

# 8

## NONCONFORMITIES

# Chapter 8. Nonconformities

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# CHAPTER 8.

# NONCONFORMITIES

## 8.1. GENERAL APPLICABILITY

### 8.1.1. Purpose and Intent

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In the provisions established by this Ordinance, there exist uses of land, structures, lots of record, signs, and site features (e.g., off-street parking, landscaping, etc.) that were lawfully established before this Ordinance was adopted or amended, that now do not conform to its terms and requirements. The purpose and intent of this chapter is to regulate and limit the continued existence of those uses, structures, lots of record, signs, and site features that do not conform to the provisions of this Ordinance, or any subsequent amendments.

### 8.1.2. Authority to Continue

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Nonconformities are allowed to continue, and are encouraged to receive routine maintenance in accordance with the requirements of this chapter as a means of preserving safety and appearance.

### 8.1.3. Determination of Nonconformity Status

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In all cases, the burden of establishing that a nonconformity lawfully exists shall be the responsibility of the owner of the land on which the alleged nonconformity is located.

### 8.1.4. Change of Tenancy or Ownership

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No change of title or possession or right to possession of property involved shall be construed to prevent the continuance of such nonconformities.

### 8.1.5. Increase in Nonconformity

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Except as authorized by this chapter, no person shall engage in activity that increases a nonconformity.

### 8.1.6. Minor Repairs and Maintenance

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Minor repairs and normal maintenance that are required to keep nonconforming uses, structures, lots of record, site features, and signs in a safe condition are permitted, provided the minor repair or maintenance does not extend, expand, or enlarge the nonconforming aspect. For the purposes of this section, "minor repair or normal maintenance" shall mean:

#### A. Maintenance of Safe Condition

Repairs that are necessary to maintain a nonconforming use, structure, lot of record, site feature, or sign in a safe condition; and

#### B. Maintenance of Land for Safety

Maintenance of land areas and site aspects to protect against health hazards and promote the safety of surrounding uses.

**SECTION 8.2: NONCONFORMING USES**

Subsection 8.1.7: Restoration or Reconstruction Following Casualty Damage

**8.1.7. Restoration or Reconstruction Following Casualty Damage**

**A. Outside Special Flood Hazard Area**

Restoration or reconstruction of a nonconformity outside the special flood hazard area following casualty damage shall be subject to the following standards.

**(1) Destruction or Damage of 50 Percent of Value**

- (a)** Except for single-family detached dwellings, in the event a structure housing a nonconformity is damaged or destroyed, to an extent that constitutes 50 percent or more of its assessed value (exclusive of foundations) at the time of damage or destruction, the use shall only be restored in a manner that conforms with the provisions of this Ordinance.
- (b)** New construction (including the establishment of off-street parking, landscaping, signage, and other site features) shall be in accordance with the requirements of this Ordinance.
- (c)** Nonconforming single-family detached dwellings damaged in excess of 50 percent of assessed value (exclusive of foundations) at the time of damage or destruction may be re-built subject to the standards in Section 8.1.7.A.2, Damage of Less Than 50 Percent of Value.

**(2) Damage of Less Than 50 Percent of Value**

- (a)** In the event a structure housing a nonconformity is damaged or destroyed, to an extent that constitutes less than 50 percent of its assessed value (exclusive of foundations) at the time of damage or destruction, it may be re-built to its previous form if a building permit for such repair or restoration is obtained within one year of the casualty damage, and repair or restoration is actually begun within one year after the date of such partial damage or destruction and is diligently pursued to completion.
- (b)** Wherever practical, redevelopment of a nonconforming use following casualty damage shall demonstrate greater compliance with this Ordinance than existed prior to the casualty.
- (c)** In no event shall repair or restoration increase, expand, or enlarge the degree of nonconformity.

**B. Within Special Flood Hazard Area**

Restoration or reconstruction of a nonconformity within the special flood hazard area following casualty damage shall be subject to the standards in Section 7.4.6.A.9, Repairs or Alterations to Existing Buildings.

