

Nonconformity ¹

A. Purpose and Intent:

1. Consistent with the provisions of the NC General Statutes, lawfully operated, established or commenced land uses or lots of record recorded within the Union County Registrar of Deeds commenced or created in accordance with applicable development regulations in effect at the time of creation are deemed to have a vested status² to continue unless the owner willfully decides to modify, cease the activity, or otherwise modify the subject parcel in accordance with the provisions of this Ordinance and/or State law;³
2. The intent of this Section is to recognize the legal existence of a land use, site development element, or a lot of record legally established but made nonconforming due to a modification of this Ordinance.
3. As a matter of policy, under no circumstances may a nonconformity be extended, expanded, enlarged, increased, or intensified.

- B. Amendments: Amendments in land development regulations are not applicable or enforceable without the written consent of the owner regarding a nonconformity. Unless otherwise specified by this Section or State law, a nonconformity may continue until intentionally and voluntarily discontinued by the property owner.

COMMENTARY: Written consent must contain a detailed description of what the owner is and is not consenting to. This is a voluntary process and is not mandated to secure continued use or occupancy of a parcel of property.

- C. Vested Status: The recognition of a vested status under the provisions of this Article does not preclude the property owner from seeking vesting under one or more other provisions of law or other vesting by application of common law principles. ⁴

¹ We are going to have to maintain this terminology. State law fixes make consistent reference to nonconformities. Originally, NFOCUS Staff was looking at revamping the language to reflect anticipated changes in State law.

² From NFOCUS standpoint, the overall intent of the General Assembly is to secure some form of common law vesting for land uses, site developments, or a lot of record so they are no longer considered to be 'nonconforming'. As previous indicated herein, the revised statutory language continuously makes reference to 'nonconforming' situations as this is the collective term, but it is clear the General Assembly is attempting to modify the overall concept of how these 'activities' are to be viewed (i.e., not 'grandfathered' but 'vested' meaning they are still classified as legal activities).

³ It is the owner's sole discretion to choose if this 'vesting' is abandoned or not.

⁴ Again, this is language taken directly from the latest draft of SB 587 that would address downzoning.

1. A vesting, as provided herein or established under common law, precludes any action by (municipality/county) compelling a change, alteration, impairment, prevention, diminishing, or otherwise result in a delay of the development or use of the property allowed by applicable development regulations, except where a change in State or federal law mandating local government enforcement occurs after the nonconformity was established that has a fundamental and retroactive effect on the development or use.⁵
 2. No change of title or possession or right to possession of the property involving a nonconformity shall be construed as extinguishing nonconforming status. Vested status shall be deemed transferable.⁶
- D. Specific Standards: Consistent with NCGS 160D-108.2, the following standards shall apply:
1. Lot of Record:
 - a. For purposes of this Section, a Lot of Record shall be defined as: A parcel of property recorded in the Union County Register of Deeds in conformance with the Development Ordinance in effect at the time of recording.⁷
 - b. A Lot of Record shall be allowed to develop under the applicable development standards in place when recorded (i.e., setbacks, height, land uses, etc.) consistent with the standards detailed herein.⁸
 - c. Divisions of a Lot of Record: A Lot of Record shall only be divided in accordance with the applicable dimensional standards of this Ordinance in place at the time of division, regardless of process (exempt or regulated divisions).
 - d. For a parcel not meeting the definition of a Lot of Record, the following shall apply:⁹

⁵ IBID.

⁶ Language intended to ensure the sale of property is not construed as relinquishing the vested status. The status is transferable until willfully extinguished. Can a future owner make an argument they should be allowed to re-establish a nonconforming land use? Not if a previous owner relinquished the vesting.

⁷ The question we will have to address is: what happens when you have parcels recorded prior to the adoption of local regulations. From my standpoint, we are going to have to address in some fashion. I am suggesting we address as noted in subsection (d).

⁸ Yes, this will be somewhat of an enforcement nightmare as local staff will have to determine what standards were in place at time of recordation. This language, however, is consistent with the most recent draft language under review by the General Assembly.

⁹ NFOCUS is recommending we consider a distinction: As defined a Lot of Record was created in compliance with applicable land use standards (dimensional standards) and is only 'nonconforming' due to an Ordinance or Zoning Map change. Those parcels are allowed to develop consistent with the applicable standards

- i. Lots with Contiguous Frontage under Common Ownership: When 2 or more adjoining lots with contiguous frontage are under common ownership, and the lots are nonconforming in terms of width or area, such lots shall be combined creating a conforming lot consistent with current dimensional standards.¹⁰
 - ii. Single Lot of Record in a Residential District: Where a parcel has an area or width which does not conform to applicable dimensional standards for the district where located, but was of record prior to the adoption of land use regulations by the Town of Unionville, a single-family dwelling may be built subject to compliance with applicable setback standards.
 - iii. Single Lot of Record in a Nonresidential District: Where a parcel has an area or width which does not conform to the dimensional standards of the district where located, but was of record prior to the adoption of land use regulations by the Town of Unionville, development is permitted subject to compliance with required setbacks, open space requirements, and all other applicable development and design standards detailed in this Ordinance.
- 2. Use of Property: Uses shall be continued and/or maintained in accordance with the provisions of this Section.
 - a. Nothing in this Section shall be deemed as restricting the enforcement of Stormwater or Flood Damage Prevention regulations.
- 3. Site Conditions: Any principal or accessory building/structure, outdoor lighting, fence, wall, sign, off-street parking, vehicular surface area, landscaping,/open space, or private access point made nonconforming by an amendment to this Ordinance shall be continued and/or maintained in accordance with the provisions of this Section.
 - a. Nothing in this Section shall be deemed as restricting the enforcement of Stormwater or Flood Damage Prevention regulations.
- E. Expiration: The vesting period shall be deemed to have expired if the nonconformity is intentionally and voluntarily discontinued for a period of not less

enforced at time of creation. Lots created before adoption of land use regulations (initial zoning) are subject to the provisions of subsection (d). How do you deal with land in a county subdivided under applicable county regulations then annexed into a municipality? From my standpoint they would also fall into subsection (d) only because the parcels were never subject to municipal regulations. Nowadays, annexation requests are voluntary thereby eliminating undisclosed creation of nonconformities.

¹⁰ Does the community want this requirement?

than 24 consecutive months. The 24-month discontinuance period shall be automatically tolled during any of the following events:

1. The pendency of any board of adjustment proceeding or civil action in a State or federal court regarding the validity of the use of the property or the existence of the statutory vesting period granted by this section.
 2. The pendency of any litigation involving use of the property that is the subject of the vesting.
 3. The duration of any emergency declaration issued under G.S. 166A-19.20 or G.S. 166A-19.22 for which the defined emergency area includes the property, in whole or in part.
- F. Reconstruction, re-establishment, repair, and maintenance of a nonconformity shall be allowed by right provided the nonconformity is not extended, expanded, enlarged, increased, or intensified by the reconstruction, re-establishment, repair, or maintenance.
1. Consistent with the provisions of State law, the provisions of this Section shall not apply to Outdoor Advertising consistent with NCGS 160D-912 inclusive.