

ORDINANCE NO. 01808-42

AN ORDINANCE OF THE CITY OF GALLATIN, SUMNER COUNTY, TENNESSEE, AMENDING THE ZONING ORDINANCE OF THE CITY OF GALLATIN, TENNESSEE ARTICLE 2.00, LANGUAGE AND DEFINITIONS AND ARTICLE 14.00, PROVISIONS GOVERNING NON-CONFORMING USES, LOTS OR PARCELS, AND NON-CONFORMING BUILDINGS AND OTHER STRUCTURES; AUTHORIZING THE REVISIONS TO BE MADE TO THE ZONING ORDINANCE; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the zoning code text amendment is in agreement and consistent with the recommendations of the *Gallatin on the Move 2020* General Development and Transportation Plan, and

WHEREAS, Tennessee Code Annotated, Title 13, Chapter 7, Section 204 authorizes the City to amend its zoning code as necessary upon first being reviewed by the Planning Commission, and

WHEREAS, the Gallatin Municipal-Regional Planning Commission, pursuant to Section 15.07.040 of the Gallatin Zoning Ordinance has reviewed and recommended approval of these amendments in GMRPC Resolution 2018-062; and

WHEREAS, the City Council of the City of Gallatin is authorized under Tennessee Code Annotated Title 13, Chapter 7, Section 201 to adopt Zoning regulations for the betterment of the city, and

WHEREAS, the City Council of the City of Gallatin is authorized under Tennessee Code Annotated Title 13, Chapter 7, Section 208 to establish nonconforming provisions which protect property owners and business operators who own or lease properties not in compliance with more recent zoning regulations adopted by the city, and

WHEREAS, notice and public hearing before the Gallatin City Council has or will occur before final passage of these amendments pursuant to Section 15.07.060 of the Gallatin Zoning Ordinance and Tennessee Code Annotated, Section 13-7-203;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GALLATIN, SUMNER COUNTY, TENNESSEE as follows:

Section 1. The City Council of the City of Gallatin does hereby approve, authorize and direct the revision of the City's Official Zoning Ordinance to show the changes in the text as described in Exhibit 'A'.

Section 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 3. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provision or applications of this ordinance which can be given without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 4. This ordinance shall become effective immediately upon adoption, the public welfare requiring such.

PASSED FIRST READING: August 21, 2018.

PASSED SECOND READING:

MAYOR PAIGE BROWN

ATTEST:

CONNIE KITTRELL
CITY RECORDER

APPROVED AS TO FORM:

SUSAN HIGH-MCAULEY
CITY ATTORNEY

Attachment – Exhibit ‘A’ – Article 2, Definitions and Article 14.00, Provisions Governing Non-conforming Uses, Lots or Parcels, and Nonconforming Buildings and Other Structures

EXHIBIT 'A' to Ordinance No. O1808-42

ARTICLE 2.00

LANGUAGE AND DEFINITIONS

Zone or Zoning Lot - Is either:

- A. A lot of record existing on the effective date of this Ordinance or any subsequent amendment, or
- B. A tract of land, either not subdivided or consisting of one lot or more contiguous subdivided or platted lots of record, or one or more subdivided/platted lot(s) and a portion of a subdivided/platted lot, located within a single block, which on the effective date of this Ordinance or any subsequent amendment was in single ownership.

A zone lot, therefore, may coincide with a lot of record as defined herein.

For the purpose of this definition, the ownership of a zone lot shall be deemed to include a lease of not less than fifty (50) years duration as defined under "landowner".

A zone lot may be divided into two or more zone lots, provided that all resulting zone lots and all buildings thereon shall comply with all of the applicable provisions of this Ordinance. If such lot is occupied by a non-conforming building, such zone lot may be subdivided provided such subdivision does not create a new non-compliance or increase the degree of non-compliance of such building. A portion of a subdivided/platted lot which does not comply with the standards for lot size and dimension as required by this Ordinance shall not be eligible for development unless the owner of such portion of a lot or parcel first obtains a variance as required herein.

ARTICLE 14.00

PROVISIONS GOVERNING NON-CONFORMING USES, LOT(S) OR PARCEL(S), AND NON- CONFORMING BUILDINGS OR OTHER STRUCTURES

14.01 Statement of Purpose

The districts established in this Ordinance (as set forth in district regulations in Articles 4.00 through 10.00) are designed to guide the use of land within the corporate limits and planning region of the City of Gallatin, Tennessee, by encouraging the development of desirable residential, commercial, and industrial areas with appropriate groupings of compatible and related uses, thereby promoting and protecting the public health, safety, and general welfare of the community.