**8.2. NONCONFORMING USES**

**8.2.1. General**

Nonconforming uses are declared generally incompatible with the permitted uses in the district in which they are located and with the provisions of this Ordinance. Nonconforming uses shall be subject to the standards in this subsection.

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**8.2.2. Change of Use**

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A nonconforming use shall not be changed to any other nonconforming use. Once a nonconforming use has ceased to operate or been discontinued for a period of 180 days or longer, it shall only be replaced with a conforming use.

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**8.2.3. Expansion and Enlargement**

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- A.** Except in accordance with this subsection, a nonconforming use shall not be enlarged, expanded in area, or intensified.
- B.** An existing nonconforming use may be enlarged into any portion of the structure where it is located provided the area proposed for expansion was designed and intended for such use prior to the date the use became a nonconformity. In no instance shall a nonconforming use be extended to additional structures or to land outside the original structure.
- C.** Open air uses that are nonconformities, including but not limited to outdoor sales areas, parking lots, or storage yards, shall not be extended to occupy more land area than that in use when the open air use became nonconforming.

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**8.2.4. Replacement of a Nonconforming Manufactured Home**

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Class B or C manufactured homes that are nonconforming uses may be replaced by a Class A manufactured home or another Class B manufactured home, provided:

- A.** Replacement of a nonconforming Class “B” or “C” manufactured home on an individual lot with another manufactured home shall be limited to Class “A” manufactured homes.
- B.** Replacement of a nonconforming manufactured home within a manufactured home park or manufactured home subdivision with another manufactured home shall be limited to Class “A” or Class “B” manufactured homes.
- C.** The replacement manufactured home is as large or larger than the manufactured home being replaced;
- D.** The replacement manufactured home is located on the lot within 180 days of removal of the original manufactured home;
- E.** All required permits related to sewage treatment are issued by the Albemarle Regional Health Services Department;
- F.** A masonry curtain wall is placed around a Class A manufactured home;
- G.** An all-weather base underpinning material is placed around a Class B manufactured home; and
- H.** The manufactured home complies with the setback requirements in this Ordinance, to the maximum extent practicable.

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**8.2.5. Nonconforming Manufactured Home Parks**

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- A.** Nonconforming manufactured home parks may continue in operation, and manufactured homes may be replaced, provided:
  - (1)** The park is not expanded in size; and

**SECTION 8.2: NONCONFORMING USES****Subsection 8.2.6: Nonconforming Campgrounds**

- (2) The number of manufactured homes is not increased beyond the number that existed on April 1, 2002.
- B.** Improvements to a water or sewage treatment system serving a nonconforming manufactured home park for the purpose of improving public health shall be permitted, provided the improvements do not result in an increase in the number of manufactured homes in the park.
- C.** Accessory structures not exceeding 100 square feet may be permitted within a nonconforming manufactured home park provided they comply with the applicable standards of this Ordinance.

**8.2.6. Nonconforming Campgrounds**

Campgrounds existing on January 1, 2013 shall receive conditional zoning approval to be a conforming use. Any campground without conditional rezoning approval shall be a nonconforming use. Nonconforming campgrounds and campground subdivisions are nonconforming uses subject to the following standards:

**A. General Standards**

- (1) Camping is an allowed use of land only in existing campgrounds and campground subdivisions.
- (2) Campers may not be modified in any manner that would render the unit non-transportable.
- (3) No tent or camper may be located on a campsite or campground subdivision for more than 90 days.
- (4) Additions to campers are not permitted.
- (5) Modifications to existing campgrounds are permitted provided the changes do not increase the nonconformity with respect to number of campsites that existed on January 1, 2013.

