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**SECTION 3.1 RELATIONSHIP WITH OTHER ADOPTED PLANS**

It is the intention of the City Council that this chapter implements the planning policies adopted by the governing board. While the City Council reaffirms its commitment that this Ordinance and any subsequent amendments to it are in conformity with such adopted plans, the City Council hereby expresses its intent that neither this Ordinance nor any amendment to it may be challenged on the basis of any alleged nonconformity with any adopted planning document.

**SECTION 3.2 RESERVED**

**SECTION 3.3 TRANSITIONAL ZONING/VESTED RIGHTS**

**3.3.1 APPROVALS GRANTED BEFORE UDO EFFECTIVE DATE**

Building permits, variances, conditional/special use permits, preliminary or final subdivision plat approval, site plan approval, and other similar development approvals that were valid on \_\_\_\_\_ shall remain valid until their expiration date. Development may be completed in accordance with such approvals, even if such building, development or structure does not fully comply with the provisions of this Ordinance. If building construction is not commenced and diligently pursued in the time allowed under the original approval or any extension granted, then the building development or structure shall meet the standards of this Ordinance at the time of re-application.

**3.3.2 APPLICATIONS IN PROGRESS PRIOR TO UDO EFFECTIVE DATE**

Applications for building permits, variances, special / conditional use permits and other similar development approvals that were submitted in complete form and accepted for review by the Administrator on \_\_\_\_\_ shall be reviewed wholly under the terms of the ordinance in effect on \_\_\_\_\_. Any application



submitted shall be acted on for approval within one hundred-eighty (180) days from the effective date of this Ordinance. Any re-application of an expired submittal may request an extension up to one hundred-eighty (180) days from the Board of Adjustment. Only one (1) extension is permitted under this provision.

### **3.4.3 VESTED RIGHTS**

Notwithstanding the above, the provisions of this UDO shall not apply to:

- A. Property upon which a valid statutorily approved vested right (per NCGS **§160A-385.1** on \_\_\_\_\_ is in place as described in Section 5.10; or,
- B. A judicially established common law vested right where:
  - 1. the owner has made substantial expenditures;
  - 2. the expenditures were made in good faith;
  - 3. the expenditures were made in reliance upon a valid governmental approval; and,
  - 4. the owner would be harmed without a vested right.

### **3.4.4 VIOLATIONS CONTINUE**

This Ordinance consolidates one or more previous stand-alone ordinances. Violations of those previous ordinances will continue to be a violation of this Ordinance and be subject to the violations and penalties provisions contained in Chapter 18 herein. The adoption of this Ordinance shall not affect any pending or future action to abate violations of previous ordinances.

### **3.4.5 NONCONFORMITIES**

- A. Any nonconforming situation determined to exist under this ordinance that lawfully existed under the previous zoning or subdivision ordinance or any other ordinance identified in Section 1.6 will also be considered to be a non-conformity under this Ordinance, so long as the situation that resulted in the nonconforming status under the previous ordinance continues to exist.
- B. When a lot is used for a purpose that was a lawful use immediately prior to the effective date of this Ordinance, and this Ordinance no longer classifies such use as either a permitted or conditional use in the zoning



district in which it is located, such use shall be considered a “non-conforming use” and shall be subject to the provisions of Section 3.5 of this Ordinance. Where any building, structure, or lot that legally existed on the effective date of this Ordinance and which does not meet all the standards set forth in this Ordinance, such building, structure or lot shall be considered “non-conforming” and shall be subject to the provisions of Section 3.5 of this Ordinance.

### **SECTION 3.4 NON-CONFORMING SITUATIONS**

The purpose of this section is to regulate the continued existence of uses and structures established prior to the effective date of these regulations or any amendment subsequent thereto that does not conform to these regulations. Given the fact that the implementation of this UDO and previous zoning ordinances has in the past and will in the future result in the creation of a number of nonconformities, some of which are viable uses which do not produce substantial negative impacts, this Ordinance allows the Administrator and the Board of Adjustment to issue permits for the expansion and or replacement of nonconforming uses and structures in certain situations.

