

CHAPTER 16: NONCONFORMITIES

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Section 16.1 Continuation of Nonconforming Situations

Unless otherwise specifically provided in these regulations and subject to the restrictions and set forth in Chapter 16, nonconforming situations that were otherwise lawful on the effective date of this ordinance may be continued.

Section 16.2 Nonconforming Lots

- A. This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. A change in use of a developed nonconforming lot may be accomplished in accordance with this Chapter.
- B. When a nonconforming lot can be used in conformity with all of the regulations (other than the area and width requirements) applicable to the district in which the lot is located, then the lot may be used as proposed just as if it were conforming. However, no use (e.g., a two-family residence) that requires a greater lot size than the established minimum lot size for a particular zone is permissible on a nonconforming lot.
- C. When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements cannot reasonably be complied with, then the entity authorized by this ordinance to issue a permit for the proposed use (the Administrator, Board of Adjustment, or Board of Commissioners) may allow deviations from the applicable setback requirements if it finds that:
 - 1. The property cannot reasonably be developed for the use proposed without such deviations;
 - 2. These deviations are necessitated by the size or shape of the nonconforming lot; and
 - 3. The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.
- D. For the purposes of Subsection C above, compliance with applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, mere financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

Section 16.3 Extension or Enlargement of Nonconforming Situations

- A. Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:
 - 1. An increase in the total amount of space devoted to a nonconforming use; or
 - 2. Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations or density requirements or other requirements such as parking requirements.
- B. 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. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.
- C. A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., a sand pit) may be extended to the boundaries of the lot where the use was established at the time it became nonconforming if ten percent or more of the earth products had already been removed on the effective date of this Ordinance.
- D. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this section occur.
- E. Notwithstanding Subsection A:
 - 1. Any structure used for single-family residential purposes (other than a class "B" or "C" mobile home) may be enlarged or replaced with a similar structure so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements; and,

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2. A nonconforming class "B" or "C" mobile home (located outside a mobile home park) may be replaced with a site built home or class "A" or "B" mobile home that was manufactured in the same year or later than the home being replaced and is as large or larger than the home being replaced, so long as:
 - a. The replacement home is moved onto the lot within 180 days of removal of the original mobile home;
 - b. All necessary permits have been issued by Albemarle Regional Health Services relating to the installation and operation of a satisfactory sewage treatment system;
 - c. Underpinning of all-weather base material is placed around the mobile home or, in the case of a class "A" mobile home, a masonry curtain wall; and
 - d. All setbacks are met to the extent feasible.
- F. The administrator may issue a zoning permit authorizing a permanent addition to a nonconforming mobile home if all other requirements of this ordinance are met.
- G. Whenever: (i) there exists a lot with one or more structures on it; and, (ii) a change in use that does not involve any enlargement of a structure is proposed for such lot; and, (iii) the parking or loading requirements of Chapter 8 that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation.
- H. The applicant shall be required to comply with all applicable parking and loading requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite parking in accordance with Section 8.6 if: (i) parking requirements cannot be satisfied on the lot with respect to which the permit is required; and, (ii) such satellite parking is reasonably available. If such satellite parking is not reasonably available at the time the zoning or special use or conditional use permit is granted, then the permit recipient shall be expected to provide satellite parking upon its availability. This requirement shall be a continuing condition of the permit.
- I. Notwithstanding any other provision of this ordinance, additional right-of-way along an existing street may be condemned, and a property owned may at the request of the county or state dedicate or convey additional right-of-way even if such condemnation, conveyance or dedication results in the creation of a nonconforming situation.

