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Section 12.1 Purpose

There are existing uses of land, structures, lots of record, signs, and site features (e.g., off-street parking, sidewalks, landscaping, lighting, signs, etc.) that were lawfully established before the effective date of this Ordinance or a subsequent amendment thereto, that now do not conform to standards and requirements of this Ordinance. Such uses, structures, lots, signs and site features are collectively referred to as "nonconformities." The purpose and intent of this article is to allow nonconformities to continue to exist, but to regulate and limit their continued existence and expansion so as to bring them into conformity to the extent that is reasonably practicable.

12.1.1 Continuation – Minor Repairs and Maintenance Encouraged

- (A) Continuation. Nonconformities are allowed to continue in accordance with the requirements of this article.
- (B) Maintenance Allowed. Nonconformities are allowed and encouraged to receive minor repairs and routine maintenance that are necessary to maintain the nonconformity and its surroundings in a safe condition and to protect against health hazards.
- (C) Strengthening Allowed. Nothing in this Ordinance shall prevent the strengthening or restoration to a safe or lawful condition of any part of any building or structure declared unsafe or unlawful by a duly authorized City official.
- (D) Change of ownership/tenancy. No change of title or possession or right to possession of property involved with a nonconformity shall be construed to prevent the continuance of such nonconformity.

Section 12.2 Nonconforming Lots of Record

The City of Boiling Spring Lakes has many nonconforming lots of record. These lots were created prior to a change in the minimum lot size for the subdivision of land – primarily due to the need to provide larger lots for on-site septic systems. Because they are considered to be nonconforming does not render them unbuildable nor insinuate a loss of value. Simply, the conditions for which subdivision of land occurred in the past is no longer the same. These nonconforming lots – which do not meet the minimum lot size or lot width requirements for the zoning district in which they are located – are subject to the provisions below. These lots are primarily in residentially zoned areas of the City. NOTE: Please contact the City's Zoning and Inspections department for specific questions about nonconforming lots.

12.2.1 Continuation

- (A) Nonconforming Lots under Common Ownership. If the owner of a nonconforming lot also owns land that abut said lot, combining a portion of this other land with the nonconforming lot will decrease the amount of nonconformity in terms of wide and/or area, without thereby creating, or increasing nonconformity on any lot, the lots may be combined in accordance with the ordinance.
- (B) Single Lot of Record in a Residential District. When a lot in a residential zoning district has an area or width which does not conform to the dimensional requirements of the

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district where it is located, but was of record as of the effective date of this ordinance, any use permitted in the zoning district within which the lot is located may be constructed, subject to compliance with setback standards and all other requirements of this ordinance.

- (C) Single Lot of Record in a Nonresidential District. When a lot in a nonresidential district has an area or width which does not conform to the dimensional requirements of the district where it is located, but was of record as of the effective date of this ordinance, then development on the lot may be permitted, subject to compliance with all required setbacks, and all other applicable development and design standards.

Section 12.3 Nonconforming Uses

The lawful use of building or premises existing at the time of the adoption of this Ordinance may be continued although such use does not conform with the provisions of this Ordinance, and such a building may be reconstructed or structurally altered and nonconforming uses therein changed subject to the following regulations:

