

## **Article 4. GENERAL LOT AND USE PROVISIONS**

### **4.1 Applicability**

No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered except in conformity with the regulations herein specified for the district in which it is located, except as provided in this Code.

### **4.2 Uses Not Expressly Permitted and Special Uses**

- A.** Uses designated as "permitted" and "permitted subject to additional standards" are allowed in a district as a matter of right. Uses requiring a Special Use Permit shall be reviewed and approved by the Zoning Board of Adjustment in accordance with Section 15.10.
- B.** It is recognized that new types or forms of land use will develop within the Town of Fletcher that are not anticipated by this Code. In order to provide for such changes and contingencies, the classification of any new or unlisted land use shall be made by the Administrator to determine if the use can reasonably be interpreted to fit into a similar use category described in the Code. The Planning Board may make such a determination after conducting a public hearing.
- C.** It is also recognized that certain allowed uses of land may pose significant impacts to adjacent properties, surrounding neighborhoods, or regional infrastructure. In order to provide for the appropriate review and approval of such uses, the Administrator may designate, at his or her discretion, that any such uses be processed as requiring a Special Use Permit in accordance with the provisions set forth in Section 15.10 of this Code upon a determination of their potential for adverse impact.
- D.** Unless a use is allowed as a "permitted", "permitted subject to additional standards", "Special Use Permit required", "nonconforming use", or "temporary use", then such use is prohibited.

### **4.3 Basic Lot and Use Standards**

No building, land or portion thereof shall be erected, used, moved, or altered except in conformity with the regulations specified for the district in which it is located.

- A.** No yard or lot existing upon adoption of this Code shall be reduced in size or area below the minimum requirements of the district. Yards or lots created after the effective date of this Code shall meet the minimum requirements established by this Code.
- B.** Every building erected, moved, or structurally altered shall be located on a lot conforming to the requirements of the regulating district.
- C.** Front yard and side yard setbacks for infill structures shall be consistent with or equal to the average setbacks for all principal structures on adjacent lots.

- D. Churches and other civic buildings shall be exempt from the front yard setback requirements but shall otherwise comply with the standards of Article 5.
- E. Mixed-use or non-residential buildings on corner lots shall be considered to have 2 front yards and shall utilize the minimum front setback for each façade. Residential structures may reduce the required side yard setback for corner lots upon approval of the Administrator, TRC, or final approving body.
- F. The construction of a customary accessory structure or building is not permitted unless a principal building is located on the lot. Customary accessory and principle buildings may be constructed concurrently.
- G. Only one principal building and its customary accessory building(s) shall be located on any lot, *except in instances involving residential uses where there is enough land area to allow a duplex; a second freestanding dwelling may be constructed in lieu of a duplex with no further subdivision of the lot required, and* except in appropriate districts that permit a lot to contain both residential and non-residential uses in one or more principal structures or within the same structure.
- H. Nothing in this Code shall require any change in the plans, construction, or designed use of any building or structure for which a building permit was secured prior to the adoption of this Code, providing the building permit remains valid.
- I. All residential and non-residential structures on a lot shall have access available from a public street for use by service or emergency vehicles.
- J. All lots shall front upon a street built in accordance with Article 12. Generally, all buildings shall front directly upon a street in a manner that creates a public space that is conducive to pedestrian use. With the provision of lane or alley access, lots may front upon a close or a square, but shall be of sufficient design to allow for the provision of emergency services.

#### 4.4 Irregular Lot Setbacks

The location of required front, side and rear yards on irregularly shaped lots shall be determined by the Administrator. The determination will be based on the spirit and intent of this Code to achieve an appropriate spacing and location of buildings and structures on individual lots.