- J. Improvements to water and sewage treatment systems in order to accommodate more mobile homes in a mobile home park shall be considered an enlargement of a nonconforming situation and shall not be permitted. However, improvements to a water and sewage treatment system serving a mobile home park for the purpose of improving public health that will not result in an increase in the number of mobile homes within the park shall be permitted.
- K. Nonconforming manufactured home parks shall be permitted to continue operation subject to the following stipulations:
 - 1. Nonconforming manufactured home parks shall not be expanded or increased in size nor shall any additional spaces be added to the site;
 - 2. Replacement of existing manufactured homes within a nonconforming manufactured home park shall be permitted, provided that the total number of units (or spaces) within the park does not exceed the number that legally existed on April 1, 2002.

Section 16.4 Repair, Maintenance, Reconstruction

- A. The limitations of this section shall not apply to structures used for single-family residential purposes, which may be reconstructed, renovated, restored, or replaced subject to the provisions of Section 16.3 (E) (1) and (2).
- B. With respect to structures located on property where nonconforming situations exist:
 - 1. Repair and maintenance are encouraged;
 - 2. Renovation, restoration, or reconstruction work is permissible so long as such work seeks only to refurbish or replace what previously existed and no violation of Chapter 16 occurs. The fact that renovation, restoration, or reconstruction work may require a permit under Chapter 11 shall not make such work impermissible so long as the work is otherwise consistent with this section;
 - 3. Renovation, restoration, or reconstruction shall be allowed if: (i) the work is estimated to not cost more than 25 percent of the appraised value of the structure to be renovated, restored, or reconstructed; and, (ii) the need for such work is not the result of damage to the structure intentionally caused by a person with an ownership interest in such structure; or,
 - 4. Renovation, restoration, or reconstruction work estimated to cost more than twenty five percent 25 percent of the appraised value of the structure to be renovated, restored, or reconstructed shall only be permissible if the permittee

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or property owner complies to the extent reasonably possible with all provisions of this Ordinance applicable to the existing use (except that the right to continue a nonconforming use or maintain a nonconforming level of density shall not be lost).

C. For purposes of Subsection B:

1. The "cost" of renovation, restoration, or reconstruction shall mean the fair market value of the materials and services necessary to accomplish such renovation, restoration, or reconstruction;
2. The "cost" referred to above shall mean the total cost of all such intended work, and no person may seek to avoid the intent of Subsections B or C above by doing such work incrementally;
3. The "appraised valuation" shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or the valuation determined by a professionally recognized property appraiser; and,
4. Compliance with a requirement of this ordinance is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible.

Section 16.5 Change in Use of Property with a Nonconforming Situation

- A. A change in use of property (where a nonconforming situation exists) that is sufficiently substantial to require a new zoning, special use, or conditional use permit in accordance with Chapter 11 may not be made except in accordance with Subsections B through E below. However, this requirement shall not apply if only a sign permit is needed.
- B. If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this ordinance applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this ordinance is achieved, the property may not revert to its nonconforming status.
- C. If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this ordinance applicable to that use cannot reasonably be complied with, then the change is

permissible if the entity authorized by this ordinance to issue a permit for that particular use (the Administrator, Board of Adjustment, or Board of Commissioners) issues a permit authorizing the change. This permit may be issued if the permit issuing authority finds, in addition to any other findings that may be required by this ordinance, that:

1. The intended change will not result in a violation of Section 16.1; and,
 2. All of the applicable requirements of this ordinance that can reasonably be complied with will be complied with. Compliance with a requirement of this ordinance is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. And in no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformities would thereby be created.
- D. If the intended change in use is to another principal use that is also nonconforming, then the change is permissible if the entity authorized by this Ordinance to issue a permit for that particular use (the administrator, Board of Adjustment, or Board of Commissioners) issues a permit authorizing the change. The permit issuing authority may issue the permit if it finds, in addition to other findings that may be required by this ordinance, that:
1. The use requested is one that is permissible in some zoning district with either a zoning, special use, or conditional use permit;
 2. All of the conditions applicable to the permit authorized in Subsection C of this section are satisfied; and,
 3. The proposed development will have less of an adverse impact on those most affected by it and will be more compatible with the surrounding neighborhood than the use in operation at the time the permit is applied for.
- E. If a nonconforming use is changed to any use other than a conforming use without obtaining a permit pursuant to this section, that change shall constitute a discontinuance of the nonconforming use, with consequences as stated in Section 16.6.

