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CHAPTER 8: NONCONFORMITIES

17-800 GENERAL

(A) Purpose and Intent

Within the County there exist uses, structures, lots, and signs that were lawfully established before this Code was adopted or amended, that now do not conform to the terms and requirements of this Code or amendments thereto. These situations are collectively referred to as nonconformities. The purpose of this chapter is to regulate and limit the continued existence of nonconformities.

It is the intent of the BOCC to protect existing development and vested rights from impairment, while at the same time providing for the gradual elimination of nonconforming structures, uses, lots, and signs to achieve conformance with the standards of this Code. Nonconformities shall not be perpetuated, renewed, replaced, extended, enlarged, or rendered more permanent, except in conformity with the provisions of this chapter.

(B) Special Procedure for Change, Continuation, or Enlargement of Nonconformity

In general, the provisions of this chapter are intended to limit or prevent the change, continuation after discontinuance, and enlargement of nonconforming situations. However, whenever the provisions of this chapter so provide, the change, continuation, or enlargement of a nonconforming situation may be specifically approved by the Planning Commission, pursuant to the standards and procedures of Section 17-202(M), *Change, Continuation, or Enlargement of Nonconformity*.

(C) Authority to Continue

Nonconformities are allowed to continue in accordance with the requirements and standards of this chapter.

(D) Determination of Nonconformity Status

In all cases, the burden of establishing conclusive evidence that a nonconformity lawfully exists shall be on the owner of the land on which the purported nonconformity is located. Business licenses, tax receipts, and utility bills are examples of evidence that may be submitted.

(E) Minor Repairs and Maintenance

Minor repairs and normal maintenance that are required to keep nonconforming uses, structures, and signs in a safe condition are permitted, provided that the repair constitutes only routine maintenance necessary to keep the structure in the same general condition it was in when the structure, use, or sign originally became nonconforming. For the purposes of this Section, "routine maintenance" shall mean:

1. Maintenance of Safe Condition

Repairs that are necessary to maintain a use (or a structure devoted to a nonconforming use), structure, or sign in a safe condition;

2. **Correction of Damage or Deterioration**
Repairs that are necessary to correct any damage or deterioration to the structural soundness or interior appearance of a structure without altering the structure;
3. **Maintenance of Land for Safety**
Maintenance of land areas to protect against health hazards and promote the safety of surrounding land uses; and
4. **Limited Sign Repairs and Maintenance**
Repairs and maintenance of nonconforming signs, such as repainting and electrical repairs, whose costs do not exceed fifty (50) percent of the replacement cost of the sign.

(F) Change of Tenancy or Ownership

The status of a nonconformity is not affected by changes of tenancy, ownership, or management.

17-801 NONCONFORMING USES

(A) General

Nonconforming uses are declared generally incompatible with the principal permitted uses in the zone district in which they are located and with the provisions of this Code.

(B) Change of Use

A nonconforming use shall not be changed to another nonconforming use unless specifically approved pursuant to Section 17-202(M), *Change, Continuation, or Enlargement of Nonconformity*.

(C) Expansion, Enlargement, or Relocation

1. Use

Unless specifically approved pursuant to Section 17-202(M), *Change, Continuation, or Enlargement of Nonconformity*, a nonconforming use shall not be expanded in area, extended, enlarged, or intensified, nor shall it be moved to any other lot or within the lot on which it is located, unless the use conforms to the requirements of this Code. Expansion, enlargement, or intensification includes increasing the number of employees, the licensing of additional business entities, the hours of operation, the use of additional land, and the use of additional or more powerful equipment.

2. Structure Housing a Nonconforming Use

Unless specifically approved pursuant to Section 17-202(M), *Change, Continuation, or Enlargement of Nonconformity*, a structure housing a nonconforming use shall not be enlarged, extended, constructed, moved, or structurally altered except to reduce the area or impact of the structure or change the use of the structure to a use permitted in the zoning district in which the structure is located.

(D) Abandonment

A nonconforming use shall not be re-established after vacancy, abandonment, or discontinuance for any twelve (12) consecutive months, unless specifically approved pursuant to Section 17-202(M), *Change, Continuation, or Enlargement of Nonconformity*.

(E) Reconstruction After Damage or Destruction

1. Damage 75 Percent or More of Fair Sale Value

If a structure housing a nonconforming use is destroyed or damaged by any means to an extent equal to or greater than seventy-five (75) percent of its fair market value immediately prior to damage or destruction, it shall not be rebuilt, reconstructed, or replaced unless the use and structure are made to conform to the requirements of this Code.

2. Damage Less Than 75 Percent of Fair Sale Value

If a structure housing a nonconforming use is destroyed or damaged by any means to an extent less than seventy-five (75) percent of its fair market value immediately prior to damage or destruction, it may be rebuilt, reconstructed, or replaced to its pre-existing state or size so long as repairs or reconstruction commence within one year of the date of the damage or destruction and are diligently carried on to completion.