#### **3.4.1 NON-CONFORMING PRINCIPAL USES (EXCLUDING SINGLE- AND TWO-FAMILY RESIDENTIAL USES, MANUFACTURED HOMES, AND MANUFACTURED HOME PARKS)**

- A. Nonconforming uses of land or structures, and nonconforming structures that contain nonconforming uses may continue only in accordance with the provisions of this Section.
- B. Normal structural repair and maintenance may be performed to allow the continuation of the nonconforming use.
- C. A nonconforming use may not be physically expanded through additions to the structure in which the nonconforming use is located (either principal or accessory structures) except in conformance with a Special Exception permit issued by the Board of Adjustment in accordance with Section 5.12. Any occupancy of additional lands beyond the boundaries of the lot on which the nonconforming use is located shall be prohibited.
- D. A nonconforming use may be changed to another nonconforming use of similar or less intensity through issuance of a permit by the Administrator. Such permit may be issued if the Administrator determines that:
  - 1. The new use is allowed only in the same or more restrictive zoning districts as the previous use [refer to Section 5.16.3D3 for the list of zoning districts and their degree of restrictiveness].



2. Reserved
  3. The hours of operation generally can be expected to be similar (i.e., with regard to opening and/or closing times) or fewer than the previous use; and,
  4. The days of operation generally can be expected to be similar (or fewer) than the previous use; and,
  5. The amount of required parking for the use is no greater than ten (10) percent greater than the previous use; and,
  6. The level of traffic generated by the new use can be expected to be no more than ten (10) percent greater than the previous use as determined by the most recent version of the ITE (International Traffic Engineers) manual.
  7. If one (1) or more of the above conditions are not met, a change in principal use may be allowed through the issuance of a Special Exception by the Board of Adjustment in accordance with Section 5.12.
- E. Once a nonconforming use has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
- F. If a nonconforming use is abandoned for a period of one hundred-eighty (180) days or more (this period being measured from the day the use was discontinued), the use shall not be allowed to reestablish. All new uses on the lot in question shall be conforming (i.e., a use shown as either a “use by right” or “conditional use” as indicated in Table 7.1-1, “Table of Uses”.) Notwithstanding, in the settlement of an estate or foreclosure proceedings, such period shall be increased to one year. The Administrator shall be authorized to extend this period, on a case-by-case basis, for up to two (2) additional one-year periods upon documentation that such additional time is needed to settle the estate.
- G. If a principal or accessory structure housing the nonconforming use is destroyed [i.e., receiving damage to an extent of more than fifty (50) percent of its assessed tax value at the time of destruction], the structure may be allowed to be rebuilt and to house the former nonconforming use in accordance with a permit issued by the Administrator per Section 3.5.1(D). An application for reconstruction must be filed with the Administrator within one (1) year of the date of destruction.



**3.4.2 NONCONFORMING PRINCIPAL USE- MANUFACTURED HOMES (NOT LOCATED WITHIN A MANUFACTURED HOME PARK)**

A nonconforming manufactured home not located within a manufactured home park may be replaced by another manufactured home under the following conditions:

- A. The replacement manufactured home must be a Class A or B and is placed on the property within one hundred-eighty (180) days following removal of the existing manufactured home. A multi-sectional home may not be replaced with a single-sectional home.
- B. In lieu of the required masonry foundation, the property owner may submit a guarantee to the City, in the form of a surety bond; escrow account that is jointly in the name of the City of Lowell and the property owner; a note and deed of trust on the unencumbered value of the parcel of land; or a pledge of securities, in the amount equal to the cost of improvements. In such cases where such guarantee is accepted by the City, occupancy of said manufactured home shall be on a temporary basis for a period jointly agreed upon by the City and the applicant up to a period of one hundred-eighty (180) days, in which such time the City shall authorize that temporary electric power be connected to the replacement manufactured wall and that permanent electric power not be granted until the required masonry improvements are completed. Should such installation not have been completed by the end of such period, the Administrator shall be authorized to have the temporary power removed, or foreclose on the guarantee and have the necessary masonry improvements installed. This requirement shall not apply to manufactured homes that are Temporary Manufactured Homes on the lot.
- C. The replacement manufactured home shall contain a front porch, a minimum of sixty-four (64) square feet.
- D. Normal structural repair and maintenance on the manufactured home may be performed. A nonconforming manufactured home cannot be expanded, except: (i) to bring the structure into compliance with the local government's minimum housing code; or (ii) for the placement of external appurtenances such as decks, porches, stairs, etc. Accessory structures may be placed on the lot in association with the manufactured home, so long as the yard requirements and all other applicable criteria for the placement of accessory structures contained in Section 9.9 are met.
- E. If the nonconforming manufactured home is destroyed (i.e.,



receiving damage to an extent of more than fifty (50) percent of its assessed tax value at the time of destruction], the manufactured home may be replaced in accordance with a permit issued by the Administrator and in accordance with the criteria contained in Section 3.5.2. Application for said permit shall be made within one (1) year of the date of destruction.

