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2-5-2019, Ordinance No. 2019-03 (Sec. 9-1.4(B))

# ARTICLE 9. – NONCONFORMING USES AND SITUATIONS

## Sec. 9-1. General.

### 9-1.1. *Purpose and intent.*

- (A) Within the provisions established by this chapter, there exist nonconforming situations that were lawfully established before this chapter was adopted or amended, that now do not conform to the terms and requirements of this chapter. Nonconforming situations include unlawful uses of land or buildings and lots, structures, and signs that do not conform to one or more regulations of the districts in which the lot, structure, or sign is located. The purpose of this article is to regulate and limit the continued existence of those uses, structures, lots, and signs that do not conform to the provisions of this chapter or any amendments thereto.
- (B) It is the intent of this chapter to permit these nonconforming situations to continue until they are removed, but not to encourage their survival except under the limited circumstances established in this article. The provisions of this article are designed to curtail substantial investment in nonconforming situations to preserve the integrity of this chapter. However, it is not the intent of this chapter to require compliance with a requirement of this chapter that is not reasonably achieved if compliance cannot be achieved without adding additional land not under the same ownership to the lot where the nonconforming situation is maintained or moving a substantial structure that is located on a permanent foundation.

9-1.2. *Authority to continue.* Nonconforming uses and situations are allowed to continue in accordance with the requirements of this article.

9-1.3. *Determination of nonconformity status.* In all cases, the burden of establishing that a nonconforming situation lawfully exists shall be on the owner of the land on which the purported nonconforming situation is located.

### 9-1.4. *Repairs, maintenance and reconstruction.*

- (A) Repairs and maintenance that are required to keep nonconforming uses, structures, situations, and signs in a safe condition are permitted, provided that the repair or maintenance does not extend, expand, or enlarge the nonconforming use, structure, situation, or sign. For the purposes of this section, the term "repair or maintenance" shall include the total cost of labor and materials (within a five-year period) utilized in the repair or maintenance, the value of which does not exceed 50 percent of the appraised value of the structure or 50 percent of the replacement cost of the sign and:
  - (1) *Maintenance of safe condition.* Repair that is necessary to maintain a nonconforming use, structure, or sign in a safe condition;
  - (2) *Correction of damage or deterioration.* Repair that is necessary to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure;
  - (3) *Maintenance of land for safety.* Maintenance of land areas to protect against health hazards and promote the safety of surrounding land uses; and
  - (4) *Sign repair and maintenance.* Repair and maintenance of nonconforming signs, such as repainting and electrical repair, provided the cost does not exceed 50 percent of the replacement cost of the sign.
- (B) In the event any nonconforming structure is damaged, by any means, to the extent of 50 percent or more of its replacement value prior to such destruction, such structure shall not be repaired or restored except in conformance with the standards for the zoning district in which it is located. The determination of replacement valuation shall be made by the administrator or, at the applicant's option and cost, by a certified independent appraiser.

Exception: A single-family detached dwelling completed prior to January 1, 2019 and which does not comply with the minimum house sizes in Sec. 5-1.1 may be re-established with the square footage existing immediately prior to damage as described above, provided a building permit is obtained within six months of the date of the damage and construction, repair or restoration is begun within one year after the date of such damage and is diligently pursued to completion.

- (C) In the event a structure is damaged, by any means, to an extent of less than 50 percent of its replacement value prior to such damage, no repairs or restoration shall be made unless a building permit is obtained within six months of the date of the damage and repair or restoration is begun within one year after the date of such damage and is diligently pursued to completion. The determination of replacement valuation shall be made by the administrator or, at the applicant's option and cost, by a certified independent appraiser.
- (D) Garages, carports, and storage buildings accessory to single-family dwellings in which the garages, carports, or storage buildings are nonconforming due to the structure not meeting minimum setback requirements may be repaired, replaced, or increased in area not exceeding 20 percent of the original footprint of the structure regardless of the repair or replacement cost relative to appraised value provided there is no increase to any nonconformity and provided further that the structure is not increased in its number of stories.

9-1.5. *Change of tenancy or ownership.*

- (A) *General.* Changes of tenancy, ownership, or management of a use containing a nonconforming situation wherein the use does not change are permitted, and, in such cases, the nonconforming situation shall continue to be subject to the requirements of this article.
- (B) *Exception.* The transfer of ownership or operation of a sexually oriented business located within 1,000 feet of another sexually oriented business is not permitted (see subsection 4.3.3(E), sexually oriented business).

