

## ARTICLE XIII

### PROVISIONS GOVERNING NONCONFORMING USES AND NONCOMPLYING BUILDINGS OR OTHER STRUCTURES

#### SECTIONS

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#### 13-101 STATEMENT OF PURPOSE

The districts established in this ordinance (as set forth in district regulations, in Articles V through XII) are designed to guide the future use of land in Fairview, Tennessee, by encouraging the development of desirable residential, commercial, and industrial areas with appropriate groupings of compatible and related uses and thus promote and protect the public health, safety, and general welfare.

As a necessary corollary, in order to carry out such purposes, nonconforming uses which adversely affect the development of such areas must be subject to certain limitations. The provisions governing nonconforming uses set forth in this article are, therefore, established to contain the existing undesirable conditions resulting from such incompatible nonconforming uses, which are detrimental to the achievement of such purposes. While such uses are generally permitted to continue, this ordinance is designed to restrict any expansion of such uses beyond the site which the use occupied upon the effective date of this ordinance.

In the case of buildings or other structures not complying with the bulk regulations of this ordinance, the provisions governing noncomplying buildings or other structures set forth in this article are established in order to permit the continued use of such buildings or other structures, but to limit the creation of additional noncompliance or increase in the degree of noncompliance.

These provisions are thus designed to preserve the character of the districts established in this ordinance in light of their suitability to particular uses, and thus to promote the public health, safety, and general welfare.

#### 13-102 PROVISIONS GOVERNING NONCONFORMING USES

##### 13-102.1 Applicability

The provisions of this section are applicable to all uses which are not permitted within the districts in which they are located. Additionally, buildings and other structures located within the floodplain are considered within the regulation of nonconforming uses.

**13-102.2 Construction or Use Permit Approved Prior to Ordinance Adoption**

Nothing contained herein shall require any change in the overall layout, plans, construction, site or designated use of any development, building, structure, or part thereof where official approvals and required building permits have been granted before the enactment of this ordinance, or any amendment thereto, the construction of which, conforming with such plans, shall have been started prior to the effective date of this ordinance and completion thereof carried on in a normal manner within the subsequent six (6) months period, and not discontinued until completion except for reasons beyond the builder's control.

In the event that the activity or construction of such building or other structures is not substantially underway and being diligently pursued within the six (6) month period following the issuance of a building permit, then such permit shall automatically lapse and the provisions of this ordinance shall apply.

**13-102.3 Conditional Use - Status and Alteration**

Whenever the zoning ordinance in effect at the time of adoption of this zoning ordinance has authorized any use which is not permitted as of right by issuing a variance, exception, or permit to locate in a district such authorization may be continued subject to the time of approval of said variance, exception, or conditional use, including any time period established for the continuation of such use. However, any change of use, alteration or expansion is subject to the provisions of this ordinance.

**13-102.4 Repairs and Alterations**

Nothing in this ordinance shall prevent the strengthening or restoring to a safe condition of any part of any building or structure declared unsafe by proper authority.

**13-102.5 Continuation of Nonconforming Use**

Any nonconforming use which existed lawfully at the time of enactment of this ordinance and which remains nonconforming under the provisions contained herein or any use which shall become nonconforming upon enactment of this ordinance, or any subsequent amendments thereto, may be allowed to continue in operation and be permitted provided that no change in use (see Subsection 13-102.6, of this section) is undertaken.

**13-102.6 Change of Nonconforming Use**

1. General Provisions

For the purpose of this article, a change in use is a change to another use either under the same activity type or any other activity type or major class of activity; however, a change in occupancy or ownership shall not, by itself, constitute a change of use.

A nonconforming use may be changed to any conforming use, and the applicable bulk regulations and accessory off-street parking requirements shall apply to such change of use or to alterations made in order to accommodate such conforming use.

2. Land with Incidental Improvements

In all districts a nonconforming use of land, not involving a building or structure, or in connection with which any building or structure thereon is incidental or accessory to the principal use of the land, shall be changed only to a conforming use.

3. Nonconforming to Conforming Use

Whenever a nonconforming use is changed to a conforming use, such use shall not thereafter be changed to a nonconforming use.

**13-102.7 Expansion of Nonconforming Uses**

Any nonconforming use which shall become nonconforming upon enactment of this ordinance, or any subsequent amendments thereto, may be allowed to expand operations and construct additional facilities which involve an actual continuance and expansion of the nonconforming use provided that any such expansion shall not violate the provisions set out below.

1. Land with Incidental Improvements

In all districts a nonconforming use of land, not involving a building or structure, or in connection with which any building or structure thereon is incidental or accessory to the principal use of the land, shall not be allowed to expand through the addition of buildings or other structures.