**3.4.3 NONCONFORMING ACCESSORY MANUFACTURED HOME (NOT LOCATED IN A MANUFACTURED HOME PARK)**

A nonconforming manufactured home not located within a manufactured home park may be replaced by another manufactured home under the following conditions:

- A. The replacement manufactured home can be a Class A, B or C and placed on the property within one hundred-eighty (180) days following removal of the existing manufactured home. A multi-sectional home may not be replaced with a single-sectional home.
- B. In lieu of the masonry foundation, the property owner may submit a guarantee to the City, in the form of a surety bond; escrow account that is jointly in the name of the City of Lowell and the property owner; a note and deed of trust on the unencumbered value of the parcel of land; or a pledge of securities, in the amount equal to the cost of improvements. In such cases where such guarantee is accepted by the City, occupancy of said manufactured home shall be on a temporary basis for a period jointly agreed upon by the County and the applicant up to a period of one hundred- eighty (180) days, in which such time the City shall authorize that temporary electric power be connected to the replacement manufactured wall and that permanent electric power not be granted until the masonry improvements are completed. Should such installation not have been completed by the end of such period, the Administrator shall be authorized to have the temporary power removed, or foreclose on the guarantee and have the necessary masonry improvements installed.
- C. The replacement manufactured home shall contain a front porch, a minimum of sixty-four (64) square feet.
- D. Normal structural repair and maintenance on the manufactured home may be performed. A nonconforming manufactured home cannot be expanded, except: (i) to bring the structure into compliance with the local government's minimum housing code; or (ii) for the placement of external appurtenances such as decks, porches, stairs, etc. Accessory structures may be placed on the lot



in association with the manufactured home, so long as the yard requirements and all other applicable criteria for the placement of accessory structures contained in Section 9.9 are met.

- E. If the nonconforming manufactured home is destroyed (i.e., receiving damage to an extent of more than fifty (50) percent of its assessed tax value at the time of destruction), the manufactured home may be replaced in accordance with a permit issued by the Administrator and in accordance with the criteria contained in Section 3.5.2. Application for said permit shall be made within one (1) year of the date of destruction.

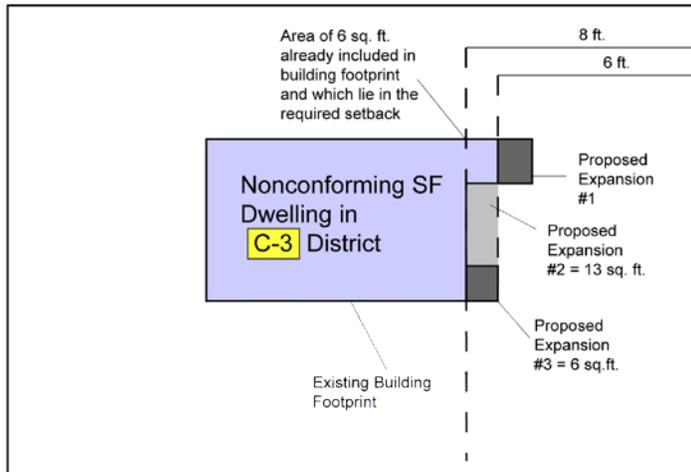
**3.4.4 NONCONFORMING PRINCIPAL USE- SINGLE- OR TWO-FAMILY DWELLINGS INCLUDING ACCESSORY STRUCTURES (OTHER THAN MANUFACTURED HOMES)**

- A. Nonconforming single- and two-family residential principal and accessory structures (other than manufactured homes) may be continued in accordance with the provisions of this Section.
- B. Normal structural repair and maintenance may be performed to allow the continuation of the nonconforming use.
- C. A nonconforming single- or two-family dwelling or accessory structure may be physically expanded (through additions or expansions) so long as the addition or expansion does not increase the number of dwelling units and so long as the front, side and rear yard requirements of the underlying zoning district are met. If any of these yard requirements cannot be met, the expansion may only occur through the issuance of a Special Exception by the Board of Adjustment in accordance with all applicable provisions of Section 5.12.

