

## ARTICLE VI. NON-CONFORMITIES

### Section 600. Purpose.

It is the purpose of this Article to provide for the regulation of nonconforming structures, signs, lots of record and uses, and to specify those circumstances and conditions under which such nonconformities shall be permitted to continue. It is necessary and consistent with the regulations prescribed by this Ordinance that those nonconformities that adversely affect orderly development and the value of nearby property not be permitted to continue without restriction.

Non-conformities are existing uses, lots, buildings and structures that were previously lawful, but that would be prohibited or subject to more stringent regulation under the zoning districts and related requirements established by this Ordinance or subsequent amendments.

- A. Legally established buildings, structures and uses in existence at the time of adoption of this Ordinance shall be permitted to continue subject to the provisions of this Article.
- B. Uses that were illegally established prior to the adoption of this Ordinance shall remain illegal and be subject to penalties and remedies that are pursued.

It is the intent of this Ordinance that legal non-conformities, as described in “A” above, be allowed to continue, in accordance with the requirements of this Article, but not be enlarged or used as the grounds for additional non-conformities. This Article provides for the regulation of legally non-conforming lots, uses, buildings and structures; specifies the conditions under which a legal non-conformity can be continued, expanded or modified; and the circumstances under which a legal non-conformity shall be terminated

### Section 601. Definitions .

**Nonconformity.** Any land use or physical design of development, structure, sign, or lot of record legally established prior to the effective date of this Ordinance or subsequent amendment to it, which would not be permitted by or is not in full compliance with the regulations of this Ordinance.

**Nonconforming Use.** An activity using land, buildings, and/or structures for purposes which were legally established prior to the effective date of this Ordinance or subsequent amendment to it, and which would not be permitted to be established as a new use in the zone in which it is located by the regulations of this Ordinance.

**Nonconforming Structure or Development Site.** Any structure or development site, established prior to the effective date of this Ordinance or subsequent amendment to it, which does not fully comply with the standards of this Ordinance.

**Nonconforming Lot of Record.** Any validly recorded lot which at the time it was recorded fully complied with all applicable laws and ordinances, but which does not fully comply with the lot requirements of this Ordinance concerning minimum area, minimum lot width, or minimum street frontage.

**Nonconforming Sign.** Any sign that does not fully comply with all requirements of Article V of this Ordinance.

## **Section 602. Authority to Continue.**

**602.01.** Except as otherwise provided in this Article, any nonconforming lot, use, or structure lawfully existing on the effective date of this Ordinance, or subsequent amendment thereto, may be continued so long as it remains otherwise lawful.

**602.02.** No nonconformity shall be enlarged upon, expanded, or extended unless such alteration is in full compliance with all requirements of this Ordinance, except as noted in this Section. Normal maintenance and incidental repair of nonconformity shall be permitted, provided that this does not violate any other section of the Article.

**A.** Nothing in this Article shall be deemed to prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition; provided that such restoration is not otherwise in violation of the various provisions of this Section prohibiting the repair or restoration of partially damaged or destroyed structures.

**B.** An extension, for the exclusive purpose of providing required off-street parking or loading spaces, involving no structural alteration or enlargement of such structure, shall not be deemed an expansion of a nonconformity, subject to the restrictions of Article VII.

**C.** Nothing in this Article shall be interpreted to prohibit routine maintenance, restoration of a structure to a safe condition, and/or internal renovations, provided the total value of such activities does not exceed 50% of the assessed value of the structure as determined by the Elmore County Tax Assessor.

**602.03.** No nonconformity shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

**602.04.** Any other provision of this Article to the contrary notwithstanding, no use or structure which is accessory to a principal nonconforming use or structure shall continue after such principal use or structure shall have ceased or terminated, unless it shall thereafter conform to all regulations of this Ordinance.

**602.05.** The burden of establishing the nonconforming status of any structure or land use under the terms of this Article, in all cases, shall be upon the owner of such nonconformity and not upon the Town of Elmore.