**B. Existing Campgrounds**

- (1) Existing campgrounds may not be expanded to cover additional land area or exceed the total number of campsites that existed on January 1, 2013.
- (2) Campers may not be placed on a permanent foundation.
- (3) Campsites may have a wooden platform not to exceed 100 square feet. Platforms must be 12 inches or less in height from existing grade. Handicap ramps are not subject to the maximum height requirement and square footage provided the ramp does not exceed five feet in width.
- (4) Campgrounds shall not include permanent residences, excluding one dwelling unit to be occupied by the park caretaker or manager.

**C. Existing Camper Subdivisions**

- (1) Camper lots shall be served by a centralized sewage system.
- (2) Single-family detached dwellings, Class A and Class B manufactured homes, and campers are permitted uses within camper subdivisions existing on January 1, 2013, provided they meet the following dimensional standards:
  - (a) Minimum front setback: ten feet;

**SECTION 8.3: NONCONFORMING STRUCTURES**

**Subsection 8.2.7: Nonconforming Warehouse Uses**

- (b) Minimum side setback: five feet;
  - (c) Minimum rear setback 25 feet;
  - (d) Maximum lot coverage 35 percent;
  - (e) For lands abutting an estuarine shoreline, the required CAMA setback or exemption shall control; and
  - (f) Campers that cannot reasonably comply with the required dimensional standards shall be located within the center of the lot.
- (3) One accessory structure, not to exceed 100 square feet, may be permitted on a camper lot provided it complies with the dimensional standards of this section.

**8.2.7. Nonconforming Warehouse Uses**

Nonconforming warehouse uses located within the General Business zoning district are not subject to the standards of Section 8.2.8 Discontinuance or Abandonment, and may be expanded by no more than 50% of the floor area as it existed on January 1, 2013, provided all new expansions, including outdoor storage, comply with the provisions of this Ordinance.

**8.2.8. Discontinuance or Abandonment**

- A.** Unless otherwise expressly stated in this Ordinance, a nonconforming use shall not be re-established after discontinuance for a period of 180 consecutive calendar days or more.
- B.** Efforts to renovate or repair the nonconforming use are not considered a vacancy, abandonment, or discontinuance, provided all appropriate permits or development approvals are obtained, and provided the renovation or repair is completed within 180 days from commencement of repair or renovation, and the use is re-established within 30 days from the time the renovation or repairs are completed. (Failure to complete the repairs or renovation within 180 days or re-establish the use within 30 days following repairs or renovation shall constitute discontinuance, and a nonconforming use shall not be re-established.)
- C.** In cases where the building or structure housing a nonconforming use is discontinued or abandoned, all associated open-air activities (e.g., storage) shall also cease.

**8.2.9. Accessory Uses**

Once a nonconforming principal use is discontinued, all associated accessory uses shall cease operations within 30 days.

**8.3. NONCONFORMING STRUCTURES**

**8.3.1. Relationship with Nonconforming Uses**

- A.** A nonconforming principal structure containing a conforming use may only continue in accordance with the provisions of this sub-section.
- B.** A nonconforming principal structure containing a nonconforming use may only continue in accordance with the standards in Section 8.2, Nonconforming Uses.

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**8.3.2. Continuation**

Normal repair and maintenance may be performed to allow the continued use of nonconforming principal and accessory structures.

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**8.3.3. Setbacks**

Structures that do not meet the minimum setback distances for the district where located may be redeveloped or reconstructed within the same footprint provided all the appropriate permits or development approvals are obtained in conjunction with, or prior to, any demolition of the existing structure; or with reduced minimum setbacks provided:

- A.** The land cannot reasonably be developed for the proposed use without a reduction in the minimum setbacks;
- B.** The reduction in minimum setbacks are necessitated by the lot's shape or size;
- C.** The land may be developed without a significantly-adverse impact on adjacent lands or the health and safety of the public;
- D.** Financial hardship to the land owner is not the sole reason for the need to reduce minimum setback requirements; and
- E.** In cases where minimum setbacks must be reduced, the reduction is the absolute minimum necessary to accommodate the proposed development.

