

ARTICLE 22

(amended June 30, 2021 to comply with NCGS 160D)

NONCONFORMITIES

22.1 Purpose

It is recognized that, over time, lawful nonconformities may develop as a result of amendments to the zoning map or Midland Development Ordinance which change the application of Town of Midland development regulations to particular properties. It is important that such properties, while nonconforming, be adequately maintained and permitted to continue, but not expanded or enlarged in any fashion that increases the extent of nonconformity. Where possible, such nonconformities should be made, wholly or incrementally, conforming.

22.2 Application and Exceptions

The provisions of this section apply only to lawful nonconformities, except as noted below. Nonconformities other than lawful nonconformities shall be considered violations of the Midland Development Ordinance. This article shall not apply, however, to any feature which is the subject of a variance from particular regulations that has been granted by an authorized reviewing board or commission or to applications of flexible development standards to such features. Where a variance or flexible development standards determination has been granted for a feature which does not otherwise conform to the requirements of this chapter, that feature shall be deemed conforming. Nonconformities associated with signs are addressed in Article 17.

22.3 Dimensional Nonconformities

22.3-1 Lawfully Established Nonconforming Lots. Lawfully established nonconforming lots having one or more dimensional nonconformities may be used for any permitted or special use allowed in the zoning district in which the lot is located provided that any structure or expansion/addition to an existing structure proposed for the use meets all applicable dimensional and numerical requirements and all applicable procedures are followed. Such lots may be recombined with adjoining lots to increase the extent of their conformity provided new nonconformities are not created.

22.3-2 Structures. Structures having one or more dimensional nonconformities may be used for any permitted or special use allowed in the zoning district in which the structure is located, and, upon any change in use, shall comply with the landscaping, buffering, and parking requirements of Articles 11 and 12. Structures may be expanded or enlarged, provided the extent of the applicable nonconformity is not increased or new nonconformities are not created by expansion or enlargement. Expansions, enlargements or reconstruction of such structures to an extent equal to or greater than fifty percent of appraised value, shall require such

structures to meet all applicable dimensional and numerical requirements, except density, which may be retained at the prior nonconforming level but not increased. For the purpose of this section, the value of any expansions, enlargements, or reconstruction of such structures over a three year period shall be cumulated in calculating the fifty percent threshold. A structure undergoing renovation (defined in Article 3) having a renovation cost equal to or greater than fifty percent of the structure's appraised value shall not be subject to the above provisions but shall be required to meet the landscaping, buffering, and parking provisions of Articles 11 and 12.

22.4 Nonconforming Uses

- 22.4-1 Discontinuation of Nonconforming Uses. A nonconforming use is allowed to continue unless the use is discontinued for a period of 1095 or more consecutive days, and there are no substantial good faith efforts to re-establish the use during this period. Obtaining permits to maintain the existing use or significant continuous efforts to market the property for sale or lease for the existing use (e.g., MLS listing, realtor contract, etc.) shall be regarded as substantial good faith efforts. A nonconforming use shall be deemed discontinued after a period of 1825 consecutive days regardless of any substantial good faith efforts to re-establish the use. Thereafter, the structure or property associated with the use may be used only for conforming use. Where multiple nonconforming uses occupy the same premises, the reallocation of any combination of the nonconforming uses shall be allowable provided there is no net increase in the gross area of the combined nonconforming uses. Special uses discontinued for a period of 1095 or more consecutive days shall be regarded as nonconforming uses and shall not be re-established without new special use permit approval.
- 22.4-2 Replacement of One Nonconforming Use with Another Nonconforming Use. A nonconforming use may be allowed to be replaced by another nonconforming use of equal or lesser impact upon a finding by the *Planning & Zoning Commission* that the proposed use is more nearly compatible with the surrounding properties than the nonconforming use which it replaces, as measured by traffic or noise generation, site activity, hours of operation, and other factors that the *Planning & Zoning Commission* finds relevant to compare or differentiate between the existing use(s) and the proposed replacement use(s). The *Planning & Zoning Commission* may establish reasonable conditions to ensure that use compatibility is maintained as approved. Application for replacement of a nonconforming use with another nonconforming use may be made to the *Planning & Zoning Commission* and the Planning Department may request plans or other information to determine impacts as necessary. Applicants may be required to pay plan review fees or other published fees as necessary.

22.5 Nonconformities Associated with Manufactured Homes.

Dimensional or use nonconformities associated with manufactured homes shall be addressed in the following manner.

- 22.5-1 Replacement of One Manufactured Home with Another Manufactured Home in a Lawfully Established Manufactured Housing Park. Such replacement shall be permitted without regard to dimensional nonconformity provided that the replacement manufactured home is no smaller than the existing manufactured home, the replacement home is placed in the same location as the original home, and such replacement occurs within 365 days of the removal of the original manufactured home. In all other situations, replacement shall be prohibited.
- 22.5-2 Replacement of One Manufactured Home with Another Manufactured Home in Areas Other Than a Lawfully Established Manufactured Housing Park or Area Covered by a Manufactured Housing Zoning Overlay. Such replacement shall be permitted provided that new dimensional nonconformities are not created, the replacement manufactured home is no smaller than the existing manufactured home, the replacement home is placed in the same location as the original home, and such replacement occurs within 365 days of the last day of occupancy of the original manufactured home. In all other situations, replacement shall be prohibited.

22.6 Maintenance and Repair

In the interest of the public safety and health, structural alterations or remodeling of nonconforming structures or conforming structures on nonconforming lots that are required by any public law, and so ordered by a public officer in authority, shall be permitted. Routine maintenance shall also be permitted for nonconforming situations so long as no expansion of the nonconformity occurs as a result of the maintenance.