

ARTICLE X
PROVISIONS GOVERNING NONCONFORMING USES
AND NONCOMPLYING BUILDINGS OR OTHER STRUCTURES

CHAPTER 1. STATEMENT OF PURPOSE

The districts established in this ordinance (as set forth in district regulations in ARTICLE III thru VIII) are designed to guide the future use of land in Hendersonville, Tennessee, by encouraging the development of desirable residential, commercial, and industrial areas with appropriate groupings of compatible and related uses and thus promote and protect the public health, safety, and general welfare.

As a necessary corollary, in order to carry out such purposes, nonconforming uses which adversely affect the development of such areas must be subject to certain limitations. The provisions governing nonconforming uses set forth in this article are therefore established to contain the existing undesirable conditions resulting from such incompatible nonconforming uses, which are detrimental to the achievement of such purposes. While such uses are generally permitted to continue, this ordinance is designed to restrict any expansion of such uses beyond the site which the use occupied upon the effective date of this ordinance.

In the case of buildings or other structures not complying with the bulk regulations of this ordinance, the provisions governing noncomplying buildings or other structures set forth in this article are established in order to permit the continued use of such buildings or other structures, but to limit the creation of additional noncompliance or increase in the degree of noncompliance.

These provisions are thus designed to preserve the character of the districts established in this ordinance in light of their suitability to particular uses, and thus to promote the public health, safety, and general welfare.

CHAPTER 2. PROVISIONS GOVERNING NONCONFORMING USES

10-201 APPLICABILITY

The provisions of this chapter are applicable to all uses which are not permitted within the districts in which they are located. Additionally, buildings and other structures located within the floodplain are considered within the regulation of nonconforming uses. Special provisions are established for existing lots of record designed and intended for occupancy by duplex dwellings allowed under prior zoning provisions, but not allowed under this ordinance.

10-202 CONSTRUCTION OR USE PERMIT APPROVED PRIOR TO ORDINANCE ADOPTION

Nothing contained herein shall require any change in the overall layout, plans, construction, size or designated use of any development, building, structure, or part thereof where official approvals and required building permits have been granted before the enactment of this ordinance, or any amendment thereto, the construction of which, conforming with such plans, shall have been started prior to the effective date of this ordinance and completion thereof carried on in a normal manner within the subsequent six (6) months period, and not discontinued until completion except for reasons beyond the builder's control.

In the event that the activity or construction of such building or other structures is not substantially underway and being diligently pursued within the six (6) month period following the issuance of a certificate or permit, then such certificate or permit shall automatically lapse and the provisions of this ordinance shall apply.

10-203 CONDITIONAL USE - STATUS AND ALTERATION

Whenever the zoning ordinance in effect at the time of adoption of this zoning ordinance has authorized any use which is not permitted as of right by issuing a variance, exception, or permit to locate in a district such authorization may be continued subject to the time of approval of said variance, exception, or conditional use, including any time period established for the continuation of such use. (See Section 1-508.) However, any change of use, alteration or expansion is subject to provisions of this chapter.

10-204 REPAIRS AND ALTERATIONS

Nothing in this article shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by proper authority.

10-205 ZONE LOT CONTAINING NONCONFORMING USE

A zone lot containing a nonconforming use shall not be reduced in area, except to comply with Section 10-204.

10-206 CONTINUATION OF NONCONFORMING USE

Any nonconforming use which existed lawfully at the time of enactment of this ordinance and which remains nonconforming under the provisions contained herein or any use which shall become nonconforming upon enactment of this ordinance, or any subsequent amendments thereto, may be allowed to continue in operation and be permitted provided that no change in use (See Section 10-207) is undertaken.

10-207 CHANGE OF NONCONFORMING USE

10-207.1 General Provisions

For the purpose of this chapter, a change in use is a change to another use either under the same activity type or any other activity type or major class of activity; however, a change in occupancy or ownership shall not, by itself, constitute a change of use.

A nonconforming use may be changed to any conforming use, and the applicable bulk regulations and accessory off-street parking requirements shall apply to such change of use or to alterations made in order to accommodate such conforming use.

10-207.2 Land with Incidental Improvements

In all districts a nonconforming use of land, not involving a building or structure, or in connection with which any building or structure thereon is incidental or accessory to the principal use of the land, shall be changed only to a conforming use.

10-207.3 Nonconforming to Conforming Use

Whenever a nonconforming use is changed to a conforming use, such use shall not thereafter be changed to a nonconforming use.

10-208 EXPANSION OF NONCONFORMING USES

10-208.1 General Provisions

Any nonconforming use which existed lawfully at the time of enactment of this ordinance and which remains nonconforming under the provisions contained herein or any use which shall become nonconforming upon enactment of this ordinance, or any subsequent amendments thereto, may be allowed to expand operations and construct additional facilities which involve an actual continuance and expansion of the nonconforming use provided that any such expansion shall not violate the provisions as set out below.

10-208.2 Land with Incidental Improvements

In all districts a nonconforming use of land, not involving a building or structure, or in connection with which any building or structure thereon is incidental or accessory to the principal use of the land, shall not be allowed to expand through the addition of buildings or other structures.

10-208.3 Adequate Space for Expansion

No expansion of any nonconforming use shall infringe upon, or increase the extent of any infringement existing at the time of adoption of this ordinance, upon any open space required by this ordinance.

10-208.4 Expansion Limited

Any expansion of a nonconforming use permitted under the provisions of this section shall take place only upon the zone lot(s) on which said use was operating at the time the use became nonconforming. Nothing within this provision shall be construed so as to operate to permit expansion of any nonconforming use through the acquisition and development of additional land.

10-208.5 Expansion upon Land Subject to Flood

No expansion of any nonconforming use shall violate the provisions of Section 10-211.

10-209 DAMAGE OR DESTRUCTION

10-209.1 General Provisions

Any nonconforming use which existed lawfully at the time of enactment of this ordinance and which remains nonconforming under the provisions contained herein or any use which shall become nonconforming upon enactment of this ordinance, or any subsequent amendments thereto, may be permitted to reconstruct damaged or destroyed facilities which involve any actual continuance of the nonconforming use provided that any such reconstruction shall not violate the provisions set out below.

10-209.2 Change in Use Prohibited

No reconstruction of damaged or destroyed facilities may occur which shall act to change the nonconforming use (as regulated in Section 10-207, above) to other than a permitted use.

10-209.3 Land with Incidental Improvements

In all districts, when a nonconforming building or other structure or improvements located on "land with incidental improvements" (as defined by this ordinance) is damaged or destroyed to the extent of twenty-five (25) percent or more of the assessed valuation of all buildings, and other structures or other improvements located thereon (as determined from the assessment rolls effective on the date of damage or destruction), such nonconforming use shall terminate and the tract of land shall thereafter be used only for a conforming use.

10-209.4 Infringement upon Open Space Restricted

No reconstruction of damaged or destroyed facilities utilized by a nonconforming use shall increase the extent of any infringement upon any open space required by this ordinance.

10-209.5 Reconstruction of Flood Damaged Property

The provisions of Section 10-211, shall apply to the reconstruction of all buildings and structures associated with any nonconforming use located within floodplain districts.

10-210 DISCONTINUANCE

When a nonconforming use of land or the active operation of substantially all the nonconforming uses in any building or other structure or tract of land is discontinued for a period of one (1) year, then the land or building or other structure shall thereafter be used only for a conforming use. Intent to resume active operations shall not affect the foregoing provision.

10-211 SPECIAL PROVISIONS GOVERNING NONCONFORMING BUILDINGS WITHIN FLOODPLAIN DISTRICTS

10-211.1 General Provisions

In all districts or portions thereof which extend into the floodplain districts as established by ARTICLE VII, any building or other structure or use which is not permitted by the floodplain district provisions shall become nonconforming upon the effective date of this ordinance, or subsequent amendment as applicable.

10-211.2 Enlargement of Buildings Within the Floodplain

A building or other structure which is nonconforming by reason of location within the floodplain shall not be enlarged or expanded but may be altered, or repaired as set forth in Section 10-204, or as may be expressly authorized by the Board of Zoning Appeals in order to incorporate floodproofing measures provided that such alteration will not increase the level of the 100-year flood or extend the normal life of such nonconforming building or structure.

10-211.3 Special Provisions Governing Reconstruction of Buildings or Structures Located Within the (FWD) Floodway Districts

Within any designated floodway district any building or structure in existence prior to the effective date of this ordinance that is hereafter destroyed or substantially damaged by any means may be reconstructed and used as before only if the following requirements are met.