Notwithstanding, such Special Exception may only be issued by the Board of Adjustment for an expansion of an existing nonconforming structure if that expansion does not extend any closer to a property line than the existing structure and the expansion into a required yard setback does not more than double the area of encroachment already existing within that required yard setback. (Refer to Figure 3.5.4-1 below for an example of how this is to be interpreted.) Any occupation of additional lands beyond the boundaries of the lot on which the nonconforming use is located shall be prohibited. All non-conforming residential principal structures in non-Residential zoning districts (except C-1) shall use the RS-8 or the underlying district setback requirements, whichever is more restrictive, for residential uses.



Figure 3.5.4-1



**Facts**

- Single-Family dwellings not allowed in C-3 district
- Existing sideyard setback = 6 ft.
- Required sideyard setback in RS-8 district = 8 ft.
- Board of Adjustment can't issue special exception for proposed expansion #1 due to the fact that it further encroches into the existing sideyard setback

- Board of Adjustment can't issue special exception for proposed expansion #2 due to the fact that its area is more than double the area of the existing building footprint within the required setback

- Board of Adjustment can consider special exception for proposed expansion #3 because it neither encroches on the existing sideyard setback, and is less than double the area of the existing building footprint within the required setback

- D. Once a nonconforming single- or two-family dwelling has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
- E. If a nonconforming single- or two-family dwelling is abandoned, the use shall not be allowed to reestablish. All new uses in said structure shall be conforming. Notwithstanding, with regard to the settlement of an estate or foreclosure proceedings, such period shall be increased to one (1) year. The Administrator shall be authorized to extend this period, on a case-by-case basis, for up to two (2) additional one-year periods upon documentation that such additional time is needed to settle the estate.
- F. If said principal or accessory structure is destroyed (i.e., receiving damage to an extent of more than fifty (50) percent of its assessed tax value at the time of destruction), the residential structure may be allowed to be rebuilt in accordance with a permit issued by the Administrator per Section 3.5.5(C). Application for such permit must be made within one (1) year of the date of destruction.

**3.4.5 OTHER NONCONFORMING PRINCIPAL STRUCTURES**



- A. Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.
- B. An existing nonconforming structure may not be enlarged or altered in a way that increases its nonconformity except in conformance with a Special Exception permit issued by the Board of Adjustment in accordance with all applicable provisions of Section 5.12 of this Ordinance. One such provision is that a Special Exception may only be issued by the Board of Adjustment for an expansion of an existing nonconforming structure if that expansion does not extend any closer to a property line than the existing structure and the expansion into a required yard setback does not more than double the amount of encroachment already existing within that required yard setback. Refer to Figure 3.5.4-1 for an example of how this is to be interpreted.
- C. If such nonconforming structure is damaged to an extent greater than fifty (50) percent of its assessed tax value, it may be rebuilt only after the issuance of a permit from the Administrator. Application for such permit shall be made within one (1) year of destruction. In the issuance of said permit the Administrator shall follow these standards:
  1. If the foundation for the replacement structure is moved or removed, the structure shall be rebuilt in as conforming a manner as possible. If the original foundation is used, the structure may be rebuilt at that same location on the lot.
  2. A nonconforming structure shall not be rebuilt in a manner that increases its nonconformity.
  3. A structure rebuilt in accordance with this subsection shall not have a gross floor area larger than the structure it replaced unless all setback and related requirements (e.g., landscaping, parking, etc.) are met for the zoning district in which it is located.
  4. If the rebuilt structure is still nonconforming, the developer will be asked to meet, to the greatest degree feasible, each of the following requirements for that use:
    - a. Buffer yard requirements, per Section 11.3.
    - b. Off-street parking requirements, per Chapter 10
    - c. Landscaping and street yard tree requirements, per Section 11.4



5. Greatest priority will be given by the Administrator to satisfying said buffering requirements, followed in decreasing levels of priority by said off-street parking requirements and said landscaping and street tree requirements. The Administrator shall have the authority to waive and / or modify any of said requirements, on a case-by-case basis, in order to best accommodate that development with respect to the lot upon which it is located and surrounding land uses and development patterns.
  6. If the application to rebuild is submitted more than one (1) year after the date of destruction, the structure may be built only in accordance with the requirements of this Ordinance.
- D. Should a nonconforming structure be moved for any distance on the lot upon which it is located, whenever possible, it shall be moved so as to make the structure conforming. Otherwise the structure, if moved, shall be placed on the lot in a manner as conforming as possible.