Section 16.6 Abandonment and Discontinuance of Nonconforming Situations

- A. When a nonconforming use is discontinued for a consecutive period of 270 days, the property involved may thereafter be used only for conforming purposes.

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- B. If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a consecutive period of 270 days, then that property may thereafter be used only in conformity with all of the regulations applicable to the pre-existing use unless the entity with authority to issue a permit for the intended use issues a permit to allow the property to be used for this purpose without correcting the nonconforming situations. This permit may be issued if the permit issuing authority finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.
- C. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for 270 days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.
- D. When a structure or operation made nonconforming by this ordinance is vacant or discontinued on the effective date of this ordinance, the 270-day period for purposes of this section begins to run on the effective date of this ordinance. However, if the situation was nonconforming under the ordinance previously in effect, then the 270-day period shall begin to run from the actual date the property became vacant or the use was discontinued.
- E. For purposes of this section, the question of the property owner's or other person's intent is irrelevant, and discontinuance of the required period shall conclusively be presumed to constitute an abandonment of the right to continue the nonconforming situation. However, when a valid building or zoning permit has been issued within the 270-day period, the use shall not be considered discontinued so long as such permit remains valid even though the particular use may not begin within the 270-day period.

Section 16.7 Completion of Nonconforming Projects

- A. Nonconforming projects may be completed only in accordance with the provisions of Section 16.3.
- B. When a building permit has been validly issued for construction of a nonconforming project, such project shall be permitted to develop in accordance

with the terms of that permit provided the building permit remains un-revoked and unexpired. Further, when approval is given to develop a project and more than five percent of the cost of that project is spent on reliance of that approval, such project shall be permitted to develop in accordance with the terms of that permit.

- C. Nothing in this section shall be deemed to conflict with vested rights provisions as found in Chapter 11.

Section 16.8 Nonconforming Bufferyards

- A. When a change in use occurs, and the new use is the same or lower land use classification then the previous use as found in Section 5.3, then the applicant shall not be required to bring the landscaping into compliance with Chapter 5. When a change of use occurs, and the new use is of a higher classification than the previous use as found in Section 5.3, and the bufferyard required in Chapter 5 is not met, then the following shall apply:
 - 1. If the existing landscaping is less than is prescribed in this ordinance, then all landscaping required by Chapter 5 shall be provided to the extent reasonable.
 - 2. If the existing setback is less than is prescribed by this ordinance, then the proposed use shall be permitted to occupy the property provided a solid fence is installed and six feet high evergreen shrubs and small trees planted 30 feet on center, or equivalent, is provided where the setback requirement is not met. Further, any new additions, new parking areas, and outdoor storage/display areas shall be required to meet the current setback standards.
- B. When a permit for an addition is requested where a nonconforming bufferyard exists, and the addition is less than 30 percent of the total floor area of existing buildings on the lot or 1,000 square feet, whichever is less, then no additional landscaping shall be required. When a permit for an addition is requested where a nonconforming bufferyard exists, and the addition is more than 30 percent of the total floor area of existing buildings on the lot or over 1,000 square feet, then all landscaping required by this ordinance shall be provided.

Section 16.9 Nonconforming Signs

16.9.1 General

- A. Where these regulations refer to nonconforming signs, this shall mean to include nonconforming on-premise and off-premise signs. Where these regulations refer to nonconforming on-premise or off-premise signs, then the applicable section shall apply only to that type of sign.