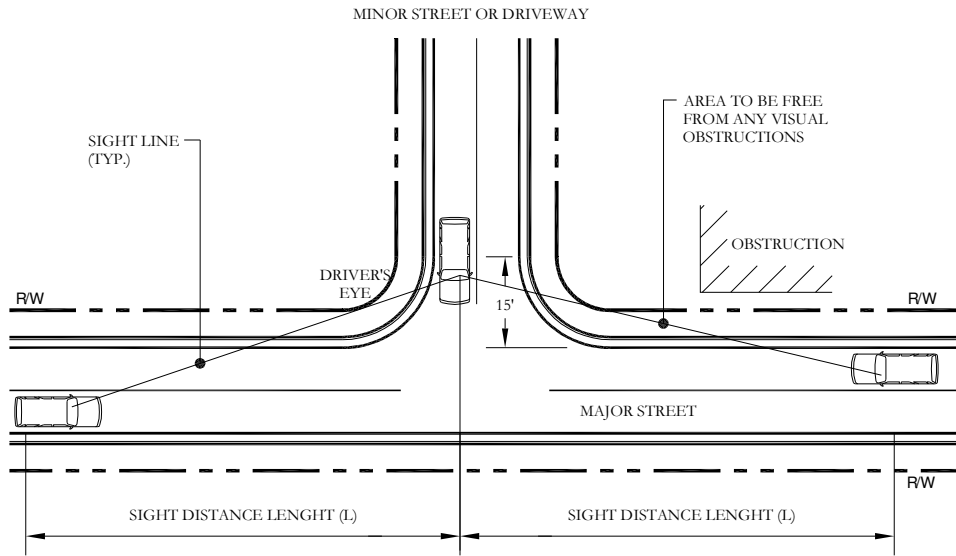
#### 4.5 Corner Visibility/Sight Triangle

- A. On any corner lot there shall be no planting, fence, structure, or other obstruction to visibility within the sight triangle. The Administrator may use discretion in enforcing this requirement where issues of topography, road alignment or other issues prevent strict application of the sight triangle requirement.
- B. Obstruction-free sight triangles shall be provided in both the horizontal and vertical planes, as related to assumed driver's eye height and position. Sight distance lengths and methods of measuring intersection sight distance along a roadway shall be in accordance with ASSHTO guidelines.

- C. Within the area of a defined sight triangle, there shall be no sight obstructing or partly obstructing wall, fence, sign, foliage, berming, or parked vehicles.
- D. Objects that may be located in the sight distance triangle are items such as: hydrants, utility poles, utility junction boxes, and traffic control devices provided these objects are located to minimize visual obstruction.

INTERSECTION SIGHT DISTANCE

FIGURE 2



NOTE:

1. DRIVER'S EYE HEIGHT SHALL BE 3.5 FEET ABOVE THE PAVEMENT FOR PASSENGER VEHICLES AND 6.00 FEET ABOVE THE PAVEMENT FOR TRUCKS.
2. DRIVER'S EYE SHALL BE PLACED 15.0 FEET FROM THE EDGE OF PAVEMENT.
3. OBJECT HEIGHT (APPROACHING VEHICLE) SHALL BE 4.25 FEET ABOVE THE CENTER OF TRAFFIC LANE.

**4.6 Encroachments**

Based on the District provisions in Chapter 2, certain architectural features are permitted to encroach into the front setback. The following standards shall be established for encroachments:

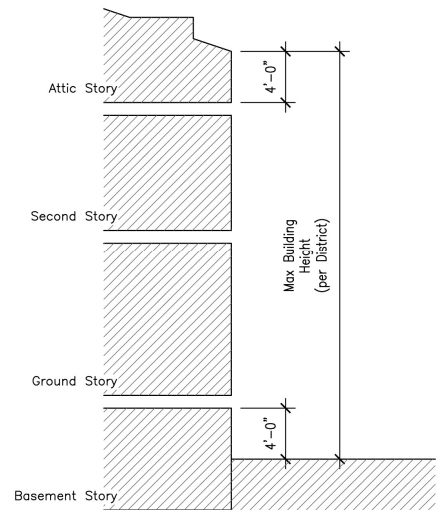
- A. **Arcades:** Arcades, if provided, should be designed to avoid the swing of car doors parked parallel to the arcade. In addition the sidewalk within the arcade should be sufficient to accommodate the intended uses (i.e. outdoor seating) while providing suitable clearances per the American with Disabilities Act Accessibilities Guidelines (ADAAG).
- B. **Awnings:** All awnings, if provided, shall be supported by means of a frame attached directly to the structure receiving beneficial use of the awning. In no case shall awnings be supported by a frame attached to a sidewalk or other public right-of-way. All awnings in other zoning districts shall be considered a part of the structure for purposes of measuring and complying with area and setback regulations.