9-1.6. *Temporary nonconforming uses.* A temporary use permit may be issued by the administrator pursuant to temporary use permit provisions in Article 2, Administration, for an appropriate period of time for the following uses, provided that the owner of the temporary nonconforming use agrees to remove the temporary nonconforming use upon expiration of the permit.

- (A) Nonconforming buildings, structures or uses incidental to building construction or land development may be allowed for the duration of the construction or development period.

**Sec. 9-2. - Change of use where nonconforming situation exists.**

9-2.1. *Change to permitted use.* A nonconforming use may be changed to a principal use permitted in the district in which the property is located provided all other requirements of this chapter applicable to that change of use can be met. Permission to accomplish the change must be obtained in the same manner as permission to make the initial use of a vacant lot in the district. Once conformity with this chapter is achieved, the property may not be changed to a nonconforming use.

9-2.2. *Change to another nonconforming use.* A nonconforming use shall not be changed to any other nonconforming use except as may be permitted pursuant to procedures and standards for special exception permit in Article 2, Administration.

**Sec. 9-3. Expansion or enlargement where nonconforming situation exists.**

9-3.1. *Increase of nonconformity.* Except as specifically provided for in this section, the extent of nonconformity shall not be increased. In particular, physical alteration of structures, the placement of new structures on open land, the relocation of structures, or the extension of a use to cover more land than was occupied when the use became nonconforming, is unlawful if such activity results in:

- (A) An increase in the total amount of space devoted to a nonconforming use; or
- (B) Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, density limitations, parking requirements, etc.

Notwithstanding subsection 9-3.1(B), the administrator may authorize the enlargement of a single-family dwelling determined to be nonconforming due to its not meeting minimum setback requirements provided there is no decrease in the prevailing setback and the number of stories is not increased.

9-3.2. *Increase of use.* A nonconforming use shall not be enlarged, expanded in area occupied, or intensified. A nonconforming use may be enlarged in any area of the same structure which is designed for such use prior to the date the use became a nonconforming use.

#### **Sec. 9-4. Discontinuance and reestablishment of a nonconforming situation.**

9-4.1. A nonconforming use shall not be reestablished after:

- (A) Discontinuance for 180 days; or
- (B) Discontinuance for any period of time without a present intention to reinstate the nonconforming use.

Pursuant to subsection 9-1.4, repairs, maintenance and reconstruction, a nonconforming use may be reestablished if the reestablishment occurs within three months from the time the renovations or repairs are completed.

9-4.2. If a nonconforming use is located within the same development as a conforming use, discontinuance of the nonconforming use pursuant to subsection 9-4.1(A)(2) shall terminate the right to continue the use thereafter.

9-4.3. Except as specifically provided in this chapter, a structure or lot accommodating a use or situation that does not conform to one or more regulations of article 6, development and design standards, shall not be reestablished or changed to another use after discontinuance for 180 days.

#### **Sec. 9.5. - Nonconforming signs.**

9-5.1. *General.*

- (A) Subject to the conditions set forth in this section, and pursuant to the provisions of O.C.G.A. 32-6-83, nonconforming signs may continue in operation and maintenance, provided that nonconforming signs:
  - (1) Shall not be changed to or replaced with another nonconforming sign;
  - (2) Shall not be structurally altered so as to extend useful life;
  - (3) Shall not be expanded;
  - (4) Shall not be relocated, except in compliance with this article; or
  - (5) Shall not be re-established after damage or destruction of more than 50 percent of the replacement value of the same type of sign at the time of such damage or destruction. Any damage to a nonconforming sign that is not repaired constitutes damage or destruction for purposes of this subsection, and that damage shall be cumulative; and
  - (6) Shall be removed if the parcel on which the sign is located is redeveloped or the building on the same parcel as the sign is demolished and/or redeveloped or reconstructed.
- (B) This section shall not prevent normal maintenance operations performed on a nonconforming sign or sign structure, provided structural elements are not removed and replaced. Nonconforming signs declared to be structurally unsafe by the administrator shall be removed and not repaired.

9-5.2. *Signs made nonconforming due to condemnation.* When a sign is located on land condemned for road right-of-way acquisition, the following standards shall apply:

- (A) Any sign not located within, and which does not overhang, the land acquired for right-of-way may remain in place, subject to subsection 9-5.1, general.
- (B) Any sign located within the new right-of-way for a state or federal highway shall, at a minimum, comply with state standards for relocation.