In order to protect the health, safety and general welfare of the community, land uses, properties (lots and parcels), or structures which existed legally upon the commencement of the land use or the construction of the structure, but no longer conform to all the applicable provisions of this

Ordinance, shall be authorized or restricted by the provisions of this Article to the fullest extent permitted by Tennessee law, including, but not limited to, the provisions of T.C.A. § 13-7-208, as amended.

Non-conforming uses, lots or parcels, and structures shall be subject to the following limitations and controls in order to protect and preserve the full use and enjoyment of affected and nearby properties. While legally non-conforming uses are generally permitted to continue by this Article, further investment in such uses may be limited so as to encourage a the relocation of the use to an appropriately zoned area and the establishment of a conforming use, structure or lot/parcel.

The following provisions apply to legally non-conforming uses of land, non-conforming improvements to the land, pre-existing lots or parcels of substandard size, and non-conforming signs. These provisions shall be applied in a manner consistent with Tennessee Code Annotated § 13-7-208, as amended.

14.01.010 Conflicts with State or Federal Law

The provisions and requirements of this Article shall be interpreted as necessary by the Zoning Administrator to maintain consistency with applicable State or Federal law.

14.02 Non-Conforming Commercial, Industrial and Business Establishments/Uses

14.02.010 Applicability

For any manner of non-conformity, whether by (1) use, (2) structure, or (3) combination of non-conforming use and non-conforming structure, the following provisions shall apply:

14.02.020 General Provisions

A. Continuation of Non-Conforming Uses

Any non-conforming use which existed lawfully at the time of enactment of this Ordinance and which remains non-conforming under the provisions contained herein or any use which shall become non-conforming upon enactment of this Ordinance, or any subsequent amendments thereto, may be continued subject to the provisions of this Article.

B. Change of Non-Conforming Uses

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

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

Whenever an owner changes or permits a change from a non-conforming use to a conforming use, such use cannot thereafter be changed back to a non-conforming use.

A structure used for a nonconforming use may continue to be used for such use unless the use ceases to operate for a continuous period of thirty (30) or more months as established by Tenn. Code Annotated Sec. 13-7-208 (g).

C. Discontinuance of Non-Conforming Industrial, Commercial or Business Establishment Uses

When a non-conforming industrial, commercial or business use of land or a non-conforming use, part or all of a structure, is discontinued or abandoned for a period of thirty (30) continuous months such use shall not thereafter be re-established or resumed, except for uses, structures or lots/parcels as specified by Tennessee Code Annotated § 13-7-208 (1), as amended. Any subsequent use or occupancy of such land or structure shall comply with the regulations of the zoning district in which such land or structure is located except that no pre-existing building shall require removal to establish a new or renewed use on the property. All other bulk requirements shall be met including landscaping/bufferyards, placement or replacement of signs, and parking. Stormwater regulations may be exempt if impervious surfaces are reduced on the property. Car sales lots, where previously sold cars are offered for sale on the property, may be continued and reestablished even if voluntarily abandoned and discontinued for greater than thirty (30) continuous months.

Inactivity of a non-conforming use. When a nonconforming use has been inactive and ceases to operate for a period of thirty (30) or more continuous months, except as described above, the land and its associated improvements shall thereafter be used only in accordance with the provisions of this Article. An intent to resume activity shall not qualify the property for a continuation of the nonconforming use. For the purpose of this subsection, the thirty (30) month period of continuously ceased operation shall be tolled by:

The period in which the use of the property is the subject matter of any action in a court of competent jurisdiction until such time that a final settlement, order, decree, or judgement has been rendered. For purposes of this subsection, "use of the property" shall mean a function or operation that constitutes an activity occurring on the property that requires a business license or a certificate of occupancy.

D. Repair and Maintenance of Non-Conforming Uses and Structures

Nothing in this Section shall prevent repair of damage, or the routine maintenance, strengthening or restoring to a safe condition of any part of any non-conforming building or structure declared unsafe by proper authority except where such building or structure or uses were discontinued and/or was determined to be intentionally and/or voluntarily abandoned as described in Section 13-7-208 (g), Tenn. Code Annotated. However, no substantial

improvement to a non-conforming structures located within a special flood hazard area shall occur unless such structures is flood-proofed as required by Article 10, Section 10.03, of this code.