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**8.3.4. Alteration or Expansion**

Expansion of the structure in a way that complies with applicable dimensional standards or that decreases the degree of nonconformity is allowed.

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**8.3.5. Relocation**

A nonconforming structure shall not be moved, in whole or in part, to another location on or off the parcel of land on which it is located, unless upon relocation it conforms to the requirements of this Ordinance.

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**8.4. NONCONFORMING LOTS OF RECORD**

No use or structure shall be located on a nonconforming lot of record established after August 2, 1965, except in accordance with the standards in this section.

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**8.4.1. Nonconforming Lot Area, Width, or Lot Coverage**

- A.** A legally established lot established after August 2, 1965 that does not conform to the minimum lot area, minimum lot width, or maximum lot coverage requirements for the zoning district where located shall be treated as a conforming lot in cases where the lot can comply with all other applicable dimensional or lot configuration standards applicable in the zoning district where located (see Chapter 3: Zoning Districts).
- B.** Uses subject to a minimum site size requirement are prohibited on a nonconforming lot smaller than the required minimum site size.



**SECTION 8.5: NONCONFORMING SIGNS**

**Subsection 8.4.2: Status of Structure on Nonconforming Lots**

**8.4.2. Status of Structure on Nonconforming Lots**

- A.** Conforming structures legally established on a nonconforming lot prior to the effective date of this Ordinance (or any amendment thereto) may be continued, enlarged, extended, reconstructed, or structurally altered in any way that is in conformance with the standards of this Ordinance.
- B.** Nonconforming structures legally established on a nonconforming lot prior to the effective date of this Ordinance (or any amendment thereto) may be continued, enlarged, or redeveloped only in accordance with the standards in Section 8.3, Nonconforming Structures.

**8.4.3. Development on Vacant Nonconforming Lots**

Development on a vacant nonconforming lot shall meet the minimum dimensional requirements (including setbacks) for the zoning district where located, to the maximum extent practicable, as determined by the Director.

**8.4.4. Governmental Acquisition of Land**

Conforming lots subject to governmental acquisition of a portion of the lot for a public purpose that results in the lot becoming nonconforming because it no longer complies with lot area or width standards of the district shall be deemed conforming upon receipt of a zoning compliance permit (see Section 2.4.9), and compliance with the following standards:

- A.** The development proposed complies with Table 4.1.1.A and Table 4.1.1.B, Summary Use Table.
- B.** The development proposed complies with the dimensional standards of this Ordinance, to the maximum extent practicable;
- C.** The development proposed is designed to comply with the off-street parking and landscaping standards of this Ordinance, to the maximum extent practicable;
- D.** The development proposed complies with all other standards and requirements of this Ordinance; and
- E.** The proposed development is designed and located in a way that is compatible with surrounding development.

**8.4.5. Change of Nonconforming Lot**

The boundaries, shape, or size of a nonconforming lot may be modified through a lot line adjustment, provided the lot line adjustment results in the lot becoming more conforming.

**8.5. NONCONFORMING SIGNS**

**8.5.1. In General**

Nonconforming signs may be continued, subject to the standards in this section.

- A.** No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign.

**SECTION 8.5: NONCONFORMING SIGNS****Subsection 8.5.2: Nonconforming Off-Premise Signs**

- B.** No nonconforming sign may be enlarged or altered in such a manner as to increase the nonconformity, including, but not limited to, increasing the display surface area, height, or decreasing the required minimum separation between signs.
- C.** When all or a portion of a nonconforming sign is removed as part of a state road widening project, the nonconforming sign may be relocated or replaced in a manner not to exceed the specifications of the original sign (i.e., height, size, lighting, etc.), subject to the following:
  - (1)** The relocation or replacement sign shall be parallel to the original sign location away from the right-of-way.
  - (2)** Application for a permit to replace a nonconforming sign in the right-of-way is made within 180 days after the existing nonconforming sign is removed.
  - (3)** The message of a nonconforming sign may be changed, provided no new nonconformities are created.
- D.** If an on-premise nonconforming sign is damaged by 25 percent or more of the sign's total replacement cost, the sign may not be reestablished or relocated except in accordance with the standards in this Ordinance.