- (A) Conversion. No nonconforming use shall be changed to another nonconforming use unless the use is determined by the UDO Administrator to be of equal or less intensity or density. A nonconforming use must continue to occupy the same lot or plot of land. In determining whether a nonconforming use is of equal or less intensity or density, the UDO Administrator shall consider:
 - (1) Anticipated traffic of each use
 - (2) Parking requirements of each use
 - (3) Anticipated number of persons on the premises of each use at a time of peak demand;
 - (4) The number of dwelling units
 - (5) Off-site impacts of each use, such as noise, glare, dust, vibration, or smoke.
- (B) Extension and enlargement. A nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this Ordinance, was manifestly designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings, new buildings, or to land outside the original building.
- (C) The structural alterations made in a nonconforming use shall not result in enlargement unless the use therein is changed to a conforming use; provided, however, that nonconforming uses damaged by fire, explosion, tornado, earthquake, hurricane or similar uncontrollable cause, may be repaired or rebuilt within one hundred eighty (180) days of the date of such damage, but not thereafter.
- (E) If a nonconforming use of land ceases for more than one hundred eighty (180) days, any further use of the land, building, or premises shall be of a use permitted within the zoning district for which it is located. This shall be construed to be mean that where a residential or nonresidential use in unoccupied for a period of more than one hundred eighty (180), then any further use of the premise shall be in accordance with the uses permitted within the zoning district for which it is located.

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Section 12.4 Nonconforming Structures

Where a lawful principal or accessory structure exists at the effective date of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions.

12.4.1 Replacement

(A) Residential Development. Nonconforming residential development subject to damage by fire, explosion, tornado, earthquake, hurricane or similar uncontrollable cause may be reconstructed in the same location and with the same footprint as existed prior to damage. In no instance shall replacement of a nonconforming residential structure increase the nonconformity or result in a larger structure than existed prior to damage.

(B) Nonresidential Development

(1) After Damage in Excess of 50 Percent of Building Value. In the event of damage by fire or other causes to an extent exceeding 50 percent of its building value prior to such damage, as established by the applicable County tax listing, reconstruction of a nonconforming structure shall be permitted only in compliance with the applicable dimensional requirements of this Ordinance.

(2) After Damage Less Than 50 Percent of Building Value. In the event of damage by fire or other causes to an extent not exceeding 50 percent of its building value prior to such damage, as established by the applicable County tax listing, reconstruction of a nonconforming structure shall be permitted, provided it is constructed:

(a) In accordance with a previously approved site plan or building permit, as applicable.

(b) In the same location and up to the same dimensions as originally existed.

(c) In compliance with the current dimensional requirements.

12.4.2 Enlargement and Relocation

(A) No such structure may be enlarged or altered in a way which increases its nonconformity.

(B) Should such a structure be moved for any reason for any distance whatever, it shall hereafter conform to the regulations for the district in which it is located after it is moved.

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Section 12.5 Nonconforming Sites

(A) For purposes of this section, the term “nonconforming site features” includes the following:

- (1) Nonconforming off-street parking
- (2) Nonconforming sidewalks
- (3) Nonconforming landscaping
- (4) Nonconforming perimeter buffers
- (5) Nonconforming screening walls or fences
- (6) Nonconforming lighting.

(B) If an application is filed for a building permit (including mechanical, electrical, HVAC, or other typical permit) for the remodeling or expansion of a structure and the development site contains one or more nonconforming site features identified in Subsection (A) above, and the value of the proposed improvements totals at least 25 percent of the assessed value of the existing structure, the applicant shall be required to address the nonconforming site feature as provided in this section.

(C) For purposes of determining if upgrading of nonconforming site features is required by this subsection, the cost of the remodeling shall be as shown on the approved building permit application. Assessed value shall be based on the most recently available Brunswick County tax records.

12.5.1 Remodeling of Buildings or Structures

If a building permit is required for interior or exterior remodeling of the building or structure, the remodeling or redevelopment shall require correction of existing on-site nonconforming off-street parking, landscaping, perimeter buffer, screening, and signage in accordance with this section.

(A) 25 Percent or Less of Structure Value. Remodeling in any continuous one-year period that costs 25 percent or less of the current assessed value of the structure shall not require any correction to nonconforming site aspects.

(B) More Than 25 Percent but Less Than 75 Percent of Structure Value. Remodeling in any continuous one-year period that costs more than 25 percent but less than 75 percent of the current assessed value of the structure shall require that a corresponding percentage of the off-street parking, landscaping, perimeter buffer, screening, and signage standards of this Ordinance be installed or upgraded on the site, until the site achieves 100 percent compliance. Sidewalk installation, if applicable, is not required.