In a non-residential district, any residential dwelling, other than a structure in a special flood hazard area that is substantially damaged or destroyed, may be restored within one year of the date of damage. The building setbacks of the original dwelling may apply to any reconstructed residential dwelling.

E. Expansion of Non-Conforming Uses and Structures

Subject to the provisions of Tennessee Code Annotated § 13-7-208, as amended, non-conforming industrial, commercial, or business establishment uses may be expanded and additional facilities may be constructed which involve an actual continuation and expansion of the non-conforming use, provided there is a “reasonable” amount of space on the property so as to avoid nuisances to adjacent landowners. Acquisition of additional land is not a basis for permitting the expansion of a non-conforming use or structure.

F. Remove Present Non-Conforming Facilities and Replace or Reconstruct New Facilities

Subject to the provisions of Tennessee Code Annotated § 13-7-208, as amended, non-conforming industrial, commercial, or business establishments uses may remove present facilities and reconstruct or replace with new facilities necessary to conduct business, provided there is a “reasonable” amount of space on the property so as to avoid nuisances to adjacent landowners. Any structure rebuilt on the site must conform to the provisions of the existing zoning regulations as to setbacks, height, bulk, or requirements as to the physical location of a structure upon the site. “Reasonable” shall include construction of an expansion which does not result in any encroachment into required yards or setbacks or the expansion resulting in exceeding bulk regulations, including floor area ratios, building bulk and /or heights, lot coverage, construction of the expansion area not compliant with building material requirements, or which require the removal of code required landscaping or bufferyards of the currently designated zoning district.

G. Reduction of a Non-Conforming Use Structure or Land

Any activity to reduce the extent or magnitude of a nonconforming use, structure or land, including a reduction in the nonconforming bulk regulations, parking, or performance and design standards, such as landscaping bufferyards, architectural designs, etc., shall be considered and may be permitted when reviewing applications for a change of use of land or a structure or the use of land or a structure. Reductions in nonconformities associated with redevelopment of a residential, non-residential or multi-family site shall be considered an administrative review except where such redevelopment requires review by the Planning Commission as determined by the Zoning Administrator. However, in cases where a change of use is proposed on a property where a discontinuance of use occurs as described in Section 14.02.020. C., all measures shall be applied to establish or redevelop the property in compliance with the requirements of this Ordinance.

14.03 Non-Conforming Residential Uses

14.03.010 Applicability

For any manner of residential non-conformity, whether by (1) use, (2) structure, or (3) combination of non-conforming residential use and non-conforming residential structure, the following provisions shall apply:

14.03.020 General Provisions

A. Continuation of Non-Conforming Residential Uses

Any non-conforming residential use which existed lawfully at the time of enactment of this Ordinance and which remains non-conforming under the provisions contained herein or any use which shall become non-conforming upon enactment of this Ordinance, or any subsequent amendments thereto, may be continued subject to the provisions of this Article.

B. Change of Non-Conforming Residential Uses

Unless otherwise provided for in this Article, a non-conforming residential use may be changed to any conforming use, and the applicable bulk regulations for any expansion shall apply to such change of use or to alterations made in order to accommodate such conforming use.

Whenever an owner changes or permits a change from a non-conforming residential use to a conforming use, such use cannot thereafter be changed back to a non-conforming use.

C. Discontinuance of Residential Use

Any non-conforming residential use legally established upon the enactment of this Ordinance, or any subsequent amendments thereto, may be continued unless they are discontinued for a period of one (1) year.

D. Repair and Maintenance of Non-conforming Residential Uses and Structures

Nothing in this Section shall prevent the routine maintenance, strengthening or restoring to a safe condition of any part of any non-conforming residential building or structure declared unsafe by proper authority

In a residential district, a nonconforming residential use, except for a multi-family residential use, shall cease if the residential structure(s) is damaged or destroyed which results in a fifty (50) percent or more reduction in the assessed valuation of all buildings. When damage is less than fifty (50) percent of the assessed valuation of the building(s) the use and structure(s) may be restored if reconstructed and reestablished within one year of the date of the damage.

