

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 a continuous period of six (6) months unless otherwise approved by the Board of Commissioners or holds a current Cherokee County Business License. In cases where the request is to re-establish a use after discontinuance for more than six (6) months, the Board of Commissioners may not approve the re-establishment of any use which has been discontinued for more than two (2) years, unless as provided in Section 13.15 regarding Legacy Uses. (Ord. No. 2025-O-001, 01-21-2025)

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, unless approved by the Board of Commissioners under the provisions of Section 13.3-3, 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); (Ord. No. 2025-O-001, 01-21-2025)

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 repainting, 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

13.15 Legacy Uses

13.15-1 Intent: The intent of this section is to allow the ability for Legacy Uses to be re-established through review by the Cherokee County Board of Commissioners.

13.5-2 Review Criteria: The Board of Commissioners shall review and render a decision for an application of a Legacy Use and shall render its decision based upon consideration of the following:

- a. The extent to which the use has a documented historical record of its prior existence in the proposed location.
- b. The historical, cultural, or economic significance of the use to Cherokee County.
- c. The similarity of the use to the prior, historical use.
- d. The impact of the use to the general health, safety, and welfare of neighboring properties.
- e. The appropriateness of the intensity of the use for the proposed location.
- f. The extent to which the zoning of property in the immediate vicinity, the land use policies set forth in the Comprehensive Plan and existing pattern of development of nearby property support a request for a zoning change rather than a Legacy Use designation.
- g. Any special or unique conditions of the use which are consistent with the purpose, intent and goals of the Comprehensive Plan.
- h. Conformity with other applicable requirements set forth in the Zoning Ordinance and Code of Ordinances.

13.5-3 Use Conditions:

The use may only be permitted with the following conditions:

- a. The building or structure which previously contained the use must exist on the property and have been in existence prior to January 1, 1969.
- b. The use must be permitted in the OI (Office and Institutional), or NC (Neighborhood Commercial) Zoning Districts as reflected in the Permitted Uses Table.

- c. The exterior materials and design of the building or structure containing the use must complement the historic design of the use and of the community previously served by the use, as determined by the Cherokee County Planning and Zoning Director, or their designee.
- d. The proposed Legacy Use may not exceed the area, structure, or building of the prior, historical use by more than 25%. If no documentation is available to conclusively determine the scale of the prior area, structure or building, the Planning and Zoning Director, or their designee, shall determine this based on the available information.
- e. The use may not result in a nuisance as defined under state law.

13.15-2 Public Hearing Required: The Board of Commissioners shall conduct a public hearing for a Legacy Use consideration. Alternatively, the Board of Commissioners may direct the Planning Commission to conduct a public hearing for the purpose of obtaining its recommendation on the request for a Legacy Use. Following its public hearing or after receipt of the Planning Commission recommendation, as applicable, the Board of Commissioners shall consider the request for a Legacy Use and take final action. Requests for Legacy Uses shall be subject to the public notice requirements of Sections 18.3-3, and 18.3-5(A)(7) of the Cherokee County Zoning Ordinance unless determined otherwise by the Community Development Agency Director, or their designee. In the event an approved Legacy Use ceases operation for six (6) consecutive months, the Board of Commissioners may initiate a process for the termination of the Legacy Use pursuant to the provisions of Article 18 of the Zoning Ordinance. (Ord. No. 2025-O-001, 01-21-2025)