



Town of
INDIAN TRAIL
north carolina

Indian Trail, North Carolina 28079

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PLANNING BOARD TRANSMITTAL

Planning Board Transmittal for the November 9th, 2010 Town Council Meeting

Reference Name	Case: ZT 2010-015 Nonconforming Site Aspects		
PB Meeting Date	October 27 th , 2010		
Members Present	Chair Whitehurst <input checked="" type="checkbox"/>	Vice Chair Cowan <input checked="" type="checkbox"/>	Larry Miller <input checked="" type="checkbox"/>
	Gary Vaughn <input checked="" type="checkbox"/>	Kathy Broom <input checked="" type="checkbox"/>	Robert Rollins <input checked="" type="checkbox"/>
	Sidney Sandy <input checked="" type="checkbox"/>	John Simulcik- alt <input type="checkbox"/>	Cathi Higgins-alt <input type="checkbox"/>
Case Found Complete	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
Motion	Recommend approval as transmitted.		
Member making the motion	Member Cowan		
Second the motion	Member Sandy		
Vote	Unanimous		

Background

This is a request to amend Division 1400 of the UDO titled Nonconformities to allow for business owners to provide incremental improvements on nonconforming sites. The requirement for improvements would correlate directly to the amount of investment into a site. The Planning Board heard this request on October 27th, 2010 and transmits a recommendation to approve.

Town Council Action: *Receive transmittal report and public testimony and:*

- 1. Concur with the findings and transmittal of the Planning Board to approve; or*
- 2. Concur with the findings and approve as modified by Council; or*
- 3. Do not make the findings and disapprove the amendment.*

Planning Board Meeting (October 27, 2010)

The Planning Board heard this item at its reconvened meeting on October 27, 2010. The proposed text amendment would allow for incremental improvements to occur for a nonconforming site when a property or business owner reinvests into their property. The amount of improvements would directly correlate to the amount of investment in the property. The intent is to encourage growth of existing businesses and new businesses on nonconforming sites and to allow for them to provide incremental site improvements as they grow until they are in full compliance with the UDO. The Planning Board discussed the item and unanimously recommended approval of the amendment to the Town Council.

The Board made the following consistency findings, in conjunction with their recommendation:

The following findings were made consistent with the Comprehensive Plan:

1. 1.3.2 of the Comprehensive Plan – Land Use; the proposed UDO amendment will help to promote a quality mix of different land uses while avoiding land use conflicts with neighboring properties and surrounding municipalities.
2. This UDO ordinance amendment request is reasonable and in the best interest of the public because it allows for the redevelopment and expansion of sites in the Town while bringing the sites more into conformity with the Town's ordinances

TC Attachments:

TC Attachment 1 – Draft Ordinance for UDO

TC Attachment 2 – Planning Board Staff Report for ZT2010-015

TC ATTACHMENT 1

- ~~B. Change of use in nonconforming structure~~
- ~~C. Enlargement or expansion of nonconforming structure~~

1410.0650 Change in Tenancy or Ownership

Nonconforming status runs with the land and is not affected by changes of tenancy, ownership, or management.

Section 2 – Chapter 1470 is hereby amended as follows:

Chapter 1470. ~~Other Nonconformities~~

~~When an otherwise lawfully existing use is allowed generally in any given zoning district but where, due to the adoption and amendment of this development ordinance, required off-street parking, paving of parking area, landscape screening, and similar regulations are not provided, such deficiencies attributable to the use will be considered lawful, nonconforming characteristics of such use. These deficiencies must be brought into conformance with current standards when the use they are associated with is expanded or enlarged.~~

Chapter 1470 Nonconforming Site Aspects

1470.010 Purpose

The purpose of this section is to provide a means by which the city may require certain nonconforming site features to come into compliance with the standards of this Ordinance as part of remodeling, expansion of a building or structure, or the establishment of an allowed use into a site which had previously been used for a nonconforming uses. It is not the intent of this section to allow multiple incremental improvements to a nonconforming site without addressing the nonconformities as required in this section.

