

**ARTICLE 5. NONCONFORMITIES**

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# ARTICLE 5. NONCONFORMITIES

## SECTION 5.1 INTENT.

**5.1.1.** It is the intent of this UDO to regulate lots, structures, sites and uses of land which were conforming at the time of their creation or construction but no longer adhere to the requirements of this UDO. The Town desires to allow nonconformities to continue until they are removed. Nonconforming uses and nonconforming portions of structures shall not be enlarged, expanded or extended, except as specifically provided for in Section 5.6, Nonconforming Use of a Structure.

**5.1.2.** Nonconformities are allowed to continue and are encouraged to receive routine maintenance in accordance with the requirements of this UDO as a means of preserving safety, appearance, and sense of community.

**5.1.3.** However, nothing in this UDO shall be deemed to require a change in the plans, construction or designated use of any structure for which approval has been granted in accordance with Article 4, Development Review Process subject to the time limitations specified in Section 4.15 Time Limitations for Site Plans, Development Permits, & Building Permits.

**5.1.4.** Except as provided in subsection 5.6.3.2, nothing in this UDO shall prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be dangerous to life by the Building Inspector charged with protecting the public safety, or upon order of such official when he has determined that there is a clear and immediate danger to the public safety. However, required repairs and maintenance shall be done in conformity with the provisions of this UDO or in conformity with the regulations of the district in which it is located.

## SECTION 5.2 NONCONFORMING LOTS OF RECORD.

**5.2.1.** When a nonconforming lot is adjacent to one or more conforming or nonconforming lots under the same ownership as the nonconforming lot, and when any portion of a proposed structure or required use is located on two or more lots, the lots shall be combined into one single lot of record, and a plat combining such lots shall be recorded in the Dare County Register of Deeds prior to the issuance of a building permit. Existing commercial uses and structures may be exempted from this requirement as provided for under subsection 5.2.4.

**5.2.2.** In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory building may be erected on any single lot which met all legal requirements at the time of its creation and recording in the Dare County Register of Deeds, subject to the following provisions:

**5.2.2.1.** All dimensional requirements applying to that district, other than lot area and lot width, shall be met.

**5.2.2.2.** The lot must not be less than 5,000 square feet in area.

**5.2.2.3.** The lot must abut either an improved public right-of-way as shown on the most recent Powell Bill Map or on a street or access approved by the Board of Commissioners.

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**5.2.2.4.** A current permit for a sewage system shall be issued by the Dare County Health Department or authorization received from the NC Department of Environmental Quality prior to the issuance of a building permit.

**5.2.3.** In any commercial zoning district, any lot which was legal at the time of its creation and recorded in the Dare County Register of Deeds may accommodate any commercial use permitted within that district, subject to the provisions contained in subsection 5.2.2 of this section.

**5.2.4.** Existing commercial uses and structures developed on multiple adjoining conforming or nonconforming lots under the same ownership, when developed under a common scheme of development and site plan, shall not be required to recombine parcels into a singular lot and may be used and developed as a single site subject to the following terms and conditions:

**5.2.4.1.** Applicable front yard, rear yard, side yard and buffering requirements for uses and structures shall not be applied to each individual lot line within the site, but shall be applied in the same manner to the outer boundaries of the identified site. This provision allows for the crossing of uses and structures over existing internal lot lines located within the site.

**5.2.4.2.** Lot coverage shall be allowed to be calculated for the entire site in the same manner that it is calculated for individual lots. Parking, stormwater management, and all other development regulations applicable to the commercial use and development on individual lots shall be allowed to be applied in the same manner to the site.

**5.2.4.3.** Multiple structures shall be permitted on a site as provided for in this section.

**5.2.4.4.** Once a site is developed as a retail shopping center or other unified commercial development requiring shared parking and in use as allowed by this section, all lots within such site must remain in the same ownership and may not be individually sold. Lots within the site may only be individually sold if all use, site, and structural nonconformities which would have otherwise resulted if the lots had not developed as a singular site as allowed by this section are removed. The provisions of this section shall apply to only those lots presently developed with commercial uses and shall not be applicable to undeveloped and unimproved lots.

### **SECTION 5.3 NONCONFORMING STRUCTURE WITH CONFORMING USE.**

A nonconforming structure may be continued, subject to the following provisions:

**5.3.1.** A nonconforming structure may not be enlarged or altered in a way which increases the degree of nonconformity. Reconstruction and additions occurring within the existing building footprint, excluding enclosed space additions above or below open decks, shall be allowed and shall not constitute an increase in structural nonconformity.

**5.3.2.** A nonconforming structure occupied by a conforming principal use destroyed or otherwise modified by any means may be repaired, maintained, or replaced with an identical or similar structure regardless of value provided the repair, maintenance or replacement does not create any new structural nonconformities or increase the degree of existing structural nonconformities.