- C. **Bay Windows:** Bay Windows shall not exceed a maximum projection of two (2) feet from the primary wall. In addition, it shall not contain habitable floor space, but may provide seating as an integral element.
- D. **Balconies, Porches, and Stoops:** Only open balconies, porches, and stoops are permitted as encroachments provided that no encroachment shall be greater than eight (8) feet. To the extent possible, these features are to remain visually permeable so that the front door can be easily seen from the street or sidewalk. Roofs and code-required railings are permitted. However, enclosure of these areas with screening is considered an enclosure for the purposes of this section.
- E. **Handicapped Ramps:** A ramp installed on a residential structure to provide access for a disabled resident may encroach into any setback as necessary.
- F. **Rear Yard Encroachments:** Open decks, porches, patios, and other similar structures not exceeding an average finished height above grade of 30 inches may encroach into the side and rear setback to within five feet of the property line. When a privacy fence of a minimum 6 feet in height is provided, the encroachment may be constructed to the property line. Roofs over such structures are not permitted to encroach into the setbacks.

4.7 Measurement of Height

- A. **Height Computation:** “Building Height” is measured as the vertical distance above a reference elevation measured to the parapet or roof line of a flat roof, the eave of a pitched roof, or the deck line of a mansard roof. The reference elevation shall be selected using the greater of either of the following:

1. The elevation of the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of an exterior wall of the building when such sidewalk or ground surface is not more than 10 feet above the lowest grade.
2. An elevation 10 feet higher than the lowest grade when the sidewalk or ground surface described in “1” above is more than 10 feet above the lowest grade. The height of a terraced or stepped building is the maximum height of any segment of the building.



- B. **Story:** The habitable level of a building of no more than 14 feet in height from finished floor to finished floor. Basements that emerge less than 4 feet from grade or attics not exceeding 4 feet at the knee-wall shall not constitute a story.
- C. **Items Not Included in Calculation:** The height limitations of this Code shall not apply to church spires, belfries, cupolas, and domes not intended for human occupancy, monuments, water towers, observation towers, transmission towers, chimneys, smokestacks, conveyors, flagpoles, masts and antennas; provided evidence

from appropriate authorities is submitted to the effect that such building or structure will not interfere with any airport zones or flight patterns.

#### 4.8 Containment Areas for Trash and Recyclables

All containment devices for trash and recyclables, including compactors, dumpsters, commercial roll-out bins, and areas for storing cardboard shall be located and designed so as not to be visible from the view of adjacent streets and properties and shall be placed in the side or rear yards only. All containment areas shall meet the following standards:

- A. All containment areas shall be enclosed to contain windblown litter.
- B. The enclosure shall be at least as high as the highest point of the compactor or dumpster.
- C. The enclosure shall be made of a material that is opaque at the time of installation and compatible with and/or similar to the design and materials of the principal building.
- D. All compactors and dumpsters shall be placed on a concrete pad that is large enough to provide adequate support, allows for positive drainage, and conforms to the Henderson County Health Department regulations governing compactor pads. A concrete apron shall also extend from the pad for support.
- E. The enclosure shall contain gates to allow for access and security.
- F. Dumpsters and compactors shall be located within the side or rear yard behind buildings and away from sidewalks or pedestrian circulation. Such locations should be accessible to service vehicles.
- G. Enclosures shall be landscaped in accordance with Section 8.4.