**602.06.** In the event that a structure or premise occupied by a nonconforming use becomes and remains vacant for a period of twelve (12) months, or is used for a use that is permitted in the zoning district in which such structure or premises is located, the use of same shall thereafter conform to the use regulations of the district in which such structure or premise is located.

**602.07. Termination Required by Modification.** A development site that is nonconforming by physical design (i.e., insufficient parking, landscaping, setbacks, etc.), may be utilized for any land use which is permitted at that location. However, any permits for additional floor area, or the replacement of any structure on the development site, shall be contingent upon bringing the entire site into conformity with all requirements of this Ordinance.

### **Section 603. Non-Conforming Vacant Lots of Record.**

When a lot exists that does not consist of sufficient land to comply with the lot, yard and setback requirements at the time of adoption of this Ordinance or any subsequent amendment, it shall be considered a non-conforming vacant lot of record.

Subject to the provisions of this Section, a nonconforming lot of record may be used for any principal use permitted in the zone in which the lot is located, provided that for any use which is to be served by an individual well and/or septic system, the nonconforming lot shall be of a size and design to meet the minimum requirements of the Elmore County Health Department regulations for such wells and septic systems.

**603.02. Effect of Single Owner.** If two or more contiguous vacant lots of record are in single ownership at the time of adoption of this Ordinance, or any subsequent amendment, and one or more of the lots is a non-conforming lot of record, then the land involved shall be considered an undivided tract of land. No portion of the tract of land shall be divided, sold or developed in a manner that diminishes the ability of all lots to comply with the requirements of this Ordinance or any subsequent amendment.

**603.03. Appeal to Build on Non-conforming Vacant Lot of Record.** A non-conforming vacant lot may be used as a building site for any use permitted in the zoning district in which the lot is located provided:

- A. Other requirements of this Ordinance are complied with; or
- B. Application is made to the Board of Zoning Adjustment for a variance from applicable requirements that can not be met.

- C. A variance for a non-conforming vacant lot of record shall conform, as closely as possible to the lot area, yard and building setback and other requirements and:
1. The front yard set back shall not be less than the average of the setbacks of existing buildings within two hundred (200) feet on each side of the lot; except, no front yard shall be less than twenty (20) feet;
  2. At least one side yard shall not be reduced to less than ten (10) feet in width and the other side yard not less than five (5) feet in width;
  3. The rear yard setback shall not be less than twenty (20) feet, and
  4. No more than one principal use and building shall be allowed on a non-conforming vacant lot of record.

#### **Section 604. Non-Conforming Developed Lot of Record.**

**604.01. Non-conforming Developed Lot of Record.** When the use complies with the requirements of the district in which the use is located, but the lot has been developed in a manner that does not comply with the lot, yard and setback requirements at the time of adoption of this Ordinance, or any subsequent amendment, it shall be considered a non-conforming developed lot of record.

**604.02. Expansion of Conforming Use.** Provided a proposed use is permitted in the zoning district in which the lot is located, the use, building or structure may be expanded, in accordance with all other requirements, within the buildable area defined by this Ordinance.

#### **Section 605. Non-Conforming Uses of Buildings and Structures.**

When a building or structure and related uses exist at the time of adoption of this Ordinance, or any subsequent amendment, that does not comply with these regulations, that building or structure and related use shall be allowed to continue subject to the following conditions.

**605.01. Expansion of Non-conforming Use within an Existing Building or Structure.** The expansion of non-conforming use within an existing building or structure shall be allowed provided the use will be expanded in a space contiguous with the existing use. The expansion shall be limited to within the existing building or structure. A non-conforming use shall not be expanded or relocated, in whole or part, to a non-contiguous part of a building or structure. All required on-site improvements, such as parking, loading and buffer areas shall be provided before the use is expanded within the building.

**605.02. Enlarging Non-conforming Principle Buildings and Structures Prohibited.** A non-conforming building or structure and related use shall not be enlarged, intensified, or altered in a manner that increases the non-conformity, but may be altered to decrease the non-conformity.

**605.03. Effect of Relocation.** If a use, building or structure is relocated on the existing site or moved to another location, the lot, use, building or structure shall comply with all zoning and applicable development regulations after it is moved.

**Section 606. Construction Prior to Adoption or Amendment of Zoning Ordinance.**

Nothing in this Ordinance shall be interpreted as requiring a change in plans, construction, use or occupancy of land, buildings or structures on which construction was lawfully begun and has been diligently continued prior to the adoption this Ordinance or any subsequent amendment that would make a use, building, structure or occupancy non-conforming.

- A. Construction shall mean the erection and fastening of building materials in a permanent manner in accordance with approved plans.
- B. Where demolition and removal of an existing building has begun in preparation for rebuilding, or where excavation has begun for building, construction shall be deemed to have begun provided the work is diligently continued.
- C. The storage of building materials or location of a temporary office on a lot shall not be deemed as having begun construction.

**Section 607. Repair and Restoration of Non-conforming Buildings and Structures.**

**607.01.** Nothing in this Ordinance shall:

- A. Prevent the continuous maintenance, internal renovations, strengthening, or restoration of any building or structure to a safe and sanitary condition; or
- B. Prevent repairs ordered by a proper authority charged with the duty of protection of health and safety.

**607.02.** A non-conforming building, structure or use shall not be rebuilt or restored except in conformance with the provisions of this Ordinance after being damaged by natural acts (e.g. fire, wind, flood, etc.) to the extent of fifty (50) percent or more of the assessed value at the time the damage occurred. If a non-conforming building is damaged less than fifty (50) percent of its assessed value at the time of damage it may be rebuilt or restored and used provided the rebuilding or restoration is started within twelve (12) months following the date of such damage and that restoration work is diligently continued.

### **Section 608. Changes and Reversions to Non-Conforming Uses Prohibited.**

A non-conforming use of land, buildings or structures shall not be changed to another non-conforming use. A non-conforming use of land, buildings or structures that is changed to a conforming use shall not be permitted to revert to a non-conforming use.

### **Section 609. Termination of Use of Non-conforming Buildings and Structures.**

Any non-conforming use of buildings and structures that has been discontinued for any reason for a period of twelve (12) consecutive months shall not be reestablished. The future use of the building or structure shall comply with all applicable regulations.

### **610. Nonconforming Signs.**

A nonconforming sign is any sign within the jurisdiction of the Zoning Ordinance of the Town of Elmore on the effective date of this Ordinance or any sign existing within any area annexed into such jurisdiction after the effective date of this Ordinance which is prohibited by, or does not conform to the requirements of Article V of this Ordinance.

Nonconforming signs shall be maintained in good condition. However, such signs shall:

- A. not be structurally altered to accommodate another nonconforming sign or sign face
- B. not be structurally altered in order to prolong the life of the sign, except to meet safety requirements as specified by the Building Official;
- C. not be altered so as to increase the degree of nonconformity of the sign (including additional sign faces);
- D. not be enlarged in any manner;
- E. not be allowed to remain if a change of use occurs as defined by this Ordinance, or if the premises promoted by the sign comes under new ownership or tenancy and such sign is proposed to be remodeled, repainted or otherwise changed for the purpose of displaying the new name or other new identification of the premises; or
- F. not be re-established after damage or destruction if the estimated cost of reconstruction or repair exceeds fifty percent (50%) of the appraised replacement cost. This cost shall be exclusive of any expected or estimated revenue generated by the sign.

**Section 611. Nonconforming Heights in Airport Hazard Overlay District.**

1. **Airport Hazard Overlay District Regulations Not Retroactive.** The regulations prescribed in Section 422 shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Amendment (date), or otherwise interfere with the continuance of a nonconforming use. Nothing contained in Section 422 shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Amendment, and is diligently prosecuted.
2. **Marking and Lighting.** Notwithstanding the preceding provision of this Section, the owner of any existing nonconforming structure or tree located within the Airport Hazard Overlay District is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Town Clerk to indicate to operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated and maintained at the expense of the City of Wetumpka.
3. **Nonconforming Uses Abandoned or Destroyed.** Wherever the Town Clerk determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.