**8.5.2. Nonconforming Off-Premise Signs****A. Replacement in Same Location**

A nonconforming off-premise sign may be replaced at the same location, if it complies with the following:

- (1)** The new sign does not exceed the specifications of the nonconforming sign being replaced in terms of height, display surface area, number of sides, setback, and illumination.
- (2)** The application for a sign permit to erect the new sign is made within 180 days of removal of the existing nonconforming sign.
- (3)** The new sign is located within the footprint boundaries of the replaced nonconforming off-premise sign.

**B. Replacement on Same Lot**

A nonconforming off-premise sign may be relocated on the same lot, provided it complies with the following:

- (1)** Not exceed 300 square feet in surface area.
- (2)** Not be less than 300 feet from a pre-existing off-premise sign on the same side of the road.
- (3)** Not be located closer than 15 feet to a street right-of-way or within a sight triangle.
- (4)** Not exceed a height of 20 feet measured from ground level. In cases where the adjacent grade has an elevation below the road bed, the sign may maintain a height that is the lesser of 20 feet above the road bed or 25 feet from ground level.

**SECTION 8.5: NONCONFORMING SIGNS**

**Subsection 8.5.2: Nonconforming Off-Premise Signs**

**C. Maintenance**

- (1)** All off-premises signs and all components thereof, including without limitation supports, braces, and anchors, shall be kept in a state of good repair. With respect to off-premises freestanding signs, components (supporting structures, back, etc.) not bearing a message shall be constructed of materials that blend with the natural environment or shall be painted a neutral color to blend with the natural environment.
- (2)** If an off-premises sign other than a billboard advertises a business, service, commodity, accommodation attraction or other enterprises or activity that is no longer operating or being offered or conducted, the sign shall be considered abandoned and shall, within 30 days after such abandonment, be removed by the sign owner, owner of the property where the sign is located, or other party having control over the sign.
- (3)** If the message portion of an off-premises sign is removed, leaving only the supporting “shell” of a sign or the supporting braces, anchors, or similar components, the owner of the sign or the owner of the property where the sign is located or other person having control over the sign shall, within 30 days of the removal of the message portion of the sign, either replace the entire message portion of the sign or remove the remaining components of the sign.
- (4)** The area within ten feet in all directions of any part of an off-premises freestanding sign shall be kept clear of all debris and all undergrowth more than 12 inches in height.

**D. Exterior Lighting**

Off-premise signs shall comply with the following exterior lighting standards:

- (1)** No off-premises sign within 250 feet of an existing residential use not owned by the owner of the sign may be illuminated between the hours of 12:00 midnight and 6:00 a.m., unless the impact of the lighting beyond the boundaries of the lot where the sign is located is less than 1.5 footcandles at the lot line.
- (2)** Lighting directed toward an off-premises sign shall be shielded so that it illuminates only the face of the sign and does not shine directly into a public right-of-way or residential development.
- (3)** No off-premises sign may be illuminated by flashing or intermittent lights or lights of changing degrees of intensity, except signs indicating the time, date, weather conditions, or similar information.

**E. Protection of Existing Off-site Vegetation**

In no instance shall the owner of an off-premise sign damage, trim, destroy, or remove any trees, shrubs, or other vegetation located:

- (1)** Within the right-of-way of any public street or road, unless the work is done in accordance with the express written authorization of the NCDOT;
- (2)** On property that is not under the ownership or control of the person doing or responsible for such work, unless the work is done in accordance with the express authorization of the person owning the property where such trees or shrubs are located; and,

- (3) In any area where the trees or shrubs are required to remain under a permit issued in accordance with this Ordinance.