#### 4.9 Accessory Structures and Uses

**A. Principal Buildings Required:** The construction of an accessory structure or building is not permitted unless a principal building is located on the lot. Accessory buildings and principal buildings may be constructed concurrently.

**B. Permitted Uses**

1. The following uses are permitted within outbuildings:

- Parking
- Gazebo/Pergola
- Poolhouse
- Equipment Enclosure
- Customary Home Occupation
- Artist Studio Space
- Sauna
- Workshop
- Conservatory
- Rental Cottage

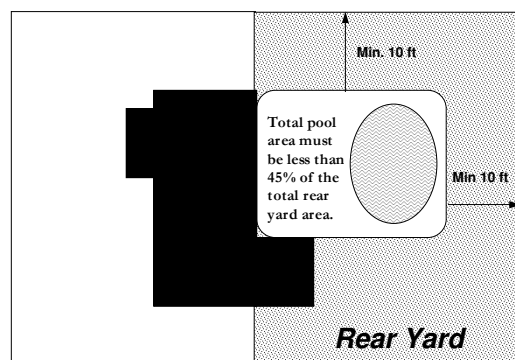
2. Trash containers, mechanical equipment and outdoor storage shall be located only within the rear or side yards.
3. Mailboxes, newspaper boxes, walls, fences, birdhouses, flagpoles, and pump covers may be placed in any front, side or rear yard.

**C. General Requirements**

1. Accessory structures including detached garages shall only be permitted in the side and rear yard.
2. Non enclosed carports, gazebos, and pergolas shall be permitted in front, rear, or side yards, provided that they meet minimum setback requirements.
3. Accessory buildings shall be regulated in size based upon the area of the lot.
  - a. Lots < 1 acre: 800 square foot maximum footprint.
  - b. Lots 1-3 acres: 1500 square foot maximum footprint.
  - c. Lots > 3 acres: no maximum footprint.
4. Accessory buildings in the C-1, CBD, NBD, and Heart of Fletcher Overlay Districts must be placed at the rear of the property and to the maximum extent possible, be kept out of view from the street. The structure may be in the side yard, but not in front of or closer to the road than the primary structure. On corner lots, the structure shall not be on the side that faces the second street frontage. If deemed visible from the street, then the structure must meet the façade requirements of Article 5 of this chapter. In no case shall an accessory structure be taller than the principal building. If an accessory structure is proposed that has bay doors/openings, then such doors/openings shall face the rear or side property line with the building facade facing the street frontage.
5. Cargo shipping containers and/or tractor trailers may NOT be utilized as permanent accessory buildings in the C-1, CBD, NBD, or C-2 zoning district, nor in the Heart of Fletcher Overlay District.

**D. Pools (for Single Family Homes)**

1. All pools for single family homes, whether above ground or below ground, shall be built in side or rear yards, except on lots greater than 2 acres, where this provision shall not apply. The definition of a pool shall include all structures, and walks or patio areas of cement, stone, or wood, at or above grade, built for, and used in conjunction with the pool.
2. Pools, as defined above, shall be setback a minimum of ten (10) feet from all side and rear property lines and from the



right-of-way where pools are allowed in the front yard. Patio areas at grade have no setback requirements from rear and side lot lines.

3. Pools shall be enclosed by a privacy fence (with a self-latching gate) at a minimum height of four (4) feet and a maximum height of ten (10) feet.

#### 4.10 Temporary Uses

Temporary structures and uses shall be permitted in compliance with the provisions of this Code and all other Codes of the Town of Fletcher.