(F) Mobile Homes

A mobile home that is a nonconforming use shall not be replaced with another mobile home unless specifically approved pursuant to Section 17-202(M), *Change, Continuation, or Enlargement of Nonconformity*.

17-802 NONCONFORMING STRUCTURES

(A) Expansion, Enlargement, or Modification

1. Increase in Nonconformity Prohibited

Any enlargement, alteration, or expansion of a nonconforming structure that increases the degree of nonconformity or that tends to make the nonconforming elements more permanent is prohibited. (For example, a structure that has a 5-foot side yard setback where this Ordinance requires a 10-foot side yard setback cannot be enlarged to further encroach into the side yard setback. A porch that encroaches upon a required rear yard setback may be repaired to maintain it in a safe condition, but may not be enclosed to create an interior room.)

2. Certain Changes Allowed

A nonconforming structure may be enlarged, extended, reconstructed, altered, or structurally altered in ways that do not increase or intensify the elements of nonconformity, that do not tend to make the nonconformity more permanent, that comply with applicable dimensional standards, or that decrease the degree of nonconformity.

(B) Damage or Destruction

1. Damage 75 Percent or More of Fair Sale Value

If a nonconforming structure is destroyed or damaged by any means to an extent equal to or greater than seventy-five (75) percent of its fair sale value at the time of damage or destruction, then the structure shall not be rebuilt, reconstructed, or replaced unless it is made to conform to the requirements of this Code.

2. Damage Less Than 75 Percent of Fair Sale Value

If a nonconforming structure is destroyed or damaged by any means to an extent less than seventy-five (75) percent of its fair sale value at the time of damage or destruction, it may be rebuilt, reconstructed, or replaced to its pre-existing state or size so long as repairs or reconstruction commence within one year of the date of the damage or destruction and are diligently carried on to completion.

(C) Relocation

A nonconforming structure shall not be moved, in whole or in part, to another location on or off the parcel of land on which it is located, unless upon relocation it shall conform to the standards and requirements of this Code.

(D) Mobile Homes

A mobile home that is a nonconforming structure shall not be replaced with another mobile home after it is removed unless specifically approved pursuant to Section 17-202(M), *Change, Continuation, or Enlargement of Nonconformity*.

17-803 NONCONFORMING LOTS OF RECORD

(A) Lots of Record as Building Sites

Whenever a lot or plat has been legally recorded with the Clerk of Superior Court of the County prior to ____ [*insert effective date of this Code*], and actually exists as so shown or described, it shall be deemed a lot of record. Although a lot of record may not contain sufficient land area to meet the minimum lot size requirements of this Code, it may be used as a building site, provided all other requirements of the zoning district in which it lies are met and building plans are consistent with all state and local health codes.

(B) Lot Merger by Plat

If a vacant nonconforming lot has been combined by recorded plat with an adjacent lot or parcel, and the two lots together would comply with minimum dimensional standards for lots or would reduce the degree of nonconformity with regard to dimensional standards, then the commonly controlled lots shall be considered merged for purposes of this Code and shall be considered together for purposes of determining compliance with or reduction of nonconformity with regard to the dimensional requirements for lots. In determining whether such combination of lots has occurred, the Planning Director shall consider the graphic features of the plat such as solid versus dashed boundary lines, the elimination of old lot dimensions, and notes or other indications of intent of the creation of the plat. The Planning Director may also consider the history of separate or combined tax payments or other factors not directly tied to the plat drawing.

(C) Lot Merger by Construction

Where any building or other improvement requiring a building permit, except for a fence, is constructed across the boundary line between two lots, or in the proximity to a property line so as to not meet the required setback under this Code, those two lots shall be considered merged for purposes of this Code and shall be considered together for purposes of determining compliance with or reduction of nonconformity with regard to the dimensional requirements for lots.

(D) Reconfiguration of Non-Conforming Lots

A non-conforming lot shall not be made non-conforming to a greater degree by any partial sale or change of configuration, except that two or more adjacent non-conforming lots may be reconfigured so that none of the lots is made non-conforming to a greater degree with any dimensional standard in this Code. Such reconfiguration is intended to eliminate existing encroachments and allow better utilization of lots due to topography, soils or other existing conditions. Reconfiguration should not increase the buildable area of one lot to the detriment of the other, such as by transferring buildable area in exchange for flood plain, steep slopes, or land area in a location or configuration that does not benefit the buildable area of the lot.

17-804 NONCONFORMING SIGNS

(A) General

A nonconforming sign may continue in existence, provided that the sign owner meets the requirements of state laws, rules, and regulations governing such signs, and, in the case of signs governed by the provisions of Code of Georgia, Section 32-6-70 *et seq.*, until purchased by a government entity.

