonconformity under the provisions of this Ordinance shall be upon the property owner of the nonconforming parcel, structure or use.

C. Safety Regulations

All police power regulations enacted to promote public health, safety, convenience, comfort and general welfare including, but not limited to, all building, fire and health codes shall apply to nonconforming structures.

14.3 NONCONFORMING USES

A. Ordinary Repairs and Maintenance

Normal maintenance and incidental repair may be performed on any structure that is devoted in whole or in part to a nonconforming use, provided it will not create any new nonconformity or increase the degree of nonconformity.

B. Structural Alterations and Replacements

Structural alterations and complete replacement of any structure devoted to a nonconforming use is permitted, subject to compliance with other terms of this ordinance.

C. Expansion of Use

A nonconforming use of land or a structure may be expanded, extended or enlarged. Such activity shall include, without limitation:

- 1 Expansion of any structure devoted entirely to a nonconforming use.
- 2 An expansion, extension or enlargement of a use or its accessory uses to any land area or structure on the same lot or parcel.
- 3 An expansion, extension or enlargement of such use, including its accessory uses, within a structure or on the same lot, to any portion of the floor area or lot that was not occupied by such nonconforming use. Said expansion may also occur on an adjoining lot or parcel, but only if, at the time of adoption of this ordinance, it was under the same ownership as the lot or parcel where the nonconforming use is located.

D. Relocation

A nonconforming use of land or a structure shall not be relocated, in whole or in part, to any other location on the same lot or parcel. The nonconforming use may only be relocated to another lot or parcel if the use conforms to all regulations of the zoning district in which it is relocated including all use regulations.

E. Change of Use

A nonconforming use shall not be changed to any other use. For the purpose of this Section, a use is defined as a use as listed on any single line within the tables of permitted and conditional uses within this ordinance. For example, a nonconforming retail use may change to another nonconforming retail use, but not to a motor vehicle dealership or to an office. When such a nonconforming use has been changed, in whole or in part, to a permitted use, the whole or part which has been made to conform may not be changed back to a use that is not permitted. A change of use shall be deemed to occur when an existing nonconforming use has been terminated and another use has commenced. Any change in use in violation of this Ordinance shall be deemed an abandonment of the previously existing lawful nonconforming use.

F. Discontinuation or Abandonment

If a nonconforming commercial or industrial use is discontinued for a continuous period of thirty (30) months, or the structure that it occupies becomes vacant and remains unoccupied for a continuous period of thirty (30) months, or if any nonconforming residential use, including mobile or manufactured home, or other non-commercial or non-industrial use is discontinued for a continuous period of twelve (12) months, or the structure that it occupies becomes vacant and remains vacant for a continuous period of twelve (12) months, such use shall be deemed to be abandoned and shall not be reestablished or resumed regardless of the intent to resume or to continue the use. Any subsequent use or occupancy of such land or structure shall comply with all regulations of the zoning district in which such land or structure is located. The period of such discontinuance caused by government action, acts of God, or other acts without any contributing fault by the user, shall not be included in calculating the length of discontinuance for this Section.

G. Damage or Destruction

In the event that any structure and/or property that is devoted in whole or in part to a nonconforming use is damaged or destroyed, the structure and/or property may be repaired, reconstructed or restored and the nonconforming use continued, provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit shall be obtained for such rebuilding, restoration, repair or reconstruction of a commercial or industrial building within thirty (30) months, and for residential and other non-commercial and non-industrial buildings, within one (1) year of the date of damage or destruction, and

construction shall be completed within one (1) year of issuance of the building permit. In the event that the permit is not obtained within the time limits specified above, or that repairs or restoration are not completed within one (1) year of the issuance of the building permit, then the nonconforming use shall not be continued.

14.4 NONCONFORMING BUILDINGS

A. Ordinary Repairs and Maintenance, Structural Alterations and Additions

Ordinary repairs and maintenance, structural alterations and additions to nonconforming buildings and structures are permitted. The nonconformity may remain. However, the degree of nonconformity shall not be increased.

For the purpose of this Section, structural alteration may include the removal of the building down to the foundation and the re-construction or replacement of the building on the same foundation with the same nonconformity within six (6) months of removal. The degree of nonconformity shall not be increased.

B. Re-construction and Replacement

Nonconforming buildings and structures shall not be re-constructed or replaced except in conformity with this ordinance, except when re-constructed or replaced on the existing foundation as a structural alteration within six (6) months of removal as stated above.

C. Relocation

A nonconforming structure shall not be relocated, in whole or in part, to any other location on the same zoning lot or parcel unless it is made to comply with all terms of this ordinance. A nonconforming structure may be relocated to another zoning lot or parcel if the structure conforms to all regulations of the zoning district in which it is relocated.

D. Damage

When a building or structure is damaged or destroyed, by any means not within the control of the property owner or tenant, it may be repaired and reconstructed provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit shall be obtained for such rebuilding, restoration, repair or reconstruction within thirty (30) months of the date of damage or destruction, and the construction shall be completed within one (1) year of issuance of the building permit. In the event that the building permit is not obtained within one (1) year, or that repairs are not completed within one (1) year of the issuance of the building permit, then the structure shall not be restored unless it conforms to all regulations of the district in which it is located. These time limits shall not apply to repair and re-construction on nonconforming lots.

14.5 NONCONFORMING NEON AND LED LIGHTING

Neon lighting/tubing and strings of lighting which do not conform to Section 12.3F2b and Planning Commission Resolution 2013-10 adopted May 28, 2013, shall be removed within sixty (60) days of adoption of this Ordinance.

14.6 NONCONFORMING LOTS OF RECORD

This Section regulates lots of record which at one time were conforming, but which no longer conform to the lot area requirements of the zoning district in which they are located. Notwithstanding limitation imposed by other provisions of this ordinance, uses allowed by this ordinance may be established on any single nonconforming lot of record existing prior to the effective date of this ordinance, or the date the lot of record became nonconforming. This provision shall apply even though the lot of record fails to comply with the standards for lot area and width. All other standards shall apply, including yard, lot coverage, pervious area, and parking standards.

14.7 NONCONFORMING SIGNS

The provisions for nonconforming signs are contained within Section 13.8 (Nonconforming Signs).