#### **3.4.6 NONCONFORMING ACCESSORY STRUCTURES**

- A. A nonconforming accessory structure may be expanded only if the nonconforming features of that structure are expanded in a manner that does not increase the degree of nonconformity.
- B. Replacement of any destroyed nonconforming accessory structure is allowed in a manner consistent with the provisions of Section 3.5.5(C).

#### **3.4.7 NONCONFORMING LOTS**

A nonconforming vacant lot may be developed for any of the uses permitted by this Ordinance in the zoning district in which it is located, provided that the use meets all applicable yard, bulk, and dimensional requirements for that zoning district.

Notwithstanding, in any zoning district where, prior to the effective date of this Ordinance: (i) a lot was recorded in a subdivision whose plat was filed with the Gaston County Office of the Register of Deeds; (ii) such lot was not in violation of the Lowell Zoning Ordinance or Subdivision Ordinance in effect at the time of adoption of this Ordinance; and, (iii) such lot does not comply with this Ordinance's minimum lot area and/or width requirements for the zoning district in which such lot is located, then such lot may be used for any use permitted in that zoning district. In addition, the Administrator may use the front, side, and rear yard setbacks for principal



structures as they appear on the recorded final plat or in the recorded deed for any additional or expanded principal structures on the lot in question.

#### **3.4.8 NONCONFORMING SCREENING AND LANDSCAPING**

In accordance with Sections 11.3 and 11.4 of this Ordinance, certain uses are required to provide screening and / or landscaping on-site. Except as herein provided, an expansion of an existing use which is deficient in screening and / or landscaping or a change in principal use cannot occur without the required screening and / or landscaping having first been provided on site. The requirements for providing such screening and/or landscaping may be waived or modified by the Administrator on a one-time basis for any principal use (or for a shopping center, office park, or other multi-tenant development), where building expansion of ten (10) percent [or five (5) percent if adjacent to a residential zoning district] occurs.

#### **3.4.9 NONCONFORMING OFF-STREET PARKING AND / OR LOADING**

- A. On any lot which contains a use which does not comply with the off-street parking and / or loading regulations contained in Section 10.5 of this Ordinance, a Certificate of Occupancy shall not be issued for any expansion [except as provided in Section 3.5.9(B)] or any change of use, either of which would result in a need to increase the number of off-street parking and/or loading spaces required (except as herein provided), until the off-street parking and paving requirements have been met.
- B. A Certificate of Occupancy may be issued when there has been a change in a principal use and the number of off-street parking spaces required for the new use (per Chapter 10 of this Ordinance) is within ten (10) percent or ten (10) spaces, whichever is less, of the number of off-street parking spaces actually provided. For a greater reduction of off-street parking space requirements, but not to exceed fifteen (15) percent of the required number of parking spaces, the expansion may only occur through the issuance of a Special Exception by the Board of Adjustment in accordance with all applicable provisions of Section 5.12.
- C. Such relief may be granted on a one-time only basis per lot or planned development. In instances where such relief is provided, the additional parking spaces need not be paved (but shall have a graded gravel, crushed-stone or similar dust-reducing surface) if the parking lot prior to said expansion was not paved.
- D. Any use that is nonconforming with respect to off-street parking and which



is destroyed [i.e., receives damage to an extent greater than fifty (50) percent of its assessed tax value at the time of destruction) may be rebuilt so long as the number of off-street parking spaces is not reduced and the zoning permit application for reconstruction is submitted to the Administrator within one (1) year of the date of destruction.