1470.020 Applicability

- A. For purposes of this section, the term “nonconforming site features” includes the following:
 - 1. Nonconforming off-street parking;
 - 2. Nonconforming landscaping;
 - 3. Nonconforming screening of mechanical equipment; and
 - 4. Nonconforming screening and buffering.
- B. In all cases, sites will be responsible for the full implementation of the requirements of:
 - a. Chapter 1360 Flood Damage Reduction Ordinance, Chapter 1370 Storm Water Management Permits, Chapter 1380 Post Construction and Chapter 1390 Sedimentation Pollution Control of This Ordinance; and
 - b. Americans with Disabilities Act (ADA) regulations of this and any other applicable ordinances
- C. For the purposes of record keeping, the tracking of improvements to nonconforming structures or sites, will begin on the date of the adoption of this ordinance, November 9th, 2010.
- D. If an application is filed for an zoning permit for the remodeling or expansion of a building or site that has one or more nonconforming site features identified in 1470.020 (A), Applicability, and the value of the proposed improvements over a five-year period exceeds at least 25 percent of the assessed value of the existing site over a five-year period, the applicant shall be required to address the nonconforming site features as provided in this section.
- E. The Planning Director may develop administrative guidelines to assist in the implementation of this subsection, including guidelines for the resolution of conflicts when it may not be possible for one or more types of nonconforming site features to be brought into conformance with the requirements of this Ordinance because of particular site constraints or impacts upon adjacent properties.

1470.030 Exemptions

These standards shall not apply to the reconstruction of a nonconformity damaged by an act of God or other natural disaster.

1470.040 Structural Alteration

A. Determining Applicability

Structural alterations only include activities that do not result in the expansion of a building. For the purpose of determining when site features must be brought into partial or full compliance with the standards of this Ordinance, the costs that constitute the assessed value of the structural alteration of a building or structure shall be as shown on the zoning permit application, and shall include the cost of materials and labor.

B. General

a. 25 Percent or Less of Structure Value

Structural alteration of a building or structure during a five-year period whose assessed value is 25 percent or less of the current assessed value of the building or structure shall not require any correction to nonconforming site features.

b. More Than 25 Percent but Less Than 75 Percent of Structure Value

Structural alteration of a building or structure whose assessed value exceeds more than 25 percent but less than 75 percent of the current assessed value of the structure during a five-year period shall require that a corresponding percentage of the site features identified in, 1470.020 (A), Applicability, be brought into compliance incrementally, until the site achieves 100 percent compliance.

Example: a nonresidential site with nonconforming off-street parking (site feature) with an assessed value of \$100,000 is undergoing remodeling equaling \$40,000 (40 percent of the assessed value), the developer must add a corresponding number of additional required parking spaces until the site fully complies. The site at the time of remodel has 10 parking spaces, but the ordinance requires a minimum of 20 for the use that is proposed (10 more spaces are required for the site to be conforming), the applicant would be required to provide 40 percent of the 20 spaces - or 8 more parking spaces, bringing the total number of spaces on the site to 18 spaces.

c. 75 Percent or More of Structure Value

Structural alteration of a building or structure during a five-year period whose alteration is estimated to cost 75 percent or more of the current assessed value of the building or structure shall require 100 percent compliance with the site features identified in Section 1470.020 (A), Applicability.

d. Two or Fewer Additional Parking Spaces

When two or fewer additional off-street parking spaces are required under this subsection as a result of a redevelopment, such additional off-street parking is not required to be installed.

C. Physically Constrained Properties- Comply to Maximum Extent Practicable

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

1470.050 Expansions

Expansions to buildings or structures or use areas on sites with nonconforming site features identified in 1470.020 (A), Applicability, shall require compliance until the site achieves 100 percent compliance for site features in accordance with this section.

A. General

a. Expansions of 15 Percent or Less

Additions or expansions that increase a building or structure or use area's size by 15 percent or less over a five-year period shall not require any correction to nonconforming site features.

b. Expansion between 15 and 50 Percent of Gross Square Footage Over 5 Years

Expansion in any continuous five-year period, which results in an increase in the gross square footage of the existing building or structure or use area (measured at the beginning of the five-year period) greater than 15 percent, but less than 50 percent, requires a corresponding percentage of the nonconforming site features identified in 1470.020 (A), Applicability, to be brought into compliance, incrementally until the site achieves 100 percent compliance.

Example: A 25 percent increase in square footage will necessitate a 25 percent increase in the total number of parking spaces provided (up to the minimum requirement). Existing landscaping on the site shall be retained or replaced but shall not count toward the required percentage of new landscaping.

c. Expansion of Greater Than 50 Percent of Gross Square Footage Over 5 Years

Expansions over any continuous five-year period, which results in a greater than 50 percent increase of the gross square footage of the existing building or structure or use area (measured at the beginning of the five-year period) that has a nonconforming site feature identified in 1470.020 (A), Applicability, shall require the building or site or use area to comply with all standards of this Ordinance for the new site features. Examples of these requirements include parking, landscaping, screening, installation of trash enclosures, lighting, etc.

B. Physically Constrained Properties- Comply to Maximum Extent Practicable

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

C. Addition of Outdoor Storage Area Only

When only outdoor storage areas are being added or increased on a site, the percentage increase in outdoor operations area shall require a corresponding percentage increase in perimeter buffers and screening. Perimeter buffer and screening augmentation shall be located so as to achieve the performance objectives in Section 810.100, Screening of Open Storage.

1470.060 Establishment of Allowed Use on site with Nonconforming Site Aspects

A. Applicability

The purpose of this section is to establish regulations for when an allowed use obtains a zoning permit to operate on a site with nonconforming site aspects and where the previous use was nonconforming. The amount of improvements required will be related to the amount of investment placed into the property

B. General

a. 75 Percent or Less of Structure or Site Value

Items listed in 1470.020 (A)(1,3,4), Applicability, will be required to comply with the standards of this Ordinance. This will require that parking, and screening and buffering will be installed.

b. More than 75 Percent of Structure or Site Value

When more than 75 percent of the structure of a structure or site value is invested into a site, then the site will need to be brought into full compliance with the ordinance, including both on-site and off-site improvements.

C. Physically Constrained Properties- Comply to Maximum Extent Practicable

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

Section 3 - This ordinance shall be effective immediately upon adoption.

SO ORDAINED THIS 9TH DAY OF NOVEMBER, 2010.

THE TOWN COUNCIL OF INDIAN TRAIL

By _____
Honorable John J. Quinn, Mayor

Attest:

Peggy Piontek, Town Clerk

TC ATTACHMENT 2



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PLANNING AND DEVELOPMENT DEPARTMENT

Zoning Staff Report

Case: ZT 2010-015 Amendment of Chapter 1410 and 1470 Other Nonconformities	
Reference Name	Nonconforming Sites
Applicant	Town of Indian Trail
Submittal Date	10-12-10
Location	Town Wide
Tax Map Number	n/a
Plan Consistency	Comprehensive Plan
Recommendations & Comments	Planning Staff Recommend approval to Town Council.

Project Summary

A request to amend Chapter 1410 and 1470- of the Unified Development Ordinance to allow for an incremental process for bringing nonconforming sites into compliance with Town Ordinances.

Analysis

The Nonconforming Section of the ordinance currently addresses nonconforming uses, structures, lots, signs, and site aspects. The proposed text amendment is specific to nonconforming site aspects. This section of the ordinance refers to a site where the use may be permitted, but the site improvements do not meet the requirement of the UDO. An example of this may be a property which does not have the required amount of parking, or does not have the necessary screening in place.

In the UDO, these issues are addressed under Chapter 1410 and 1470 which indicates that all onsite improvements of a nonconforming sites must be brought into compliance when a property is expanded or enlarged. These requirements can be costly and in many situations place an undue hardship on a new business, or a small business looking to expand.

Staff completed research on this topic to see how other municipalities handled similar cases and found that other municipalities require that site be brought into compliance incrementally by linking site improvements to structural alterations or expansions.

The amount of improvements would be tied to the amount of reinvestment. For example, for structural changes, if a non residential structure valued at \$100,000 is completing remodeling project costing \$40,000, they would then be required to install 40% of the required improvements to bring the site into compliance. This would mean that if the site required 20 parking spaces, they would need to install 8 parking spaces (40%).

For expansions, the ordinance bases the required improvements on the size or the building or site expansion. So if a building were to expand by 35%, the applicant would need to install 35% more of the required parking. Each expansion would require the additional parking until the site has reached 100% of it required parking.

Lastly, the text amendment examines the requirements for establishing an allowed use on a site where the previous use was nonconforming, there are nonconforming site aspects. An example is a commercially zoned property with a house and had previously been used for residential purposes and there is an applicant who wants to use the house for a business. In this case, the text amendment would require that the site install improvements such as parking and screening, but not larger items such as dumpster enclosures and a full landscaping plan. If the applicant proposes a redevelopment of more than 75% of the cost of the structure, then at that time, the Town will require that the site be developed to the full extent of the ordinance.

Required Consistency Findings

The Planning Board is required to make two findings, one for consistency with Town adopted plans and another regarding the benefit of the public. Staff is of the opinion the following findings can be made:

1. The proposed UDO amendment is consistent with the following goals:
 - 1.3.2 of the Comprehensive Plan – Land Use; the proposed UDO ordinance amendments will help to promote a quality mix of different land uses while avoiding land use conflicts with neighboring properties by ensuring compatibility with existing development.
2. This UDO ordinance amendment request is reasonable and in the best interest of the public because it allows for the redevelopment and expansion of sites in the Town while bringing the sites more into conformity with the Town's ordinances.

Staff Recommendation

Staff recommends that the Planning Board make the required consistency findings and recommend adoption of the UDO ordinance amendment to the Town Council.

Staff Contact

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