##### A. Uses and Structures

The following temporary structures and uses shall be permitted:

1. **Carnivals or Circus:** Carnivals or circuses are permitted for a period not to exceed 21 days, subject to the approval of Town Council.
2. **Contractor's Office and Equipment Shed:** A contractor's office and equipment shed is permitted in any district for a period covering construction phase of the project not to exceed one year, provided that such office be placed on the property to which is appurtenant. The Administrator may grant 6 month time extensions in the event the construction period lasts longer than one year.
3. **Open Christmas Tree Lots and Pumpkin Sales:** Christmas tree and pumpkin sales in open lots within industrial and commercial districts are permitted for a period not to exceed 45 days.
4. **Seasonal Structures:** Seasonal greenhouses, tents, and other temporary structures for a period not to exceed 90 days. These structures must be removed on their expiration date. No more than two (2) temporary permits for seasonal structures may be granted per applicant per year.
5. **Temporary Classrooms and Offices**  
Manufactured homes may be used for temporary classroom space as a temporary use granted by the Administrator, providing that the following conditions are met:
  - a. The manufactured homes are necessary to alleviate overcrowding only.
  - b. The petitioner of the request must be a church, school, institution of learning, or other public institution.
  - c. The manufactured housing shall be provided with underpinning, from the bottom of the walls to the ground, made of vinyl, pre-painted aluminum material, or other material specifically manufactured for manufactured homes.
  - d. Landscaping shall be provided to create an aesthetically pleasing appearance.
  - e. All required setbacks for the district are adhered to.
6. **Temporary Manufactured Home Use**  
Manufactured homes may be allowed as a temporary use in a zoning district in which such use is not permitted if a disaster occurs which results in the destruction or damage of an occupied single-family dwelling unit greater than



sixty (60) percent of its current tax value. In this instance, a manufactured home may be placed on the lot containing the dwelling unit that was destroyed or damaged to give the occupants a place to live while a new dwelling unit is being constructed or damage to the original dwelling unit is being repaired. Such use is subject to the following conditions:

- a. The manufactured home shall not be placed in the front yard and shall be located no closer than fifteen (15) feet to another principal residential structure on another lot and no closer than ten (10) feet to any lot line.
  - b. The Planning Department shall have the authority to issue a zoning permit for such temporary use on a one-time basis only for a period of nine (9) months. Such permit may be renewed on a one-time only basis [for a period not to exceed nine (9) months] by the Planning Board if it is determined upon information submitted by the applicant that:
  - c. Construction of a new dwelling unit is proceeding with diligence; and
  - d. The granting of this permit will not materially endanger the public, health, welfare or safety; and
  - e. The location of the manufactured home on the site does not have a significant negative or adverse impact on the value of adjacent properties.
7. Temporary Yard Sales and Garage Sales: Yard, garage, tag, patio and apartment sales are permitted without a permit, as an accessory use on any residential or institutional property in any district. Such sales on the same lot shall be limited to no more four (4) yard sales per year, with no more than one (1) sale per calendar month, not to exceed two (2) days in succession, with option to reschedule in the event of inclement weather. Additional regulations can be found in Article 11 Signs.
8. Temporary Storage: Temporary “PODS” type storage containers may be utilized, without a permit, for a period of 90 days, with a 30 day extension allowable under extenuating circumstances. The use of cargo shipping containers and/or tractor trailers is prohibited in the C-1, CBD, NBD, and C-2 zoning districts and the “Heart of Fletcher” Overlay District, EXCEPT where utilized on a construction site with active zoning and building permits.
9. **Recreational Vehicles (RV’s) and Campers:** Outside of an approved campground, one recreational vehicle or camper may be permitted on a lot, without permit, but may not be permanently hooked up to water, sewer, or power. The RV or camper must be properly licensed and registered, and cannot be occupied for more than a single 90 day period per calendar year (outside of an approved campground). In the event the 90 day period lapses at the end of a calendar year, then there shall be at least a 30 day interval before the camper or RV may be occupied again. The RV or camper may either be parked in the driveway or at the rear of the property. An RV/Camper may only be located on a vacant lot and occupied where there are active zoning/building permits for the construction of a single-family residence. The occupancy of mobile “Tiny Homes” on wheels shall be regulated in the same manner.