- (1) Example: A hypothetical building is required to provide at least 40 off-street parking spaces, but the building site only includes 20 spaces. If the building is

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remodeled such that the cost of remodeling equals 30 percent of the building's assessed value, the remodeling project must add 12 parking spaces (30% x 40 required spaces). This increases the development's degree of compliance with off-street parking standards from 50 percent (20 of 40 required spaces) to 80 percent (32 of 40 required spaces).

- (C) 75 Percent or More of Structure Value. Remodeling projects that cost 75 percent or more of the current assessed value of the structure shall require 100 percent compliance with the off-street parking, sidewalk, landscaping, perimeter buffer, screening, and signage standards of this Ordinance.
- (D) Five or Fewer Additional Parking Spaces. When five or fewer additional off-street parking spaces are required under this subsection as a result of a remodeling project, such additional off-street parking is not required to be installed.

12.5.2 Additions or Expansions

Additions and expansions to structures on nonconforming sites shall require correction of existing on-site nonconforming off-street parking, landscaping, perimeter buffer, screening, and signage standards in accordance with this section. Additions to, and expansions of, existing structures which are nonconforming as to setbacks must meet current setback requirements.

- (A) Expansion of 50 Percent or Less of Gross Square Footage Over One Year. Expansions in any continuous one-year period, which result in a 50 percent or less increase in the gross square footage of the existing structure (measured at the beginning of the one-year period), require that a corresponding percentage of the off-street parking, landscaping, perimeter buffer, screening, and signage standards of this Ordinance be installed or upgraded on the site, until the site achieves 100 percent compliance. Sidewalk installation, if applicable, is not required.
 - (1) Example: if the addition is 25 percent of the area of the existing structure and the site contains only 50 percent of the required landscaping, 25 percent of the required landscaping for the entire site must be provided, thereby bringing the landscaping on the site to 75 percent of the total required. Existing landscaping on the site shall be retained or replaced but shall not count toward the required percentage of new landscaping.
- (B) Expansion of Greater Than 50 Percent of Gross Square Footage Over One Year. Expansions over any continuous one-year period, which result in a greater than 50 percent increase of the gross square footage of the existing structure (measured at the beginning of the one-year period), require the entire property to meet all of the off-street parking, sidewalk, landscaping, perimeter buffer, screening, and signage standards of this Ordinance.

Section 12.6 Nonconforming Signs

Signs which were in existence prior to the effective date of this ordinance, which do not conform to the provisions of this article are declared nonconforming signs. It is the intent of this section to recognize that the eventual elimination, as expeditiously and fairly as possible, of

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nonconforming signs is as much a subject of health, safety and welfare as is the prohibition of new signs that would violate the provisions of this article. It is also the intent of this section that any elimination of nonconforming signs shall be effected so as to avoid any unreasonable invasion of established property rights.

12.6.1 General Nonconforming Sign Provisions.

- (A) Any nonconforming sign may be continued in operation and maintenance after the effective date of this ordinance, provided that nonconforming signs shall not be:
- (1) Changed to or replaced with another nonconforming sign, including changing the sign face (except on changeable copy signs).
 - (2) Structurally altered so as to extend their useful life.
 - (3) Expanded.
 - (4) Relocated.
 - (5) Reestablished after damage or destruction of more than 50 percent of the value at the time of such damage or destruction.
 - (6) Modified in any way that would increase the degree of nonconformity of such sign.
 - (7) Except in the case of expansion, this shall not prevent repairing or restoring to a safe condition any part of a sign or sign structure of normal maintenance operations performed on a sign or sign structure.

Section 12.7 Nonconformance Created by Change in Zoning Boundaries or Regulations

Any nonconformance created by a change in district boundaries or ordinance regulations after the effective date of this ordinance shall also be governed by the provisions of this Ordinance.