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**5.3.3.** Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations for the district in which it is located after it is moved, except as provided in subsection 5.3.4.

**5.3.4.** Any nonconforming structure located on a lot adjacent to the Atlantic Ocean or Roanoke Sound may be moved landward on the same lot, provided that such movement does not increase the degree of nonconformity of the structure in any way. However, when dimensional requirements can be met, they shall be met, except as provided for in Article 8, Section 8.6.3.7, Reductions in Yard Setbacks.

### SECTION 5.4 NONCONFORMING SITE AND PARKING AREAS.

Where a nonconforming site exists that was legal at the time of its creation but which would not be permitted by the regulations imposed by this UDO, the nonconforming site may continue, subject to the following provisions:

**5.4.1.** No structure on a nonconforming site may be enlarged or altered in a way which increases the nonconformity of the site.

**5.4.2.** No use on a nonconforming site may be expanded, enlarged, or increased in a way which increases the nonconformity of the site.

**5.4.3.** Any changes to a nonconforming site or parking area must comply with all of the requirements of this UDO.

**5.4.4.** The change of use of a structure on a nonconforming site from one permitted use to another permitted use shall be allowed, provided that there is no increase in the degree of nonconformity of the site. Where the site is nonconforming due to an insufficient number of parking spaces for the proposed new use, the Board of Commissioners may approve a change of use without requiring additional parking spaces in accordance with the procedures set forth in section 10.15.6.

### SECTION 5.5 NONCONFORMING USE OF LAND.

Where use of land exists that was legal at the time of its creation but which would not be permitted by regulations imposed by this UDO, and where such use involves no individual structure or combinations of structures with a cumulative assessed tax value not exceeding \$5,000.00, the use may continue, subject to the following provisions:

**5.5.1.** No such nonconforming use shall be enlarged or altered in a way which increases the degree of nonconformity, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this UDO. An example of an increase in degree of nonconformity would be installing additional rides in an amusement park.

**5.5.2.** No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this UDO.

**5.5.3.** If any such nonconforming use of land ceases for any reason for a period of more than 12 consecutive months, any subsequent use of such land shall conform to the regulations specified by this UDO for the district in which such land is located. For the purpose of this article, indicators of the cessation shall include, but not be limited to, no Town water or no electrical service has been legally provided and consumed for the nonconforming use or structure in question for a period of 12 consecutive months.

**5.5.4.** No structure requiring a building permit shall be erected until the nonconforming use of land is eliminated or converted to a use permitted by the regulations of the district in which such land is located.

### **SECTION 5.6 NONCONFORMING USE OF A STRUCTURE.**

**5.6.1.** If a use involving individual structures or combinations of structures with a cumulative replacement cost of \$5,000.00 or more exists that was legal at the time of its creation but would not be allowed in the district under the terms of this UDO, the lawful use may continue, subject to the following provisions:

**5.6.1.1.** No existing structure devoted to a use not permitted by this UDO in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted by the regulations of the district in which it is located.

**5.6.1.2.** Any nonconforming use may be extended throughout any part of a structure which was manifestly arranged or designed for such use at the time of adoption or amendment of this UDO, but no such use shall be extended to occupy any land outside such building. A conforming structure cannot be expanded to allow expansion of a nonconforming use.

**5.6.1.3.** Where a nonconforming use is superseded by a permitted use, the nonconforming use may not thereafter be resumed.

**5.6.1.4.** If the nonconforming use of any structure ceases for any reason for a period of more than 12 consecutive months, any subsequent use of the structure shall conform to the regulations specified by this UDO for the district in which such structure is located. For the purpose of this article, indicators of the cessation shall include, but not be limited to, no Town water or no electrical service has been legally provided and consumed for the nonconforming use or structure in question for a period of 12 consecutive months.

**5.6.2.** A conforming structure with a nonconforming use may be repaired and maintained, subject to the following provisions:

**5.6.2.1.** On any structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing, provided that the cubic content or intensity existing when it became nonconforming shall not be increased.

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**5.6.2.2.** If a structure containing a nonconforming use becomes dangerous to life, destroyed or unlawful due to lack of repairs and maintenance, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure may thereafter be restored, repaired or rebuilt provided that the cubic content or intensity of the existing nonconforming use is not increased, or that the use is changed to a use permitted by the regulations the district in which it is located.

**5.6.2.3.** Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be dangerous to life by any official charged with protecting the public safety, or upon order of such official when he has determined that there is a clear and immediate danger to the public safety.

**5.6.3.** A nonconforming structure with a nonconforming use may be repaired and maintained, subject to the following provisions:

**5.6.3.1.** On any nonconforming structure containing a nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing, to an extent not exceeding 50 percent of either the annually adjusted Dare County assessed tax value or independent appraisal value of the nonconforming structure as determined by a North Carolina Licensed Appraiser, provided that the degree of nonconformity existing when it became nonconforming shall not be increased.

**5.6.3.2.** If a nonconforming structure containing a nonconforming use becomes dangerous to life, destroyed or unlawful due to lack of repairs and maintenance, where such destruction or lack of repairs and maintenance exceeds 50 percent of either the annually adjusted Dare County assessed tax value or independent appraisal value as determined by a North Carolina Licensed Appraiser, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

### SECTION 5.7 NONCONFORMING SIGN AND SIGN STRUCTURE.

If a sign and/or sign structure exists that was legal at the time of its erection that would not be allowed under the terms of this UDO, the sign may continue, subject to the following provisions:

**5.7.1.** A nonconforming sign shall not be moved or replaced except to bring the sign into conformity with this UDO. No additional signage shall be added to a site which has a nonconforming sign.

**5.7.2.** If a sign and structure become physically unsafe, damaged, destroyed or unlawful due to storm-related damage or damage incurred at no fault of the owner where such damage exceeds 50 percent of the replacement cost, the sign shall be declared destroyed by the building inspector and shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of this UDO.

**5.7.3.** If a sign and/or sign structure becomes physically unsafe, damaged, destroyed, or unlawful due to lack of repairs and/or maintenance, where the cost of repair exceeds 25 percent of the replacement

cost, the sign shall be declared destroyed by the building inspector and shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of this UDO.

### **SECTION 5.8 VESTED RIGHT.**

Nothing in this Article shall conflict with the provisions in Section 3.6 pertaining to a vested right.

### **SECTION 5.9 HISTORIC STRUCTURES.**

Identified historic structures and/or maids' quarters which were legal at the time of their placement or construction, but which would not be permitted by the regulations imposed by this UDO may continue, subject to the following provisions:

**5.9.1.** Historic structures or maids' quarters may not be enlarged or altered in a way which increases the degree of nonconformity. An example of the increase in the degree of nonconformity would be to enclose above or below a nonconforming deck whether or not the footprint is increased. Additions above or below nonconforming portions of enclosed floor space shall not constitute an increase in the degree of nonconformity.

**5.9.2.** For the purpose of this section, historic structures and detached maids' quarters will be considered collectively when determining thresholds for repair, maintenance, and destruction.

**5.9.3.** Historic structures and maids' quarters listed on the National Register of Historic Places located on lots abutting the Atlantic Ocean or Roanoke Sound may be moved provided that such movement does not increase the degree of nonconformity of these structures in any way. When utilizing this provision, a minimum ten-foot separation shall be maintained between individual structures. All historic structures, when moved, shall adhere to the minimum setback requirements prescribed for single-family dwellings in the applicable zoning district if those setbacks can be met.

**5.9.4.** If a historic structure or maids' quarters becomes dangerous to life, destroyed, or unlawful due to lack of repairs or maintenance, where such destruction or lack of repairs and maintenance exceed either the annually adjusted Dare County assessed tax value or the independent appraisal value as determined by a North Carolina Licensed Appraiser, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure shall not thereafter be restored, repaired, rebuilt or replaced, except in conformity with the regulations of this UDO and any other applicable federal or state regulations.

**5.9.5.** For a historic structure having an attached or detached maids' quarters to make use of these provisions, no repair, alteration, restoration or replacement shall be made to these structures that would jeopardize its listing on the National Register of Historic Places.

**5.9.6.** Existing maids' quarters may be replaced subject to the other requirements of this UDO provided the following conditions are met:

**5.9.6.1.** The maids' quarters must be listed on the National Register of Historic Places.

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**5.9.6.2.** The maids' quarters shall be architecturally compatible with the principal dwelling to the maximum extent feasible.

**5.9.6.3.** Replacement maids' quarters shall be similar in appearance to the maids' quarters which are being replaced.

**5.9.6.4.** The square footage limitations as defined in Appendix A, Definitions, Dwelling, Large Residential, shall be calculated separately for the maids' quarters and principal building.

**5.9.6.5.** The number of bedrooms in the maids' quarters cannot exceed the number of documented bedrooms in the original maids' quarters.

**5.9.6.6.** Total floor area of the maids' quarters shall not exceed 25 percent of the gross floor area of the principal building. Floor area for both the maids' quarters and principal building shall include the floor area of all habitable rooms and garages.

**5.9.6.7.** Setbacks shall meet the requirements for accessory structures in accordance with subsection 8.6.3.

**5.9.6.8.** Parking for the maids' quarters and principal building shall be calculated collectively in accordance with Section 10.16, Required Parking by Use.

### **SECTION 5.10 APPLICATION OF COMMERCIAL DESIGN STANDARDS.**

Change of use of any commercial structure or building, in and of itself, shall not require adherence to the provisions of Article 10, Part VI, Commercial Design Standards.