- (a) The reconstruction does not exceed the volume and external dimensions of the original structure or does not offer any greater obstruction to the flow of floodwaters than did the original structure.
- (b) Nonresidential structures may be reconstructed only if the lowest floor (including basement) elevation is at least one (1) foot above the level of the 100-year flood or the structure is floodproofed (in accordance with the requirements of Section 7-306, to a height of at least one (1) foot above the level of the 100-year flood.
- (c) Residential structures may be reconstructed only if the lowest floor (including basement) of the structure is elevated to a point at least one (1) foot above the level of the 100-year flood.
- (d) That no reconstruction or alteration permitted hereinunder shall result in any increase in the level of the 100-year flood.

10-212 SPECIAL PROVISIONS GOVERNING THE PLACEMENT OF DUPLEX DWELLINGS ON LOTS WHERE SUCH USE WAS PERMITTED UNDER PROVISIONS OF PRIOR ZONING

This section is intended to establish special provisions to allow the development of existing lots of record upon which duplex dwellings were permitted under the provisions of **Ordinance 1970-16** or **1974-54** (as amended) but are not permitted under the provisions of this ordinance. It is intended that a reasonable statutory period shall be established during which lots previously developed and/or designed and intended for such usage under the provisions of zoning ordinances then in effect may be so utilized. It is further intended that upon the expiration of this time period such usage may be continued only as provided in Section 10-206.

10-212.1 Existing Lots of Record

For a three (3) year period, beginning upon the effective date of approval of this ordinance, any previously existing lot of record which was established, of legally sufficient size and zoned under the provisions of **Ordinance 1970-16** or **1974-54**, as amended, so as to accommodate duplex dwellings, may be developed and utilized for said use. Upon the expiration of this three (3) year time period, the provisions of Subsection 10-212.3, shall apply.

10-212.2 Lots of Preliminary Approval, but not Recorded

Any lot which lies within a plan of subdivision which has been granted preliminary approval by the planning commission upon the effective date of this ordinance may be utilized for development of a duplex dwelling provided:

- (a) That each such lot shall be of legally sufficient size and located upon land which, under the provisions of **Ordinance 1970-16** or **1974-54**, as amended, was within a district where such use was permitted; and
- (b) That each such lot shall be put to record and a building permit requested therefore within three (3) years following the effective date of approval of this ordinance.

Upon the expiration of this three (3) year time period the provisions of Subsection 10-212.3, shall apply.

10-212.3 Provisions Applicable Following Expiration of Three (3) year Time Period

Following the expiration of the three (3) year time limit established, hereinabove, the provisions of Subsections 10-212.1 and 10-212.2, shall no longer apply and all lots shall be fully subject to the provisions of this ordinance for the district wherein such may be located. Provided, however, that any building permit issued for any lot under Subsections 10-212.1, and 10-212.2, shall remain in effect as otherwise provided in Subsection 11-202.4.

CHAPTER 3. NONCOMPLYING BUILDINGS OR OTHER STRUCTURES

10-301 GENERAL PROVISIONS

The provisions of this chapter shall control buildings and other structures which do not meet the bulk or any other provisions applicable in the districts in which they are located except those provisions which pertain to activity or use.

10-302 CONTINUATION OF USE

The use of a noncomplying building or other structure or parcel may be continued, except as otherwise provided by this chapter.

10-303 REPAIRS AND ALTERATIONS

Repairs, incidental alterations, or structural alterations may be made in noncomplying buildings or other structures subject to the provisions of Sections 10-304 through 10-306.3.

10-304 ENLARGEMENTS OR CONVERSIONS

A noncomplying building or other structure may be enlarged or converted, provided that no enlargement or conversion may be made which would either create a new noncompliance or increase the degree of noncompliance of a building or other structure or parcel of any portion thereof.

10-304.1 Buildings Noncomplying as to Lot Area

If a building does not comply with the applicable district regulations on lot area per dwelling unit (lot area of zone lot being smaller than required for the number of dwelling units on such zone lot) such building may be converted (and, in mixed buildings, the residential use may be extended, except when in the floodplain district), provided that the deficiency in the required lot area is not thereby increased (for example, a noncomplying building on a zone lot of three thousand-five hundred (3,500) square feet, which before conversion required a lot area of five thousand (5,000) square feet and was, therefore, deficient by one thousand-five hundred (1,500) square feet, can be converted into any combination of dwelling units requiring a lot area of no more than five thousand (5,000) square feet).

10-305 DAMAGE OR DESTRUCTION OF NONCOMPLYING USES

A noncomplying building which is damaged or destroyed may be reconstructed, provided that the reconstruction will not either create a new noncompliance or increase the degree of noncompliance of a building or structure or parcel or portion thereof.