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- B. Subject to the remaining restrictions of this section, nonconforming signs that were otherwise lawful on the effective date of this section may be continued.
- C. No person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming sign. No nonconforming sign may be enlarged or altered in such a manner as to aggravate the nonconforming conditions. Extension of nonconforming conditions shall include, but not be limited to, increasing the display surface area and/or height, and causing a nonconforming sign to be closer to another sign where the minimum separation between signs is not maintained. A second side may be added to a nonconforming sign up to the same size as the existing display provided the entire support structure and framing be painted one neutral color (i.e. black, dark green). Lighting may be added to any nonconforming sign subject to the illumination provisions of the UDO.
- D. When all or a portion of a nonconforming sign will be removed as part of a state road widening project, then such 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 shall be parallel to the original sign location away from the right-of-way.
 - 2. Application for a permit to erect the new sign or replace what was lost for a sign partially in the right-of-way is made within 180 days after the existing nonconforming sign is removed.
- E. The message of a nonconforming sign may be changed so long as this does not create any new nonconformities.

16.9.2 Nonconforming, Off-Premise Signs (PB 10-22, 8/2/10)

16.9.2.1 Replacement and Relocation

- A. A nonconforming off-premise sign may be replaced on the same location so long as:
 - 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. Application for a permit to erect the new sign is made within 180 days after the existing nonconforming sign is removed.
 - 3. The new sign is located within the footprint boundaries of the nonconforming off-premise sign being replaced. In the case of nonconforming on-premise signs, the sign can be relocated on the same property subject to applicable setback standards.

- B. A nonconforming off-premise sign may be relocated on the same lot so long as once relocated, the off-premise sign:
1. Shall not exceed 300 square feet in surface area.
 2. Shall not be less than 300 feet from a pre-existing off-premise sign on the same side of the road.
 3. Shall not exceed a height, measured from ground level, of 20 feet, unless the sign is placed lower than the road bed, under which circumstances the sign may have a height equal to 20 feet above the road bed, not to exceed 25 feet from ground level.
 4. Shall not be located closer than 15 feet to a street right-of-way or within a sight triangle.
 5. Shall not be located within the minimum structure side and rear yard setbacks required by Chapter 2.
- C. A nonconforming off-premise sign may be relocated to an adjacent lot so long as once relocated, the off-premise sign:
1. Shall not exceed 300 square feet in surface area.
 2. When attached to the wall of a structure shall not exceed 30 percent of the total surface area of the wall on which the sign is located and shall not be located on the same wall as any other off-premise sign.
 3. Shall not exceed a height, measured from ground level, of 20 feet, unless the sign is placed lower than the road bed, under which circumstances the sign may have a height equal to 20 feet above the road bed, not to exceed 25 feet from ground level.
 4. Shall not extend above any parapet or be placed upon any roof surface, except that for purposes of this subsection, roof surfaces constructed at an angle be regarded as wall space. This subsection shall not apply to displays, including lighting, erected in connection with the observation of holidays on the roofs of residential structures.
 5. Shall not be located closer than 15 feet to a street right-of-way or within a sight triangle.
 6. Shall not be located within the minimum structure side and rear yard setbacks required by Chapter 2.

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7. Shall not be located within 1,500 feet on the same side of the road of any part of another off-premises sign (other than temporary signs regulated under Chapter 7 or exempt signs on the same side of the road or highway). For purposes of determining the permissible location of an off-premises sign:
 - a. A sign for which a permit authorizing initial construction was issued prior to the permit for the off-premises sign in question shall be regarded as existing from the date the permit for such other sign was issued (unless such permit has expired or been revoked); and,
 - b. A nonconforming sign that has been removed for the purpose of being replaced in accordance with Section 16.9.2 shall be regarded as existing, provided that the sign has not been removed for more than 180 days without application for its replacement having been made as required by this ordinance.
8. Shall not result in a net increase of off-premise signs allowed under this section.
9. Shall be demolished prior to a permit being issued for its replacement. The demolition permit issued for the existing sign shall serve as documentation that the adjacent lot contained an off-premise sign.

