

CHAPTER 14. NONCONFORMITIES

14.1 Purpose and Scope

- (1) The purpose of this Section is to regulate and limit the development and continued existence of uses, structures, and lots established prior to the effective date of this Code. Many nonconformities may continue, but the provisions of this Section are designed to curtail substantial investment in nonconformities and to bring about their eventual improvement or elimination in order to preserve the integrity of this Code and the character of the City. Any nonconforming use, structure, or lot which lawfully existed as of the effective date of this Code and which remains nonconforming, and any use, structure, or lot which has become nonconforming as a result of the adoption of this Code or any subsequent rezoning or amendment to this text of this Code, may be continued or maintained only in accordance with the terms of this Section.
- (2) This Section shall not apply, however, to any feature which is the subject of a variance or modification from particular regulations that has been granted by the Planning Committee or City Council, subsequent to the adoption of this Code. Where a variance or modification has been granted for a feature which does not otherwise conform to the requirements of this Code, that feature shall be deemed conforming.

14.2 Nonconforming Uses

- (1) **Extension of Use:** A nonconforming use shall not be enlarged or extended in any way except as provided in Section 14.5 below.
- (2) **Mobile and Manufactured Home:** A nonconforming mobile or manufactured home may be continued, maintained, repaired, or relocated on the same property or conveyed in the same manner as if a mobile or manufactured home were a permitted use. However, if the mobile or manufactured home is moved from the property or if the mobile or manufactured home is moved because of a condemnation or demolition order under the city's substandard building Code, then no mobile or manufactured home may again be placed on said property. If active use or operation of the mobile or manufactured home is discontinued for three (3) consecutive months or more, then the use of the mobile or manufactured home shall be automatically deemed abandoned and shall be removed from the city limits of the City of Tupelo immediately.
- (3) **Continuation, Maintenance, and Minor Repair:** The continuation of a nonconforming use and the maintenance or minor repair of a structure containing a nonconforming use are permitted, provided that the continuation, maintenance, or minor repair does not extend or expand the nonconforming use. For purposes of this Section, "maintenance or minor repair" shall mean:
 - (a) Repairs that are necessary to maintain and to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure without expanding or altering the building or structure;

- (b) Maintenance of land areas to protect against health hazards and promote the safety of surrounding land uses;
 - (c) Repairs which are required to remedy unsafe conditions which cause a threat to public safety; and
 - (d) Maintenance or repair of a sign in a way which does not change the exterior message.
- (4) **Damage or Destruction:** If a nonconforming use or structure that is or contains a nonconforming use is damaged or destroyed by any means to an extent greater than fifty percent (50%) percent of its replacement cost at the time of the damage or destruction, then such use shall not be re-established in any way which does not conform to the requirements of this Code.
- (5) **Change of Use:** Any nonconforming use may be changed to a conforming use by securing all approvals and permits which this Code requires for the intended or resulting use, building, structure, or lot. No nonconforming use may be changed to another nonconforming use, except as provided in Section 14.5 below.
- (6) **Cessation of Use:** If a nonconforming use is discontinued for three (3) consecutive months or more, then the property shall thereafter be occupied and used only for a conforming use, except as provided for re-establishments in Section 14.5 below. If a nonconforming use is continued before three (3) months has passed it may continue, provided that the nature and degree of the nonconformity will not be changed or increased from that which existed before the nonconforming use was discontinued.
- (7) **Signs for Nonconforming Uses:** Nonconforming uses located in residential districts may erect non-illuminated wall signs only. Such signs shall conform in all other ways with the size, placement, and other standards set forth for such signs in Chapter 10 of this Code.

14.3 Nonconforming Structures

- (1) **Expansion or Enlargement:** A nonconforming structure shall not be enlarged or extended in any way, except as provided in Section 14.5 below.
- (2) **Maintenance or Repair:** The maintenance or repair of a nonconforming structure is permitted, provided that it does not extend or expand the nonconforming structure.
- (3) **Damage or Destruction:** If a nonconforming structure is damaged or destroyed by any means to an extent greater than fifty percent (50%) percent of its replacement cost at the time of damage or destruction, then such structure shall not be restored, nor any use of the structure be re-established, in any way which does not conform to the requirements of this Code.
- (4) **Section Not Applicable to Nonconforming Signs:** This Section shall not apply to nonconforming signs, the continuation, replacement, removal, expansion, maintenance and repair of which are governed by Section 10.11.

