

Article 13 – Non-Conforming Uses

13.1 Purpose

Continuation and within a suitable period of time, elimination of existing uses of property that do not conform to the requirements of this Ordinance or that may not conform to future amendments.

The provisions of this article are designed to accomplish this intent in a way that:

13.1-1 Minimizes the nuisance, reduction in neighboring property values, and other adverse effects of properties that do not conform to their environs.

13.1-2 Allows the property owner or lessee to recover all or a substantial part of his investment in the nonconformity, while also minimizing the time period during which, by virtue of the nonconformity, he enjoys a special right not available to other property owners in the same zoning district.

13.2 Definition. A nonconformity is a characteristic of a building, structure, or area of land, or the use of such building, structure, or area of land, which was lawful prior to the date of enactment of this Ordinance or any amendment that does not conform to the requirements applicable to the zoning district in which it is located. Use of a portion of a lot shall not establish a non-conformity as to the entire lot, but only to that portion of the lot actually used at the time of the enactment or amendment of this Ordinance. (Ord. No. 2008-Z-002, 09-16-08)

13.3 Continuance of Non-Conforming Uses. The lawful use of any building, structures, land or sign existing at the time of the enactment or amendment of this Ordinance may be continued, even though such use does not conform with the provisions of this Ordinance, except that the non-conforming use shall not be:

13.3-1 Changed or extended so as to increase the portion of the property covered by the non-conforming building, structure, or sign on which the non-conforming use occurs.

13.3-2 Extended to occupy a greater area of a building or structure unless such additional area of the building or structure existed at the time of the enactment or amendment of this Ordinance and was clearly designed to house the same use as the non-conforming use occupying the other portion of the building or structure.

13.3-3 Reestablished after discontinuance for six (6) months unless otherwise approved by the Board of Commissioners or holds a current Cherokee County Business License.

13.3-4 Changed to another non-conforming use.

(Ord. No. 2024-O-002, 02-20-2024) (Ord. No. 2008-Z-002, 09-16-08)

13.4 Continuance of a Non-Conforming Building. A non-conforming building existing at the time of the enactment or amendment of this Ordinance may be retained except as follows:

13.4-1 No building other than a single-family detached dwelling may be enlarged or altered except in conformance with this Ordinance but it may be repaired to the extent necessary to maintain it in a safe and sanitary condition.

13.4-2 No building other than a single-family detached dwelling shall be rebuilt, altered or repaired after damage exceeding seventy five percent (75%) of its replacement cost at the time of destruction, except in conformity with this Ordinance.

13.4-3 A nonconforming single-family detached dwelling created or modified through the acquisition of right-of-way and/or easements by a federal, state, or local government shall not constitute a violation of this Code. The owner of any such nonconforming property created or modified through the exercise of eminent domain powers shall not be required to cure the nonconformity. Any single-family detached structure subject to this Code may be rebuilt, relocated, or reconstructed to cure the impacts of the right-of-way and/or easements acquisition, even if such rebuilding, relocation, or reconstruction does not conform to this Code with respect to those requirements including, but not limited to, development standards, buffers, or location requirements. The Planning and Zoning Director, or their designee, shall allow the rebuilding, relocation, or reconstruction so long as the following criteria are met:

- A. The proposed rebuilding, relocation, or reconstruction is necessary to allow use of the property consistent with or similar to the pre-acquisition use of the property.
- B. The size or intensity of the nonconformity is not increased.
- C. The rebuilding, relocation, or reconstruction will not result in other violations of the Zoning Ordinance which are dissimilar to the pre-acquisition use of the property.

Should the proposed rebuilding, relocation, or reconstruction not meet the aforementioned criteria per this Code and the Planning and Zoning Director, or their designee, is unable to approve the request, the request may be considered by the Board of Commissioners.

Where a party immediately adjacent to the subject residential property contests a decision of the Planning and Zoning Director, or their designee, the aggrieved party may file an application to appeal such decision subject to the requirements per Section 15.14 (A) of the Zoning Ordinance.

(Ord. No. 2024-O-006)

13.5 Discontinuance of Non-Conforming Uses. Any non-conforming use which is discontinued for a continuous period of six (6) months shall not be resumed, and the premises shall be occupied only by a use which conforms to the use regulations of the district in which it is located. (Ord. No. 2024-O-006)

13.6 Change of Non-Conforming Use. The non-conforming use of any building, structure or portion of that which is designed or intended for a use not permitted in the district in which it is located, may not be changed to another non-conforming use.

13.7 Discontinuance of Non-Conforming Building. When the non-conforming use of a building, structure, or portion of a structure, which is designed or intended for a use not permitted in the district in which it is located, is discontinued for a continuous period on one (1) year, such building structure, or portion of that shall be occupied only by a use which conforms to the use regulations of the district in which it is located.

13.8 Enlargement of Non-Conforming Uses. There shall be no extension or enlargement of a non-conforming uses except with the approval with of the Zoning Board of Appeals.

13.9 Enlargement of Non-Conforming Buildings. When a building, structure, or portion of that is designed or intended for a use not permitted in the district in which it is located, it shall not be enlarged, added to, or structurally altered in any manner except as may be required by law, unless the said building or structure and use of that shall be made to conform to the use regulations of the district in which it is located.

13.10 Repair and Alteration. Repairs and alterations necessary in the ordinary course and operation of a building or structure may be made to a non-conforming building or structure, except that no structural alterations shall be permitted, unless such structural change is for the purpose of conforming to the use of a non-conforming use or to introduce new non-conforming uses are prohibited.

A non-conforming sign shall not be replaced by another sign, except within the provisions of this article. The substitution or interchange of poster panels, boards or the like on non-conforming signs shall be permitted. Minor repairs and maintenance of non-conforming signs, such as re-painting, electrical repairs, and neon tubing shall be permitted. However, no structural repairs or changes in the size or shape of the sign shall be permitted, except to make the sign comply with the requirements of this Article.

13.11 Moving. No non-conforming building or structure shall be moved in whole or in part to any other location on the lot, except as required by law, unless every portion of such building or structure which is moved has the use if that made to conform to all the regulations of the district in which it is located.

13.12 A non-conforming use of land which is accessory to the non-conforming use of a building or structure shall be discontinued on the same date the non-conforming use of the building or structure is discontinued.

13.13 The sale of merchandise in the open, when not permitted by the provisions of this Ordinance shall be discontinued immediately.

13.14 Exempted Buildings, Structure and Uses.

13.14-1 No lawfully established building, structure or use shall be subject to the termination provisions solely for reason of being non-conforming with respect to the standards prescribed in this Ordinance for any of the following:

- a. Floor Area Ratio
- b. Development Standards
- c. Permitted Uses
- d. Buffers
- e. Gross Floor Area