**10. Mobile Food and other Vendors:** In commercial zoning districts, mobile food trucks and similar mobile vendors may be located on an existing occupied commercially zoned property, with the requirement that the property or business owner obtain a temporary use permit. The vendors must not be located in any public or private right of way and must be parked and situated on the private property in a manner that does not eliminate required parking for a development or impede the flow of traffic in any way. Mobile vendors shall not occupy a vacant property that lacks basic infrastructure, parking, and other site improvements required for new commercial development.

**B. General Requirements**

1. The Administrator may issue a permit for any other temporary use provided that:
  - a. The use is clearly of a temporary nature;
  - b. The use is limited to a period not to exceed one year; and,
  - c. The use is in keeping with the requirements and intent of this Code.
2. The Administrator may attach any conditions to a temporary use permit needed to protect the public health, safety, and welfare.
3. All permits may be renewed provided that:
  - a. The use is clearly of a temporary nature;
  - b. The use will cause no traffic congestion; and,
  - c. The use will not create a nuisance to surrounding uses.

**4.11 Fences & Walls**

**A. Residential**

1. Fences and walls shall be no greater than 4 feet in height in the front yard setback. Fences and walls shall be no greater than 10 feet in height behind the front building line (in the side or rear yard).
2. Fences or walls shall not be located in any sight visibility triangle as stipulated in Section 4.5.
3. Fences and walls may not be located in any public right of way.

**4.12 Nonconformities**

**A. Purpose and Applicability**

1. The purpose of this section is to regulate and limit the continued existence of uses and structures established prior to the effective date of this Code (or any subsequent amendment) that do not conform to this Code.
2. Any nonconformity created by a change in the classification of property or the text of these regulations shall also be regulated by the provisions of this section. Many nonconformities may continue, but the provisions of this section are intended and designed to limit substantial investment in nonconformities and to bring about eventual elimination and/or lessen their impact upon surrounding conforming uses and structures in order to preserve the integrity of the area in which it is located.

**B. Nonconforming Lots**

1. Except as provided in in the two subsections below (4.12.B.2 and 4.12.B.3), a nonconforming vacant lot may be developed for any of the uses permitted by these regulations in the District in which it is located, provided that the use meets all applicable yard and setback requirements for the District in which the lot is located.
2. A nonconforming vacant lot shall not be developed if it can be combined with an adjoining lot (owned by the same person) on or after the effective date of these regulations in order to create a single lot. If the combination results in the creation of a single lot that is more than 1 ½ times the minimum lot width or area required in the District, then the single lot may be divided into two lots of equal width and area without being further classified as nonconforming. For the purposes of this section, "adjoining" shall be deemed to mean the sharing of one or more common lot lines and access to both lots can be provided by the same street without crossing that street.
3. A nonconforming lot may be developed if, at the effective date of this Code the lot is nonconforming, the lot is located in (i) a subdivision in which the lot was located had received preliminary plat approval; or (ii) a subdivision in which the lot was located had received final plat approval.

**C. Reconstruction of Damaged Nonconforming Uses and Structures**

1. Any nonconforming non-residential use and/or structure which is damaged to the extent of 50 percent or more of its current value by fire, flood, wind, or other act of God, may be repaired or replaced in its pre-existing location; provided that the repair and/or replacement is in accordance with all applicable standards and regulations, other than use and yard requirements, subject to the provisions of the Flood Damage Prevention Ordinance (Appendix 1 of the LDC) if applicable.
2. Residential structures damaged by such disasters may be repaired or replaced in its pre-existing location and condition and used as before, subject to provisions of the Flood Damage Prevention Ordinance (Appendix 1 of the LDC) if applicable.