- (5) **Illegal Signs:** Signs which were in place on December 31, 2012 and which do not conform to the terms of this Code, which signs were also in violation of the previous Sign Code of the City at the time they were erected, shall not be classified as nonconforming signs and shall be removed immediately.

14.4 Nonconforming Lots of Record

- (1) **Development Allowed.** Development shall be allowed on a lot of record which does not conform to the lot area and lot which requirements established in this Code for the zoning district in which it is located, notwithstanding limitations imposed by other provisions of this Code. Such lot must be in a separate ownership and not of the continuous frontage with other lots in the same ownership. Yard requirements, lot coverage and all other requirements shall be satisfied.
- (2) **Adjacent Lots in Single Ownership:** If two (2) or more adjacent and vacant nonconforming lots are in single ownership at any time, and such lots individually have less frontage or area than the minimum requirements of the district in which such lots are located, then such lots shall be considered and treated as a single lot or several lots which meet the minimum requirements of this Code for the district in which such lots are located.

14.5 Change, Re-establishment, Expansion, Alteration or Major Repair of Nonconformities

- (1) **Intent:** The intent of this Part is to allow the continuation of any nonconformity and the normal maintenance and repair thereof, but to require any change, re-establishment, expansion, alteration or major repair of a nonconformity to obtain a flexible use permit to determine whether it will substantially injure the value, use, and enjoyment of neighboring properties. Minor repair to nonconforming structures shall, in accordance to Section 14.2.(3), be permitted without the necessity of obtaining such conditional use.
- (2) **Flexible Use Procedure:** Unless this Section expressly provides otherwise, change, re-establishment, expansion, alteration or major repair of any nonconformity shall be deemed a "flexible use," and shall occur only as approved by the Planning Committee in accordance with the procedures set forth in Section 12.12 of this Code.
 - (a) After holding a public hearing on the flexible use, the Planning Committee shall determine whether to approve the proposed change, re-establishment, expansion, alteration, or major repair. The Planning Committee shall not approve the proposed change, re-establishment, expansion, alteration or major repair unless and until it finds, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case, that the proposed change, re-establishment, expansion, alteration or major repair meets the standards set forth in Section 12.12 of this Code as well as the following:
 - (i) That all access roads and entrance or exit drives to the nonconformity will be adequate with respect to automotive and pedestrian safety and convenience, traffic flow, and control and access in the case of fire or other emergency;

- (ii) That all off-street parking, loading, refuse collection, and other service areas will be adequate with respect to automotive and pedestrian safety and convenience, traffic flow, economic, noise, glare, odor and other impacts on adjoining properties;
 - (iii) That all water, wastewater treatment, schools, fire and police protection and other necessary public and private utilities and services will be adequate with respect to their location, availability and compatibility with adjoining properties;
 - (iv) That all landscaping, screening, and fencing will be adequate, with respect to the effectiveness of their type, dimensions and character; will be adequate with respect to minimizing the economic, noise, glare, odor and other impacts of the nonconformity on adjoining properties and other properties in the neighborhood;
 - (v) That the type, size and intensity of the proposed use, including such considerations as storage of items and arrangement, the size of the site and the location of the use upon it, and the hours of operation and numbers of people who are likely to utilize or be attached to the use, will be adequate with respect to minimizing the impact of the nonconformity upon adjoining properties, other properties in the neighborhood, and the purposes of the use district in which the property is located;
 - (vi) Surface drainage will be adequate with respect to on-site erosion, siltation, pollution, flooding or other detrimental effects of the nonconformity.
- (b) In determining whether the proposed change, re-establishment, expansion, alteration or major repair will substantially injure the value, use and enjoyment of other properties, the Planning Committee shall also consider and balance:
- (i) The possible detriment or benefit to the owner of the nonconformity resulting from denying the approval, from approving the request but requiring that the nonconformity be brought wholly or partially into compliance, or from approving the request;
 - (ii) The possible detriment or benefit to the general public resulting from denying the approval, from approving the request but requiring that the nonconformity be brought wholly or partially into compliance, or from approving the request.
- (c) The Planning Committee may impose any conditions on approval of the request as it deems necessary to mitigate any potential hazards or problems, or to bring the nonconformity into compliance to the extent necessary to protect the rights and interests of nearby property owners and the general public.
- (d) In acting upon applications for such flexible uses, the Planning Committee shall not order the discontinuation or termination of a nonconformity. If an applicant is denied, then the continuation, maintenance and repair of the nonconformity shall still be allowed in accordance with the terms of this Section.