E. Expansion of Non-Conforming Residential Structures

Unless otherwise provided for in this Article, a non-conforming residential building or structure may be altered, expanded or converted to another permitted use, provided that the alteration, expansion or conversion does not create an increase in the degree of non-conformity.

14.03.030 Non-Conforming Residential Uses and Buildings in Commercial Zone Districts

A. Continuation Permitted

Any non-conforming residential use legally established on or before July 8, 1998 that is located in any commercial zone district may be continued unless it is discontinued for a period of one (1) year. Such use may be expanded and its buildings structurally altered or replaced provided that the expansion, alteration or replacement complies with the yard requirements of the residential zone district which most closely matches the lot size containing the non-conforming use as determined by the Zoning Administrator and all applicable development standards in this Ordinance.

B. Change in Residential Use

Changes of use and/or replacement of a non-conforming Single-wide Mobile Home residential use, located in other than a registered mobile home park approved by the City, to a non-conforming One-Family Detached Dwelling residential use shall be permitted provided that the change of use and/or replacement dwelling complies with the yard requirements of the residential zone district which most closely matches the lot size containing the non-conforming use as determined by the Zoning Administrator and all applicable development standards in this Ordinance.

14.04 Non-Conforming Multifamily Residential Establishments

Non-conforming multifamily residential establishments, which were permitted to operate under zoning regulations or exceptions thereto immediately preceding a change in zoning, shall be allowed to reconstruct new facilities necessary to the conduct of such multifamily residential establishment subsequent to the zoning change, in the event of damage, whether partial or complete, by involuntary fire or wind damage or other natural disaster in accordance with the provisions of Tennessee Code Annotated § 13-7-208, as amended.

14.05 Non-Conforming Signs

14.05.010 Applicability

The following provisions shall apply to legally permitted signs that were in compliance with all applicable regulations in effect at the time of installation, but were made non-conforming by the adoption of this Ordinance, or subsequent amendments hereto. For the purpose of this Article, a non-conforming sign or sign structure means any existing permanent sign or sign structure which does not conform to the provisions of this Ordinance, but was lawfully erected under the sign

regulations in effect at the time it was erected. For the purposes of regulating non-conforming signs, the definitions contained in Section 13.07 shall apply.

14.05.020 General Provisions

The utilization of a non-conforming sign or sign structure may continue subject to the conditions and requirements referenced in Tenn. Code Annotated 13-7-208 when no change in the use of the property occurs or if the nonconforming provisions pertaining to cessation of the use on the property has not exceeded thirty (30) continuous months. When a change in the use of a property occurs (including but not limited to the redevelopment of the site or a change in the use of the property or business (es)), the sign(s) on that property must be brought into compliance with the provisions of this Ordinance.

With the exception of minor repairs and maintenance, which shall include and not be limited to printing, painting, re-facing or refinishing the surface of the existing sign face or sign structure so as to maintain the appearance, no substantial improvements to a non-conforming sign or sign structure shall be allowed. Any structural or other substantial improvement to a non-conforming sign shall be deemed an abandonment of the non-conforming status and shall result in the reclassification of such sign as an illegal sign. Any nonconforming sign located on an industrial, commercial, residential or other site, including a previously titled motor vehicle sales lot, which ceases to operate for a period of thirty (30) continuous months shall after the thirty (30) month cessation conform to the provision of the existing zoning regulations as provided for in Section 13-7-208 (g), Tenn. Code Annotated,

14.06 Non-Conforming Billboards

Non-conforming Billboards may be continued and permitted to expand in accordance with the provisions of Tennessee Code Annotated § 13-7-208, as amended, and as described in Article 13, Section 13.07.061.

14.07 Non-Conforming Uses, Buildings or Structures Located In Special Flood Hazard Areas

The provisions of Article 10.00 shall apply to the continuation, expansion or reconstruction of any non-conforming uses, buildings or structures located within a special flood hazard area.

14.08. Nonconforming Lot(s)/Parcel(s) of Substandard Size Provisions

14.08.010 Applicability

The following provisions shall apply to legally permitted lot(s) or parcel(s) that were established in compliance with all applicable regulations in effect at the time of platting or deeding, but were made non-conforming by the adoption of this Ordinance, or subsequent amendments hereto. For the purpose of this Article, a nonconforming lot(s) or parcel(s) means any existing lot(s) or parcel(s) which does not conform to the provisions of this Ordinance, but was lawfully created, platted, or deeded consistent with regulation in effect at the time such lot(s) or parcel(s) was created or established by order of a court of jurisdiction.