A nonconforming sign may not be changed, reestablished, enlarged, or replaced except in conformity with the standards for signage in Section 17-609. A removable sign face in a frame may only be changed for updating or replacement by the existing business. A change of business use requires the nonconforming sign to be modified to conform to the standards of Section 17-609.

(B) Minor Repairs and Maintenance

Nonconforming signs may be repaired and maintained in accordance with Section 17-800(E)(4).

(C) Reconstruction After Damage or Destruction

If a nonconforming sign is destroyed or damaged by any means to an extent that repair or reconstruction would exceed fifty (50) percent of the replacement cost of the sign immediately prior to damage or destruction, it shall not be rebuilt, reconstructed, or replaced unless the use and structure are made to conform to the requirements of this Code.

17-805 OTHER NONCONFORMITIES

(A) General

If the parking, loading, landscaping, lighting, access/on-site circulation, or buffering/screening on a site is inadequate to meet the requirements of Chapter 6: *Development Standards*, based upon the existing use of the site, a nonconformity exists with regard to each such feature of the site. The interior and exterior remodeling of structures and uses on such a site, and the expansion of these structures and uses (whether or not the structures and uses themselves are conforming or nonconforming), shall be subject to the following standards with regard to parking, loading, landscaping, lighting, access/on-site circulation, and buffering/screening.

(B) Interior and Exterior Remodeling, Additions, and Expansions

If a building permit is required for interior or exterior remodeling of a structure, or for an addition to or expansion of a structure, the remodeling or addition/expansion shall require correction of existing nonconforming features of the site in accordance with this section.

1. 25 Percent or Less

No correction of parking, loading, landscaping, lighting, access/on-site circulation, or buffering/screening is required for:

- (1)** Remodeling in any continuous twelve (12) month period that costs twenty-five (25) percent or less of the fair market value of the structure immediately prior to the remodeling; or
- (2)** Expansions in any continuous five (5) year period resulting in an increase of twenty-five (25) percent or less of the gross square footage of the existing structure(s) (measured at the beginning of the 5-year period), or the addition of new or increased areas for outdoor operations, storage, or display which would result in an increase of twenty-five (25) percent or less in the gross square footage for such outdoor operations, storage, or display.

2. More Than 25 and Less Than 75 Percent

(1) Correction of parking, loading, landscaping, lighting, access/on-site circulation, or buffering/screening in accordance with this subsection is required for:

- (a)** Remodeling in any continuous twelve (12) month period that costs more than twenty-five (25) percent but less than seventy-five (75) percent of the fair market value of the structure immediately prior to the remodeling; or
- (b)** Expansions in any continuous five (5) year period resulting in an increase of more than twenty-five (25) percent but less than seventy-five (75) percent of the gross square footage of the existing structure(s) (measured at the beginning of the 5-year period), or the addition of new or increased areas for outdoor operations, storage, or display resulting in an increase of more than twenty-five (25) percent but less than seventy-five (75)

percent of the gross square footage for such outdoor operations, storage, or display.

- (2) The correction required for sites covered in this subsection 2. is as follows:
- (a) Parking, loading, landscaping, and buffering/screening site features shall be upgraded and/or installed so that the standards of this Code are satisfied to a minimum extent of seventy-five (75) percent. (For example, if the site has 20 of 40 required parking spaces, then parking spaces shall be added to bring the total parking to 30 spaces, which is 75 percent of the total amount of parking required under this Code.)
 - (b) Lighting shall be upgraded to meet the standards of this Code for the development as proposed.
 - (c) Existing parking, loading, access, and on-site circulation shall be paved to comply with the standards of this Code.

3. 75 Percent or More

One hundred (100) percent compliance with the standards of Article 6: *Development Standards* is required for:

- (1) Remodeling in any continuous twelve (12) month period that costs seventy-five (75) percent or more of the fair market value of the structure immediately prior to the remodeling; or
- (2) Expansions in any continuous five (5) year period resulting in an increase of seventy-five (75) percent or more of gross square footage of the existing structure(s) (measured at the beginning of the 5-year period), or the addition of new or increased areas for outdoor operations, storage, or display resulting in an increase of seventy-five (75) percent or more of the gross square footage for outdoor operations, storage, or display.

4. Determination of Cost and Value

For purposes of determining the degree of correction required, the cost of the remodeling shall be as shown on the approved building permit application and the current fair market value of the existing building or structure shall be based on a market appraisal performed by a certified appraiser at the applicant's expense or as determined by the Real Estate Division of the Office of the Hall County Board of Tax Assessors.

5. Physical Constraints

In the case of remodeling, properties that are physically constrained from complying with these provisions shall comply to the maximum extent practicable, as determined by the Planning Director. Addition or expansion are not permitted to the extent that physical constraints of the property prevent compliance with this section with regard to correction of nonconforming features of the site.