2. Adequate Space for Expansion

No expansion or any nonconforming use shall infringe upon, or increase the extent of any infringement existing at the time of adoption of this ordinance, upon any open space required by this ordinance.

3. Application of Other Provisions to Expanded Facilities

In the event that any proposed expansion or addition is valued at less than fifty (50) percent of the assessed valuation (as recorded on the most current edition of the property tax records) of the improvements located upon the site, all provisions of this ordinance other than those which would act to eliminate the use of the property, shall be applicable to the expansion or addition. In the event, however, that the proposed expansion or addition is valued at fifty (50) percent or more of the assessed valuation of the improvements located upon the site, all provisions of this ordinance other than those which would act to eliminate the use of the property, shall apply both to the existing facilities, as well as the expansion or addition.

4. Expansion Limited

Any expansion of a nonconforming use permitted under the provisions of this article shall take place only upon the zone lot(s) on which said use was operating at the time the use became nonconforming. Nothing within this provision shall be construed so as to permit expansion of any nonconforming use through the acquisition and development of additional land. Where parking, open space or other provisions of this ordinance may so require, future expansions or additions shall be limited to that which can be accommodated without creating any new noncompliance.

5. Expansion upon Land Subject to Flood

No expansion of any nonconforming use shall violate the provisions of Subsection 13-102.10.

**13-102.8 Damage or Destruction**

Any use which shall become nonconforming upon enactment of this ordinance, or any subsequent amendments thereto, may be permitted to reconstruct damaged or destroyed facilities which involve an actual continuance of the nonconforming use provided that any such reconstruction shall not violate the provisions set out below.

1. Change in Use Prohibited

No reconstruction of damaged or destroyed facilities may occur which shall act to change the nonconforming use (as regulated in Subsection 13-102.6, above) to other than a permitted use.

2. Land with Incidental Improvements

In all districts, when a nonconforming building or other structure or improvements located on "land with incidental improvements" (as defined by this ordinance) is damaged or destroyed to the extent of twenty-five (25) percent or more of the assessed valuation of all buildings, and other structures or other improvements located thereon (as determined from the assessment rolls effective on the date of damage or destruction), such nonconforming use shall terminate and the tract of land shall, thereafter, be used only for a conforming use.

3. Infringement upon Open Space Restricted

No reconstruction of damaged or destroyed facilities utilized by a nonconforming use shall increase the extent of any infringement upon any open space required by this ordinance.

4. Damage or Destruction of Buildings or Other Structures

In all districts, when any building or other structure which is substantially occupied by a nonconforming use is damaged or destroyed to the extent of fifty (50) percent or more of the assessed valuation (as recorded on the

most current edition of the property tax records) of the improvements located upon the site, such building or other structure may be reconstructed provided that no such action shall increase the extent of any infringement upon any open space required by this ordinance and that the reconstructed buildings, structures and other site improvements, shall comply as fully as possible with all other provisions of this ordinance. When the extent of damage or destruction is less than fifty (50) percent of the assessed valuation of the improvements, the nonconforming use may be continued and the buildings or other structures may be restored provided that:

- a. A building permit pertaining to such restoration is applied for and issued within one (1) year of such damage or destruction.
- b. A certificate of zoning compliance is issued within one (1) year after the issuance of the building permit.
- c. Such restoration shall not cause a new nonconformance nor increase the degree of nonconformance or noncompliance existing prior to such damage or destruction. Otherwise, the nonconforming use shall be deemed to have ceased active operation and the provisions of Subsection 13-102.9, shall apply.

5. Reconstruction of Flood Damaged Property

The provisions of Subsection 13-102.10, shall apply to the reconstruction of all buildings and structures associated with any nonconforming use located within the floodplain district.

**13-102.9 Discontinuance**

When a nonconforming use of land or the active operation of substantially all the nonconforming uses in any building or other structure or tract of land is discontinued for a period of one (1) year, then the land or building or other structure shall thereafter be used only for a conforming use. Intent to resume active operations shall not affect the foregoing provision.

**13-102.10 Special Provisions Governing Nonconforming Buildings Within Floodplain Districts**

1. General Provisions

In all districts or portions, thereof, which extend into the floodplain districts as established by Section 8-301, any building or other structure or use which is not permitted by the floodplain district provisions shall become nonconforming upon the effective date of this ordinance, or subsequent amendment as applicable.

2. Enlargement of Buildings Within the Floodplain

A building or other structure which is nonconforming by reason of location within the floodplain shall not be enlarged or expanded, but may be

altered, or repaired as set forth in Subsection 13-102.4, or as may be expressly authorized by the Board of Zoning Appeals in order to incorporate floodproofing measures provided that such alteration will not increase the level of the 100-year flood.

