

Article II.
Applicability of Ordinance

2.1 Applicability.

No building, structure, or land shall be used, occupied, or altered; nor shall any building, structure, or part thereof be erected, constructed, reconstructed, moved, enlarged, or structurally altered; nor shall any changed use be established for any building, structure, or land, unless in conformity with the general provisions of this ordinance and the specific provisions for the district in which it is located, except as otherwise provided by these regulations.

2.2 Vested Development Rights.

(A) *In general.* Any amendments, modifications, supplements, repeal or other changes in these regulations or the zoning maps shall not be applicable or enforceable without the consent of the owner with regard to buildings and uses:

- (1) For which a building permit has been issued prior to the effective date of the ordinance making the change so long as the permit remains valid and unexpired pursuant to G.S. 160A-418 and the building permit has not been revoked pursuant to G.S. 160A-422; or;
- (2) For which a zoning permit has been issued prior to the effective date of the ordinance making the change so long as the permit remains valid and unexpired pursuant to this article; or
- (3) For which a vested right has been established and remains valid and unexpired pursuant to this section.

(B) *Additional procedures for establishing a vested right.* A vested right to commence a planned development or use of property according to a site specific development plan shall be established upon approval of a special use permit, a conditional use permit, or conditional zoning by the appropriate board. The vested right thus established is subject to the terms and conditions of the site plan. Only those design elements shown on or made a part of the site plan or permit shall be vested.

(C) *Term of a vested right.* A right, which has been vested by the Town of North Wilkesboro, shall remain vested for a period of two years from date of approval. Modifications or amendments to an approved plan do not extend the period of vesting unless specifically so provided by the appropriate board when it approves the modification or amendment. A vested right obtained under this sub-section is not a personal right, but shall attach to and run with the subject property. A right which has been vested under the provisions of this sub-section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit has been issued except that:

- (1) When a vested development plan has been at least fifty percent completed by the end of the vesting period, the project as a whole shall be given two more years to complete development in conformance with the approved plan not to exceed a total vested period of five years; and

(2) Prior to the vested right terminating at the end of the two-year period, the owner of the property may petition the appropriate board for a one-time, two-year extension of the vested right not to exceed a total vested period of five years. In its deliberations regarding the extension request, the board may consider, among other things:

- a) the percentage of the project completed;
- b) a demonstration by the petitioner of good faith efforts made towards project completion;
- c) the reasons for the delay of project build-out; and
- d) the compatibility of the planned development with current town plans and the surrounding landscape. The board may choose to extend the vested right for the entire project or only a portion of the project and may require one or more design features shown on the plan or incorporated in the permit to meet the current code.

(D) *Declaration of a vested right upon voluntary annexation.* A petition for annexation filed with the town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established. A statement that declares that no zoning vested right has been established under G.S. 160A-385.1 or G.S. 153A-344.1, or the failure to sign a statement declaring whether or not a zoning vested right has been established shall be binding on the landowner, and any such zoning vested right which may have existed shall be terminated.

2.3 Nonconformities

(A) Purpose and applicability.

The purpose of this article is to regulate and limit the continued existence of uses and structures that were established prior to the effective date of these regulations and that do not conform to these regulations. Any nonconformity created by a change in the text of these regulations or by the reclassification of property shall be regulated by the provisions of this Section. The “effective date” referenced below shall be the date the text of these regulations or the zoning map is amended to render a particular use, structure, or lot nonconforming. Many nonconformities may continue, but the provisions of this chapter are designed to curtail substantial investment in nonconformities, and to bring about their eventual improvement or elimination.

(B) Nonconforming uses.

(1) Nonconforming uses of land or structures may continue only in accordance with the provisions of this section.

(2) A nonconforming use shall not be expanded.

(3) A nonconforming use shall not be changed to any other use unless the new use conforms to the standards of the zoning district in which it is located. Once a nonconforming use is changed to a conforming use, a nonconforming use shall not be re-established.

(4) Where a nonconforming use is discontinued or abandoned for a period of one hundred eighty days, then the use shall not be reestablished or resumed and any subsequent use of the land or structure shall conform to the requirements of these regulations.