- (C) Any sign located within the right-of-way acquired for a city street or for other purposes shall comply with the provisions of subsection 9-5.1, general.

## **Sec. 9-6. - Nonconforming landscaping, buffering, and screening.**

- 9-6.1. *Expansion of nonconforming parking lots.* Parking lots that do not comply with current landscape, buffer, and screening requirements and are proposed to be expanded shall, to the extent practicable as determined by the administrator, comply with the requirements of section 6-3, landscaping, buffering, and screening, based on the following schedule:
- (A) Any expansion of a nonconforming parking lot located on a corner lot shall require the applicant to comply with the requirements set forth in section 6-3.4, interior parking lot landscaping, section 6-3.6, street buffer yards, and section 6-3.3, street trees.
  - (B) Expansion of a nonconforming parking lot located on an interior lot that increases the number of parking spaces or amount of impervious surface by 25 percent or more (or that results in an increase of 25 percent or more within a five-year period) shall comply with the requirements set forth in section 6-3.4, interior parking lot landscaping, section 6-3.6, street buffer yards, and section 6-3.3, street trees..
  - (C) Expansion of a nonconforming parking lot located on an interior lot that increases the number of parking spaces or amount of impervious surface by less than 25 percent shall require the applicant to comply with 50 percent of the planting rate established in in section 6-3.4, interior parking lot landscaping, section 6-3.6, street buffer yards, and section 6-3.3, street trees.
- 9-6.2. *Change of Use.* When the use of a building or site changes from one use classification to another use classification, the parcel on which the building or site is located shall, to the extent practicable as determined by the administrator, comply with the requirements of section 6-3, landscaping, buffering, and screening, based on the following schedule:
- (A) If a change of use constitutes less than 25 percent of the floor area of a structure or lot accommodating one or more uses (within a five-year period), the property shall comply with the provisions of this section and all other applicable city, state and federal regulations to the greatest extent practicable, as determined by the administrator, provided the new use fully complies with the requirements of subsection 6-3.5, perimeter buffering and screening requirements, and subsection 6-3.7, additional screening requirements.
  - (B) If a change of use constitutes 25 percent or more but less than 50 percent of the floor area of a structure or lot accommodating one or more uses (within a five-year period), the property shall comply with the provisions of this section and all other applicable city, state and federal regulations, to the greatest extent practicable, as determined by the administrator, provided the new use fully complies with the requirements of subsection 6-3.5, perimeter buffering and screening requirements, subsection 6-3.7, additional screening requirements; and subsection 6-3.3, street trees.
  - (C) If a change of use constitutes 50 percent or more of the floor area of a structure or lot accommodating one or more uses (within a five-year period), the property shall comply with the provisions of this section and all other applicable city, state and federal regulations, to the greatest extent practicable, as determined by the administrator, provided the new use fully complies with the requirements subsection 6-3.5 perimeter buffer yard requirements, subsection 6-3.7, additional screening requirements, subsection 6-3.3, street trees; and 50 percent of the planting rate established in subsection 6-3.4, interior parking lot landscaping, and subsection 6-3.6, street buffer yards.
- 9-6.3 *Parking reduction for landscape compliance.* In determining the extent to which compliance with sections 9-6.1 and 9-6.2 is practicable, the administrator shall balance the objectives of section 19-6.1, off-street parking and loading, and section 19-6.3, landscaping, buffering and screening, and may reduce the

proposed number of parking spaces/paved area by a maximum of 20 percent to accommodate the otherwise-required landscaping and screening.

**9-7. Nonconforming private developments.**

- (A) For the purposes of this section, "nonconforming private development" shall be defined as a private development which was in existence prior to passage of this ordinance and which does not conform to the technical standards found in section 6-11, private development standards.
- (B) Pursuant to Ordinance 2004-38, adopted July 20, 2004 all nonconforming private developments within the City of Perry shall conform to the technical standards, section 6-11, private development standards, by July 20, 2005.
- (C) Nonconforming parks shall submit to the zoning enforcement officer of Perry, Georgia, two (2) copies of a site plan within sixty (60) days from the adoption of the ordinance from which this section derives. The site plan shall contain the location of refuse facilities, street lighting facilities, and the location of required buffer areas.