3. Special Provisions Governing Reconstruction of Buildings or Structures Located Within Floodway Districts

Within any designated floodway district, any building or structure in existence prior to the effective date of this ordinance that is, hereafter, destroyed or substantially damaged by any means may be reconstructed and used as before, only if the following requirements are met.

- a. The reconstruction does not exceed the volume and external dimensions of the original structure or does not offer any greater obstruction to the flow of floodwaters than did the original structure.
- b. Nonresidential structures may be reconstructed only if the lowest floor (including basement) elevation is at least one (1) foot above the level of the 100-year flood or the structure is floodproofed (in accordance with the requirements of Article VII, Section 8-304) to a height of at least one (1) foot above the level of the 100-year flood.
- c. Residential structures may be reconstructed only if the lowest floor (including basement) of the structure is elevated to a point at least one (1) foot above the level of the 100-year flood.
- d. That no reconstruction or alteration permitted, hereinafter, shall result in any increase in the level of the 100-year flood.

**13-102.11 Special Provisions Pertaining to Uses Not Conforming to Performance Standards**

1. Conformance of Lawful Uses to Applicable Performance Standards

In all districts any lawful use which does not conform to one or more applicable performance standards, established in Article XII, may be continued for a period of ten (10) years from the effective date of the ordinance or subsequent amendment. After ten (10) years and six (6) months notice by the Zoning Administration, it shall conform to all applicable performance standards.

2. Conformance of Nonconforming Uses to Applicable Performance Standards

In all districts where there is any use which is not a permitted use, and where there are performance standards which are applicable in the districts in which it would be permitted, but not in the district in which it is located, the use may be continued, but it shall conform to the performance standards in that district where it is a permitted use in which the most stringent performance standards apply after five (5) years and six (6) months notice by the Zoning Administrator.

## **13-103 NONCOMPLYING BUILDINGS OR OTHER STRUCTURES**

### **13-103.1 General Provisions**

The provisions of this section shall control buildings and other structures which do not meet the bulk or any other provisions applicable in the districts in which they are located, except those provisions which pertain to activity or use.

### **13-103.2 Continuation of Use**

The use of a noncomplying building or other structure or parcel may be continued, except as, otherwise, provided by this section.

### **13-103.3 Repairs and Alterations**

Repairs, incidental alterations, or structural alterations may be made in noncomplying buildings or other structures subject to the provisions of Subsection 13-103.4.

### **13-103.4 Enlargement of Conversion**

#### **1. Adequate Space for Expansion**

No expansion or enlargement of any noncomplying building or other structure may be made which would either create a new noncompliance or increase the degree of any previously existing noncompliance of any building or other structure or parcel or portion, thereof.

#### **2. Buildings Noncomplying as to Lot Area**

If a building does not comply with the applicable district regulations on lot area per dwelling unit (lot area of zone lot being smaller than required for the number of dwelling units on such zone lot) such building may be converted (and, in mixed buildings, the residential use may be extended, except when in the floodplain district) provided that the deficiency in the required lot area is not, thereby, increased (for example, a noncomplying building on a zone lot of three thousand-five hundred (3,500) square feet, which before conversion required a lot area of five thousand (5,000) square feet and was, therefore, deficient by one thousand-five hundred (1,500) square feet, can be converted into any combination of dwelling units requiring a lot area of no more than five thousand (5,000) square feet).

#### **3. Application of Other Provisions to Expanded Facilities**

In the event that any proposed expansion or addition to a noncomplying building or structure is valued at less than fifty (50) percent of the assessed valuation (as recorded on the most current edition of the property tax records) of the improvements located upon the site, all provisions of this ordinance shall be applicable to the expansion or addition. In the event, however, that the proposed expansion or addition

is valued at fifty (50) percent or more of the assessed valuation of the improvements located upon the site all provisions of this ordinance shall apply to both the existing facilities, with the exception of any pre-existing noncomplying conditions, and the expansion or addition.

**13-103.5 Damage or Destruction of Noncomplying Buildings and Other Structures**

In all districts, when any noncomplying building or other structure is damaged or destroyed such building or other structures may be restored provided that such restoration shall not cause a new noncompliance nor increase the degree of noncompliance existing prior to such damage or destruction.

**13-104 SUBSTANDARD RESIDENTIAL LOTS**

Within all districts where residential uses are authorized, a single-family dwelling may be built upon a lot which was of record upon the date of adoption of this ordinance, provided such lot contains a minimum total lot area of five thousand (5,000) square feet.