14.08.020 General Provisions

Any nonconforming lot(s) or parcel(s) which existed lawfully at the time of enactment of this Ordinance and which remains nonconforming under the provisions contained herein or any lot(s) or parcel(s) which shall become non-conforming upon enactment of this, or any subsequent amendments thereto, may be continued as a nonconforming lot(s)/parcel(s) and be eligible for specified uses and for development subject to the provisions of this Ordinance.

14.08.030 Nonconforming lot(s)/Parcel(s)

A structure may be constructed or re-constructed on a lawfully established nonconforming lot(s), zoned lot, or parcel(s) created and recorded in the deed books or plat books prior to adoption of this zoning ordinance, or subsequent amendments thereto, or authorized by court order, if the lot or parcel does not comply with the current zoning and subdivision regulations. (ex: 5000 sq. ft. lot in a district that requires a 7500 sq. ft. lot) However, all structures constructed or placed upon such lot(s) or parcel(s) must comply with required zoning bulk regulations and yard requirements, except for lot area and dimension requirements.

Any parcel or lot which was subdivided or partitioned from a parent lot or parcel that does not comply with zoning regulations and subdivision regulations in effect at the time of platting or which was partitioned from a previously conforming or nonconforming platted lot shall not be eligible for development or redevelopment of a structure unless a variance(s) is granted by the Board of Zoning Appeals.

14.08.040 Separation of Contiguous Deeded Lots of Record

Non-conforming contiguous lot(s)/parcel(s) that were joined together by a deed(s) and recorded in the deed books, or by court order, without having been re-subdivided or combined complaint with current zoning regulations, may be restored or reestablished to the original lot configuration as previously recorded. Said provision shall not require a re-subdivision of the two or more formerly joined lots provided that the deeds separating such lot(s) or parcel(s) shall comply with the dimensions and boundaries of the initially recorded lots. Owners of previous non-conforming lots or parcels combined into a conforming lots(s)/parcel(s) by re-subdivision to comply with zoning regulations shall not be eligible to record a deed to restore or reestablish a non-conforming status or re-subdivide to any previous non-conforming status unless granted a variance by the Board of Zoning Appeals.

ARTICLE 14.00 AMENDMENTS

Section	Ordinance #	Date
Add Section 14.04	O0903-24	04/21/09
14.00 (Entirety)	O1307-40	10/15/13
14.00 Revisions &		
Add Section 14.08	O1808-42	--/--/--

I: Planning/Activities/Zoning Code Amendments/Article 14 –Nonconforming provisions 8/15/18

**CITY OF GALLATIN
COUNCIL COMMITTEE AGENDA**

AUGUST 14, 2018

DEPARTMENT: PLANNING DEPARTMENT

AGENDA # 7

SUBJECT:

Ordinance No. O1808-42 - Non-Conforming Provisions of the Gallatin Zoning Ordinance.

SUMMARY:

Article 14 of the Gallatin Zoning Ordinance, contains provisions and conditions for protecting nonconforming uses and structures in the City consistent with Section 13-7-208, Tenn. Code Annotated. The changes proposed to the zoning code address existing non-conformities with currently adopted standards. The proposed Ordinance provides greater specificity consistent with state statute regulating non-conforming uses, structures and lots. The code currently does not address non-conforming lots. Nonconforming lots may be developed with structures to allow for the use of property. The proposed Ordinance recognizes non-conforming lots and allows for the development or redevelopment on these lots. These are located in subdivisions such as Clearview Heights and Aqua Estates, Sunset View (Park Ave.), Jones Addition, Morningside Heights, Westland Heights, Langford Heights, Ford Addition and other older subdivisions created before adoption of the City's zoning and subdivision regulations. Effectively, this will allow more infill development consistent with the general development pattern intended when the subdivisions were created.

The Planning Commission recommended approval of the Ordinance in Resolution No. 2018-067.

RECOMMENDATION:

ATTACHMENT:

Resolution
 Ordinance

Correspondence
 Contract

Bid Tabulation
 Other

Approved
Rejected
Deferred

Notes: