



# CHAPTER 9

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## 9.00.00 GENERALLY

The purpose of this chapter is to provide mechanisms for obtaining relief from the provisions of this UDC. There are several ways that potential relief from hardship is addressed. Section 9.01.00 addresses relief through requirements regarding nonconforming development. Section 9.02.00 addresses relief through the grant of a variance in a particular situation due to the characteristics of the land to be developed based on the required site design standards. Section 9.03.00 addresses relief through the grant of an administrative waiver in specific situations. Section 9.04.00 addresses relief through recognition of vested rights regarding use and/or design.

## NONCONFORMING LOTS, STRUCTURES, AND USES

### 9.00.01 Generally

- A. Within the zoning and overlay districts established by this UDC there may exist lots, structures, or uses of land which were lawfully established before this UDC was adopted but which do not comply with the requirements set forth in this UDC.
- B. Any nonconformity created by a change in district boundaries or UDC regulations after the date of passage of this UDC shall also be governed by the provisions of this section.
- C. It is the intent of Section 9.01.00 to allow these nonconformities to continue until they are removed or discontinued. It is further the intent of this section that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding structures or uses prohibited elsewhere in the same district.
- D. Nonconforming uses are declared to be incompatible with permitted uses in the district where the nonconforming use is located.
- E. Nothing in Section 9.01.01 shall be construed to prevent the ordinary and routine maintenance and repair of nonconforming structures or structures which contain nonconforming uses provided that:
  1. Repairs do not exceed ten (50) percent of the current fair market value of the nonconforming portion of the structure during any period of twelve (12) consecutive months; and
  2. The Square footage of the structure is not increased.
- F. A structure damaged or destroyed by any means to an extent of more than seventy five (75) percent of its fair market value at time of destruction shall be reconstructed only in conformity with the provisions of this UDC.

- G. Fair market value, where required, shall be determined by reference to current statutory provisions pertaining to the valuation of real property for ad valorem tax purposes.
- H. A structure that is damaged to an extent less than seventy five (75) percent of the fair market value may be restored and occupied as before the damage, provided the following standards are met:
  - 1. Restoration shall be commenced within six (6) calendar months from the date damages were incurred.
  - 2. If reconstruction is not commenced within six (6) months, the reconstruction and use of the land or structure shall thereafter conform to the provisions of this UDC.
- I. A nonconforming structure or a structure containing a nonconforming use that is declared by the Manager to be physically unsafe or unlawful due to lack of repairs and maintenance shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the zoning district in which it is located.

#### 9.00.02 Nonconforming Lots of Record

Any lot for which a plat or legal description has been recorded in the office of the clerk of the Superior Court of Tift County at the time of passage of this UDC which fails to comply with the dimensional requirements for the district in which it is located shall be recognized as a nonconforming lot of record and may, if vacant, be used for any of the uses permitted within the district by this UDC or, if occupied by a structure containing a conforming use, may have the structure improved, enlarged or extended; provided, that in either case:

- A. Minimum requirements of the district for front, side, and rear yard, height, and floor area shall be complied with.
- B. A lot to be used for duplexes, multifamily dwellings, residential group development projects, or mobile homes, when allowed within the district, only if the lot meets the minimum lot area requirements for those uses in the district.

#### 9.00.03 Nonconforming Uses of Structures

Nonconforming uses consist of structures used, at the time of passage of this UDC, for purposes not permitted in the district in which they are located. In addition to the other requirements of this UDC, nonconforming uses of structures shall be governed by the following restrictions:

- A. An existing nonconforming use of a structure may be changed to another nonconforming use that is similar in its operation and effect on surrounding properties or may be changed to a conforming use.
- B. An existing nonconforming use of a structure shall not be changed to another nonconforming use that generates more automobile or truck traffic, creates more noise, vibration, smoke, dust or fumes, is a more intensive use of structures than

the existing nonconforming use, and is in any way a greater nuisance to the adjoining properties than the existing nonconforming use.

- C. A nonconforming use of a structure shall not be extended or enlarged except into portions of the structure which at the time the use became nonconforming were already erected and arranged or designed for such nonconforming use. No structural alterations shall be made in any structure occupied by a nonconforming use, which would in any way increase the floor space, area, or volume of space occupied by the use.
- D. When any nonconforming use of a structure is discontinued for a period in excess of six (6) months, all future use of the structure shall be limited to those uses permitted in that district under the provisions of this UDC. Vacancy and/or nonuse of the building, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.

#### 9.00.04 Nonconforming Uses of Land

Nonconforming uses consisting of lots used for storage yards, used car lots, auto wrecking, junk yards, golf driving ranges, miniature golf, mobile home parks and similar open uses where the only buildings on the lot are incidental and accessory to the use of the lot and where such use of the land is not permitted under this UDC in the district in which it is located shall be governed by the following restrictions in addition to the other requirements in this UDC:

- A. When a nonconforming use of land has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
- B. Nonconforming uses of land shall not be changed to any but conforming uses.
- C. A nonconforming use of land shall not be enlarged to cover more land than was occupied by that use when it became nonconforming.
- D. When any nonconforming use of land is discontinued for a period in excess of six (6) months, any future use of the land shall be limited to those uses permitted in that district under the provisions of this UDC. Vacancy and/or nonuse of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this provision.

#### 9.00.05 Termination of Detrimental Nonconforming Structures and Uses

- A. Reserved

#### 9.00.06 Regulation of Nonconforming Signs

- A. The following provisions shall apply to signs which were conforming immediately prior to the adoption of this UDC, but which became nonconforming at the time of adoption of this UDC.
- B. Nonconforming signs may stay in place until one (1) of the following conditions occurs:
  - 1. The sign deteriorates or is damaged to the extent that it becomes a hazard; or

2. The sign has been damaged to such an extent that structural repairs are required to restore the sign. A structural repair is any repair necessary only to maintain the stability and safety of the sign.
- C. Nonconforming signs shall be allowed to continue, except as provided in Section 5.04.00, and as follows:
1. A nonconforming sign shall not be replaced by another nonconforming sign except that the substitution or interchange of poster panels, painted boards, or removable materials on nonconforming signs shall be permitted.
  2. Nonconforming signs shall not be replaced, expanded or enlarged; although activities associated with normal maintenance and repair may be performed without violating this ordinance.
  3. Minor repairs and maintenance of nonconforming signs such as repainting, electrical repairs, neon tubing repairs shall be permitted. However, no changes in the size or shape of a sign shall be permitted except to make the sign comply with the requirements of this UDC.
  4. New on-site signs related to legally established nonconforming uses may be erected provided they comply with the sign regulations applicable to the use in the most restrictive district in which the use is permitted.
  5. A nonconforming sign damaged by fire or other causes to the extent of more than fifty (50) percent of its fair market value shall not be repaired or rebuilt except in compliance with the standards for the type and location of sign.
  6. A nonconforming sign damaged by fire or other causes to the extent of more than fifty (50) percent of its fair market value which is not repaired or rebuilt in compliance with this section shall be removed from the lot, along with all associated debris, and disposed of appropriately, which shall be the owners responsibility.
- D. Nonconforming signs along interstate highways shall be governed by State law.

## 9.01.00 VARIANCES

### 9.01.01 Generally

- A. The Zoning Board of Appeals (ZBA) may authorize upon request in specific cases such variance from the terms of this UDC as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the UDC will, in an individual case, result in unnecessary hardship.
- B. A variance shall be authorized only so that the spirit of this UDC shall be observed, public safety and welfare secured, and substantial justice done.
- C. A variance shall not be granted for a use of land or structures that is prohibited by this UDC in the district in question. Such requests shall be filed as requests for rezoning, the authority for such rezoning of property being solely reserved for the governing authority.

### 9.01.02 Types of Variances

A request for a variance shall be limited to the following dimensional standards: maximum building height; minimum lot width, minimum road frontage; required spacing for driveways; minimum front, side, or rear yard setbacks; or dimensional standards for lot size, # of parking or loading spaces & Rural Farm Homestead.

#### 9.01.03 Requirements for Variances

A variance may be granted upon a finding by the ZBA that all the following conditions have been met:

- A. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography;
- B. Such conditions are peculiar to the particular piece of property involved;
- C. The application of this UDC to this particular piece of property would create an unnecessary hardship;
- D. Relief, if granted, will not cause substantial detriment to the public good or impair the purposes and intent of this UDC;
- E. A literal interpretation of the provisions of this UDC would deprive the applicant of rights commonly enjoyed by other properties of the zoning district in which the property is located;
- F. Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the zoning district in which the applicant's property is located;
- G. The requested variance will be in harmony with the purpose and intent of this UDC and will not be incompatible with the neighborhood or to the general public welfare;
- H. The special circumstances are not the result of the actions of the applicant;
- I. The variance requested is the minimum variance that will make possible the legal use of the land or structure; and
- J. The variance is not a request to permit a use of land or structures which are not permitted by right in the zoning district involved.

#### 9.01.04 Prohibited Considerations

In exercising the above powers, the ZBA shall not consider the following as grounds for the issuance of a variance:

- A. Any permitted use of land or structures in other districts.
- B. Economic or financial hardship alone shall not be sufficient to support the issuance of a variance.

#### 9.01.05 Procedures for Variances

##### A. Applications

1. An application for a variance shall include the information required for all applications, as set forth in Chapter 10.

2. An application for a variance shall include a statement explaining how the variance request conforms to all requirements listed in Section 9.02.03.
- B. Review of applications
1. An application for a variance shall be reviewed by the Manager / Designee for compliance with the requirements set forth in Chapter 10.
  2. A public hearing shall be scheduled before the ZBA.
  3. Notice of the public hearing shall be provided pursuant to the requirements of Chapter 10.
  4. The ZBA shall conduct the public hearing in accordance with the procedures set forth in Chapter 10.
  5. The ZBA shall approve, deny, or approve with conditions the application for variance, based upon findings regarding conditions set forth in Section 9.02.03.
  6. The Manager/ Designee shall send a letter to the applicant when the variance is approved, approved with conditions or denied, by the ZBA.
- C. Expiration of variance approval
- Any variance authorized by the ZBA, for which construction has not commenced within one (1) year from the date on which the decision of the ZBA becomes final, shall be deemed abandoned and be void and of no further force and effect.

#### 9.01.06 Appeal of ZBA Action

Any person aggrieved by the decision of the Zoning Board of Appeals may appeal to the Tift County Superior Court.

### 9.02.00 ADMINISTRATIVE VARIANCE

#### 9.02.01 Authority and Limitations

The Manager / Designee is authorized to reduce specific site design and development standards of this UDC where the intent of the UDC can be achieved and equal performance obtained by granting a variance from the standards. The grant of a variance shall include a recommendation from the SDRC. The authority to grant a variance shall be limited to the following:

- A. A reduction in the minimum front, side, or rear yard setbacks for a single lot, provided the following standards are met:
1. The reduction is necessary in order to implement landscaping, buffer, and tree protection standards of this UDC; and
  2. The reduction is limited to a maximum of twenty (20) percent of the minimum standard.
- B. A reduction in the parking requirement, provided the following standards are met:
1. The reduction is necessary in order to implement landscaping, buffer, and tree protection standards of this UDC; and

2. The reduction is limited to either one (1) space or two (2) percent of the parking requirement, whichever is more; and
  3. The reduction does not limit the availability or location of required handicapped parking.
- C. A reduction in landscaping or buffer requirements, provided the following standards are met:
1. The reduction is necessary due to particular physical conditions of the property, such as the shape of the lot, topography, presence of bodies of water, or other natural features;
  2. The reduction is limited to ten (10) percent of the otherwise required width of the buffer; and
  3. The reduction is limited to ten (10) percent of the otherwise required plant materials.
- D. A modification to the requirements for sign provisions, provided the following standards are met:
1. The modification is necessary due to particular physical conditions of the property, such as the shape of the lot, topography, presence of bodies of water, or other natural features;
  2. The modification is limited to ten (10) percent of the otherwise required sign provisions.

#### 9.02.02 Annual Report Required

An annual report shall be prepared by the Manager and shall summarize the number and type of administrative waivers granted in the previous year. Annual reports shall be forwarded to the Mayor and City Council and the Board of Commissioners.

### VESTED RIGHTS

The purpose of this section is to provide a method to recognize vested rights and developments or projects in progress that were authorized prior to the adoption of this UDC.

#### 9.02.03 Time Period and Applicability

- A. Within one (1) year from the original date of adoption of this UDC or the date that an amendment to the UDC is passed affecting vested rights or creating a substantial and unreasonable conflict with a development work-in-progress, the affected party may apply for relief.
- B. Any project that constitutes a public nuisance and/or any project presenting a danger to the public health, safety, and welfare of the residents of Tift County shall not qualify for consideration.

#### 9.02.04

### 9.02.05 Applications

The affected party shall submit an application which shall include evidence that demonstrates entitlement to vested rights pursuant to applicable State law. The following information shall be provided:

- A. Citation of the specific section(s) of the UDC that affect the development of the property.
- B. Identification of the exact dates that specific ordinances or amendments to the UDC were passed by the Board of Commissioners.
- C. All complete applications provided for under this section shall be submitted not later than the one (1) year anniversary date of the adopted UDC or amendments to the UDC.

### 9.02.06 Procedures

- A. Complete applications shall be submitted to the Manager.
- B. Requests for a determination of vested rights shall be heard at a public hearing before the Board of Commissioners or City Council, as appropriate.
- C. Public notice shall be provided according to the procedures set forth in Section 10.03.00.

### 9.02.07 Expiration of Approval

An approval for a work-in-progress shall automatically expire in one (1) year where no additional development activity is evident and/or a building permit has not been obtained. Any further work on the site shall require an application for a development plan in full compliance with the standards and procedures of this UDC.