#### **3.4.10 NONCONFORMING SIGNS**

- A. Subject to the restrictions of this Section, nonconforming signs that were otherwise lawful on the effective date of this Ordinance may be continued.
- B. No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign or causes a previously conforming sign to become nonconforming. This provision shall not apply when the nonconformity is the result of the acquisition of right-of-way by a public entity. The administrator of such jurisdiction in such instances may authorize the continuation or replacement of a sign in the right-of-way with prior approval of NCDOT.
- C. A nonconforming sign may not be moved or sign structure replaced except to bring the sign into complete conformity with this section 3.5.10 and applicable portions of Chapter 12 for reference of requirements. Once a nonconforming sign is removed (i.e., the removal of the structural appurtenances above the base or footing, and / or removal of the footing) from the premises or otherwise taken down or moved, said sign only may be replaced or placed back into use with a sign that is in conformance with the terms of this Ordinance. Refer to Figure 3.5.10-1 below for examples of how this is to be interpreted.



Figure 3.5.10-1

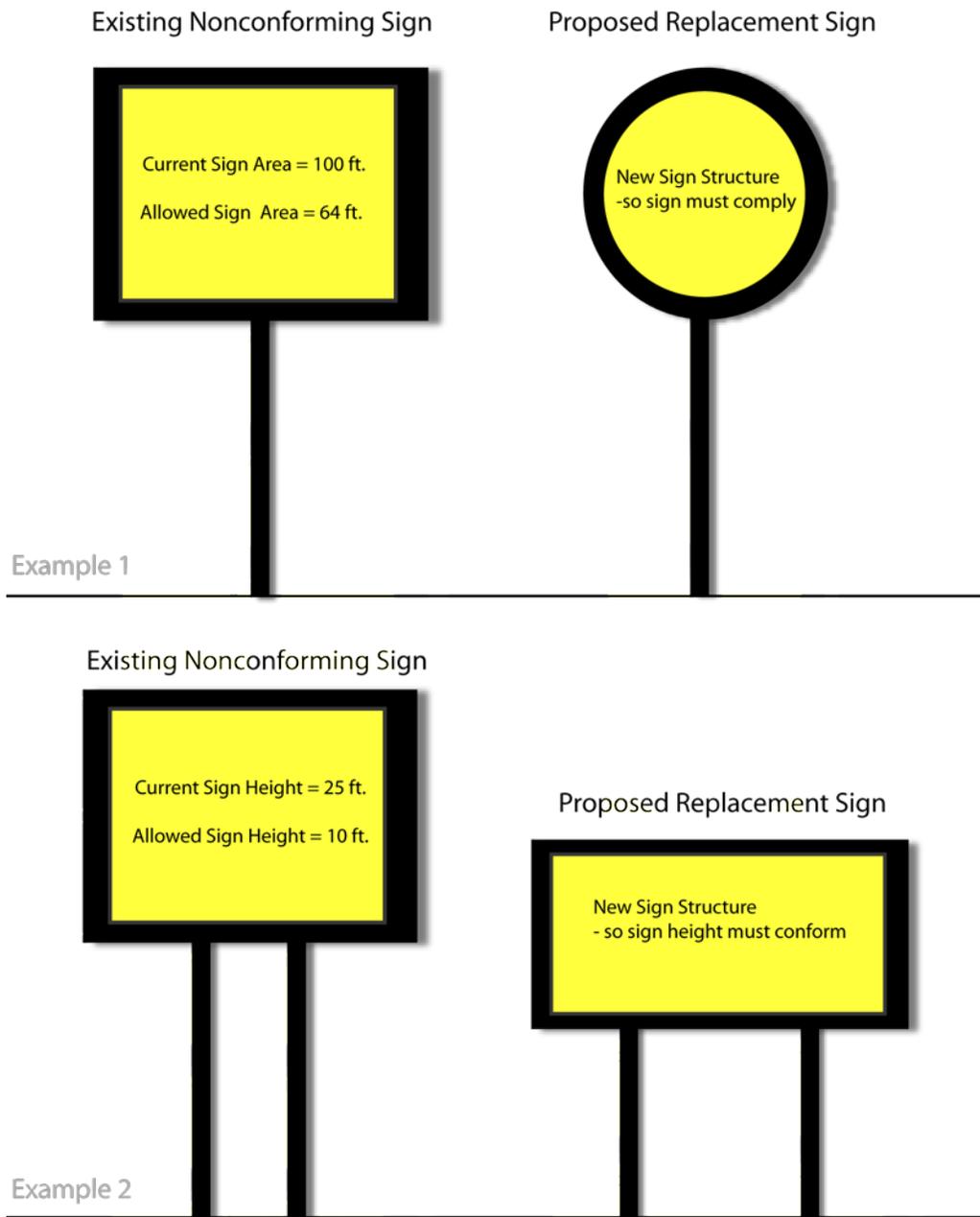
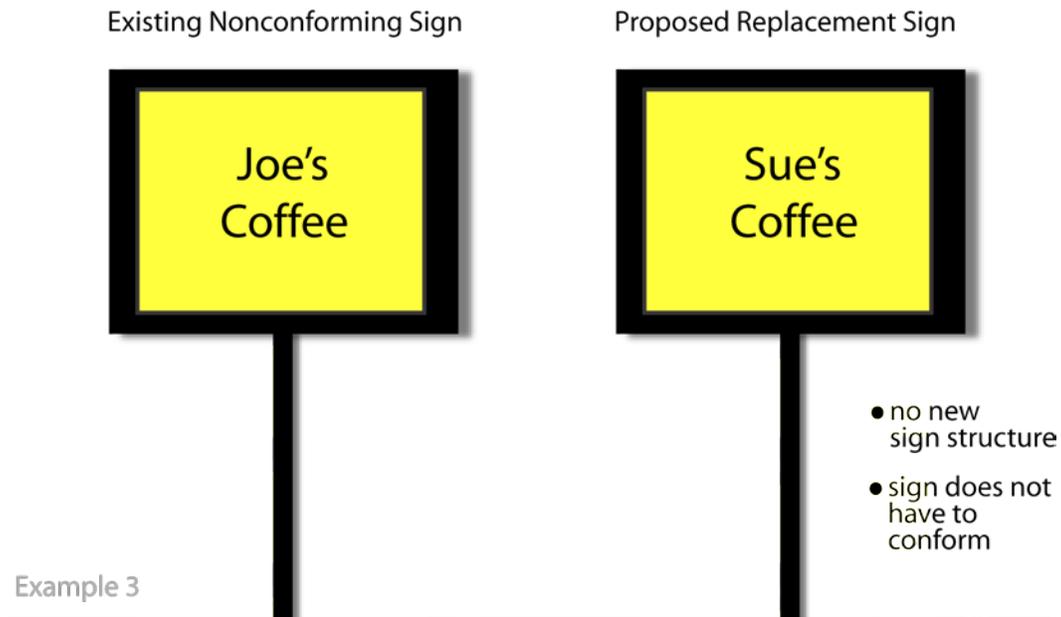