(5) No structural changes shall be made in any structure occupied by a nonconforming use except as follows:

- a) Those structural changes ordered by an authorized official in order to insure the safety of the structure shall be permitted.
- b) Maintenance and repairs to keep a structure in sound condition shall be permitted.
- c) Structural changes necessary to convert the nonconforming use to a conforming use shall be permitted.
- d) An existing nonconforming structure may be enlarged or altered provided that any such enlargement or alteration shall be in compliance with all yard requirements of the district and/or use.
- e) The nonconforming structure and its accompanying use may be moved to another location on the lot so long as the structure meets all applicable requirements of the district.

(C) Nonconforming structures.

(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.

(2) Normal repair and maintenance may be performed to allow the continuation of a nonconforming structure.

(3) Any nonconforming structure may be enlarged if the expansion does not increase the nonconformity as relating to the dimensional criteria specified in Section 6.6.

(4) A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning district in which it is located.

(5) A nonconforming structure destroyed or damaged so that more than fifty percent of the value of such structure remains, may be repaired or restored if a building permit for the repair or restoration is issued within six months of the date of the damage. A nonconforming structure destroyed or damaged so that no more than fifty percent of its value remains, may be repaired or restored only if the structure conforms to the standards of these regulations for the zoning district in which it is located. The extent of damage or destruction shall be determined by comparing the estimated cost of repair or restoration with the current assessed tax value.

(6) The front yard setback requirements of this ordinance for residential dwellings shall not apply to any lot where the average setback of existing buildings located wholly or partially within 100 feet on either side of the proposed dwelling and on the same side of the street in the same block and use district as such lot is less than the minimum required front yard depth. In such case the front yard on such lots may be less than the required front yard and such lots may be less than the average of the existing front yard on the aforementioned lots, or a distance of 10 feet from the edge of the street right-of-way, whichever is greater.

(D) Nonconforming vacant lots.

(1) Except as provided in section (2) below, a nonconforming vacant lot may be used for any of the uses permitted by these regulations in the zoning district in which it is located, provided that the use meets all yard, parking, and screening requirements of this ordinance for the zoning district in which it is located.

(2) If two or more adjacent, nonconforming, unimproved lots are held in single ownership, such lots shall be considered to be a single building lot for the purposes of this article.

(E) Nonconforming Signs.

Nonconforming signs shall be allowed to continue provided as follows:

(1) Upgrades and improvements shall be limited to legal, existing, conforming billboards and outdoor advertising where the sign area or height is not increased over what was pre-existing.

(2) Once a nonconforming advertising sign is removed, taken down, or destroyed, (that is, receiving damage to an extent of no more than 60% of the replacement cost at the time of destruction) such sign shall not be replaced with another sign unless in conformance with this section.

(3) Where digital billboards are being used for the upgrade or improvement to an existing billboard, the area shall not be larger than the pre-existing sign face. Messages shall change no more than once every hour.

Signs associated with a legal nonconforming use of a structure or land shall be allowed to continue provided that the nonconforming signs associated with a nonconforming use of a structure or land shall not be changed except to make such signs comply with the applicable sign regulations for the district in which the use or land is located.

(F) Additional requirements for nonconforming accessory uses and structures.

No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, discontinuance, damage, or destruction unless such accessory use or accessory structure thereafter is made to conform to the standards for the zoning district in which it is located.

(G) Additional requirements for manufactured homes and manufactured home parks.

(1) Nonconforming manufactured home parks may not be expanded or increased in size which shall include adding spaces to the park;

(2) When a site at a nonconforming manufactured home park is vacated, another manufactured home may be placed on the site if the replacement home is of the same class of manufactured home as the one existing. (For example, Class A for Class A; Class B for Class B, however Class B to Class A is prohibited) and is replaced within 90 days of removal. Setbacks and spacing must be met in accordance to Town manufactured home park standards when replacing the home as detailed in Section 11.7-7(C) and (E).

(3) Any replacement manufactured home whether on an individual lot or in a park must be constructed with approved HUD standards and dating no earlier than 1976.

(H) Changes of tenancy and/or ownership.

There may be a change in tenancy or ownership of an existing nonconforming use or structure, provided there is no change in the nature or character of such nonconforming use or structure except as provided herein and all other applicable requirements of this ordinance are met (e.g., parking, screening, landscaping, etc.).