16.9.2.2 Maintenance

All off-premise signs shall meet the following maintenance requirements:

- A. 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;
- B. 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, that 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 such sign;
- C. 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 such 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. This subsection shall not be constructed to prevent the changing of the message of a sign; and,

- D. 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 natural undergrowth more than 12 inches in height.
- E. For the purpose of increasing or enhancing the visibility of any off-premises sign, a person shall not 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 pursuant to the express written authorization of the North Carolina Department of Transportation;
 - 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 pursuant to the express authorization of the person owning the property where such trees or shrubs are located; and,
 - 3. In any area where such trees or shrubs are required to remain under a permit issued under this ordinance.

16.9.2.3 Illumination

All off-premise signs shall meet the following illumination requirements:

- A. No off-premises sign within 250 feet of a pre-existing residence 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 such lighting beyond the boundaries of the lot where the sign is located is entirely inconsequential (less than 1.5 foot candles at the lot line). A residence shall be deemed “pre-existing” for the purposes of this subsection if it existed (or construction of the residence had begun) before a permit was issued under the NC State Electrical Code authorizing the installation of the lighting;
- B. 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 premises; and,
- C. No off-premises sign may contain or 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.

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- D. If a nonconforming off-premises sign other than a billboard advertises a business, service, commodity, accommodation, attraction or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be considered abandoned and shall be removed within 30 days after such abandonment by the sign owner, owner of the property where the sign is located, or other party having control over such sign.
- E. If a nonconforming billboard remains blank for a continuous period of 12 months, that billboard shall be deemed abandoned and shall, within 30 days after such abandonment, be altered to comply with Chapter 7 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 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 as whole or substantial part.
 3. The advertising copy, other than the rental of the sign, has been removed.

16.9.3 Nonconforming, On-Premise Signs

All on-premise signs that do not conform with the standards established in Chapter 7 shall be removed within eight years of April 17, 2000.

Section 16.10 Nonconforming Parking and Loading Areas

16.10.1 Nonconforming Parking Surfaces

Where existing parking area surfaces do not conform to the provisions of Chapter 8, the following shall apply:

- A. Whenever a use changes, and the new use's classification (as found in The Permitted Uses Table) is the same or lower than the previous use's land classification, then the new use shall comply with all provision of Chapter 8 without driveway improvements; and
- B. Whenever a use changes, and the new use's classification (as found in The Permitted Uses Table) is higher than the previous use's land classification, then the new use shall comply with all the provisions of Chapter 8.

16.10.2 Nonconforming Parking for Existing Buildings

A. Whenever:

1. There exists a lot with one or more structures on it constructed before the effective date of this ordinance;
2. A change in use that does not involve any enlargement of a structure is proposed for such lot; and,
3. The parking requirements of Chapter 8 that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for parking.

Then the developer need only comply with the satellite parking requirements of Chapter 8 to the extent that:

1. Parking space is practicably available on the lot where the development is located, and
2. Satellite parking space is reasonably available as provided in Section 8.8.

However, if satellite parking subsequently becomes reasonably available, then it shall be a continuing condition of the permit authorizing development on such lot that the developer obtains satellite parking when it does become available. This provision shall not apply to single family and two-family residences in the RO1 and RO2 Districts.

B. Where existing parking setbacks are not met and a change of use occurs, the existing nonconforming parking may continue to be utilized to satisfy the off-street parking requirements provided all new parking established complies with the requirements of Chapter 8.

16.10.3 Nonconforming Loading for Existing Buildings

A. Whenever:

1. There exists a lot with one or more structures on it constructed before the effective date of this ordinance;
2. A change in use that does not involve any enlargement of a structure is proposed for such lot; and,
3. The loading area requirements of this section cannot be satisfied because there is not sufficient area available on the lot that can practicably be used for loading and unloading.

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Then the developer need only comply with the requirements of Chapter 8 to the extent reasonably possible.