Figure 3.5.10-1 (continued)



- D. Minor repairs and maintenance of nonconforming signs necessary to keep a nonconforming sign in sound condition are permitted.
- E. If a nonconforming sign is destroyed by natural causes, it may not thereafter be repaired, reconstructed, or replaced except in conformity with all the provisions of this Ordinance, and the remnants of the former sign structure shall be cleared from the land. For purposes of this Section 3.5.10, a nonconforming sign shall be considered "destroyed" if it receives damage to an extent of greater than fifty (50) percent of its current replacement cost.
- F. Notwithstanding any other provisions contained in this Chapter, the message of a nonconforming sign may be changed so long as this does not create any new non-conformity.
- G. If a nonconforming on-premise sign remains blank for a continuous period of twelve (12) months, that sign shall be deemed abandoned and, within thirty (30) days after such abandonment, be altered to comply with this Ordinance or be removed by the sign owner, owner of the property where the sign is located, or other person having control over such sign. For purposes of this section, a sign shall be deemed "blank" if:



1. It advertises a business, service, commodity, accommodations, attraction, or other enterprise or activity that is no longer operating, offered, or being conducted; or
  2. The advertising message it displays becomes illegible in whole or substantial part; or
  3. It does not contain an advertising message. (For such purposes, the terms "Sign For Rent," "Sign For Lease," "Sign For Sale," etc., shall not be deemed to be an advertising message).
- H. Reserved
- I. All other advertising signs which are nonconforming by virtue of their height, setback, size, spacing (i.e., distance between two (2) advertising signs, or location in a zoning district other than a residential zoning district), shall not be required to be removed and may continue subject to all other applicable portions of this section.
- J. Reserved
- K. Reserved
- L. Any sign which is prohibited under Section 12.3 (prohibited signs) which was lawfully existing at the time it became prohibited shall be allowed to continue provided that:
1. No additions or expansions of the sign occur;
  2. Message display time shall not be less than one second;
  3. At no time shall light rays be cast directly upon residential dwellings.