3. Any nonconforming non-residential use and/or structure which is damaged to the extent of less than 50 percent of its current value by fire, flood, wind, or other act of God, may be repaired or replaced in its pre-existing location and condition and used as before, subject to the provisions of the Flood Damage Prevention Ordinance (Appendix 1 of the LDC) if applicable.
4. Permits for repair or reconstruction of damaged uses and/or structures must be issued within 12 months of the date of the damage.

**D. Nonconforming Uses**

1. Nonconforming uses may continue only in accordance with the provisions of this section, but this section shall only apply to the extent these or such nonconformities fully and clearly meet the definition of “non-conforming use” as defined by this Code.
2. A nonconforming non-residential use shall not be expanded, changed or enlarged, except as follows:
  - a. A nonconforming non-residential use may expand within the existing structure, if the Administrator determines that the interior expansion will not have a negative impact upon surrounding conforming uses.
  - b. A nonconforming non-residential use may be allowed a one-time enlargement or expansion not exceeding 25% of the current gross floor area, subject to review and approval by the Zoning Board of Adjustment as a “Special Use Permit”.
3. An existing nonconforming residential use may be enlarged or altered. Any such enlargement or alteration shall be in compliance with all yard requirements and other regulations of such structures as required in the specific District.
4. Once a nonconforming use has been changed to a conforming use, it shall not revert or be used for any nonconforming use.
5. No nonconforming use shall be changed to another non-conforming use.
6. If a nonconforming use is abandoned for one hundred-eighty (180) consecutive calendar days or more, the use shall not be allowed to be re-established. All new uses subsequently established shall be conforming.
7. Minor repairs and routine maintenance of land, structures, or other development of land devoted to a nonconforming use are permitted, so long as no expansion of the nonconforming use occurs as a result.

**E. Nonconforming Structures**

1. Nonconforming structures may continue only in accordance with the provisions of this section, but this section shall only apply to

the extent these or such nonconformities fully and clearly meet the definition of “non-conforming structure” as defined by this Code.

2. A proposed expansion and/or enlargement of a nonconforming non-residential structure must be in compliance with all applicable design standards, regulations, and yard requirements. If the proposed expansion and/or enlargement (or cumulative expansions) exceeds 25% of the current floor area, then the entire property shall be brought into compliance with all applicable design standards and regulations. In no way shall any nonconformity be increased. *(expansions or enlargements of existing institutional and governmental uses shall be exempt from the maximum setback requirements from the Highway 25 corridor, but shall adhere to all other applicable development regulations unless otherwise specified)*
3. An existing nonconforming residential structure may be enlarged or altered. Any such enlargement or alteration shall be in compliance with all yard requirements and other regulations of such structures as required in the specific District.
4. Minor repairs and routine maintenance of a nonconforming structure are permitted.

**F. Nonconforming Manufactured Homes/Mobile Homes, and Mobile Home Parks**

1. A nonconforming manufactured home used as a principal residential structure may only be replaced in accordance with the design criteria found in Section 3.3.V.6 of this Code.
2. A manufactured home may continue to be placed or replaced within a nonconforming manufactured home subdivision on previously platted lots or previously approved spaces, as well as make any necessary improvements to the subdivision infrastructure, but shall not be permitted to expand the area or number of units contained within the boundary of the subdivision.
3. A nonconforming manufactured home used as a principal residential structure may be replaced with another manufactured home only if the replacement manufactured home receives a Certificate of Occupancy within six months of the removal of the original manufactured home. The manufactured home must meet all regulating district requirements.

**G. Nonconforming Accessory Uses and Structures**

1. A nonconforming accessory use or accessory structure may be expanded only if the expansion does not increase the non-conforming condition of the structure.
2. No nonconforming accessory use or accessory structure shall continue after the principal use or structure is terminated by abandonment, damage, or destruction

unless such accessory use or accessory structure is made to conform to the standards for the zoning district in which it is located. No non-conforming accessory use or structure shall become or replace any terminated principal non-conforming use or structure.

This page intentionally left blank