**F. Abandonment**

If a nonconforming off-premise sign remains blank for a continuous period of 12 months, it shall be deemed abandoned and shall, within 30 days of abandonment, be altered to comply with Section 5.12, Signage, or be removed by the sign owner, owner of the property where the sign is located, or other person having control over the sign. For purposes of this section, a sign is "blank" if:

- (1) It advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted.
- (2) The advertising message it displays becomes illegal in whole or substantial part.
- (3) The advertising copy, other than the rental of the sign, is removed.

**8.6. NONCONFORMING SITES**

**8.6.1. Purpose**

The purpose of this section is to provide a means whereby the county may require certain nonconforming site features to be brought into compliance with the standards of this Ordinance as part of remodeling or expansion of a structure.

**8.6.2. Applicability**

- A.** For purposes of this section, the term “nonconforming site features” includes the following:
  - (1) Nonconforming off-street parking;
  - (2) Nonconforming landscaping;
  - (3) Nonconforming perimeter buffers; and
  - (4) Nonconforming screening walls or fences.
- B.** If an application is filed for a building 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, the applicant shall be required to address the nonconforming site feature as provided in this section.
- C.** County staff may develop administrative guidelines to assist in the implementation of this section, including guidelines for the resolution of conflicts when it may not be possible for one or more types of nonconforming site features to be brought into compliance with the requirements of this Ordinance because of particular site constraints or impacts on adjacent sites.

**8.6.3. Determination of Cost and Assessed Value**

- A.** 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.

- B.** Assessed value shall be based on the most recently available Currituck County tax rolls.

#### **8.6.4. 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. Off-Street Parking, Landscaping, Perimeter Buffers, Signage, and Screening**

###### **(1) 25 Percent or Less of Structure Value**

Remodeling in any continuous five-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.

###### **(2) More Than 25 Percent but Less Than 75 Percent of Structure Value**

Remodeling in any continuous five-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, and screening standards of this Ordinance be installed or upgraded on the site, until the site achieves 100 percent compliance.

*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 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).*

###### **(3) 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, landscaping, perimeter buffer, screening, and signage standards of this Ordinance.

###### **(4) Three or Fewer Additional Parking Spaces**

When three 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.

#### **8.6.5. Additions and 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.

##### **A. Off-Street Parking, Landscaping, Perimeter Buffers, Signage, and Screening**

###### **(1) Expansion of 50 Percent or Less of Gross Square Footage Over Five Years**

Expansions in any continuous five-year period, which result in a 50 percent or less increase in the gross square footage of the existing structure (measured at

**SECTION 8.6: NONCONFORMING SITES**

**Subsection 8.6.6: Physically Constrained Properties- Comply to Maximum Extent Practicable**

the beginning of the five-year period), require that a corresponding percentage of the off-street parking, landscaping, perimeter buffer, and screening standards of this Ordinance be installed or upgraded on the site, until the site achieves 100 percent compliance.

*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.*

**(2) Expansion of Greater Than 50 Percent of Gross Square Footage Over Five Years**

Expansions over any continuous five-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 five-year period), require the entire property to meet all of the off-street parking, landscaping, perimeter buffer, screening, and signage standards of this Ordinance.

**B. Addition of Outdoor Storage Area Only**

When only outdoor operations/storage/display areas are being added or increased on a site, the percentage increase in outdoor operations area shall require a corresponding percentage increase in perimeter buffers and screening. Perimeter buffer and screening augmentation shall be located so as to achieve the performance objectives in Section 5.2, Landscaping Standards, with priority given to screening the impacts of outdoor operations.

**8.6.6. Physically Constrained Properties- Comply to Maximum Extent Practicable**

Lands that are physically constrained (due to limited size, topography, or other environmental considerations) from complying with these provisions shall comply, to the maximum extent practicable, as determined by the Director.