

ARTICLE XII EXCEPTIONS AND MODIFICATIONS

SECTION 1200: NONCONFORMING USES/STRUCTURES/LOTS OF RECORD

Within the Zoning Districts established by this Ordinance or amendments that may later be adopted, there exist Lots, Structures, and Uses of Structures and/or Land, which were lawful before this Ordinance was passed or amended, but which would be prohibited, further regulated, or restricted under the terms of this Ordinance or future amendments. Such non-conforming uses/structures/lots are declared by this Ordinance to be incompatible with permitted uses/structures/lots in the districts involved.

To balance the public interest in full compliance with the terms of the various zoning districts, and the private interest in legitimate investments made in good faith prior to this Ordinance, and in order to avoid undue hardship; this Ordinance seeks to phase out nonconforming uses/structures/lots at varying rates as specified herein, depending on the degree to which the effectiveness of the Ordinance is undermined by their continued existence. It is the intent of this Ordinance to permit all but the most imposing nonconformities to remain until they are voluntarily removed, corrected, or discontinued, but to prohibit their expansion and encourage their elimination or transformation to a conforming status.

Nothing in this Section shall require a change in the plans, construction, or designated use of any building under construction or designated use of any building under construction prior to the adoption of this Ordinance.

Any use or structure established prior or subsequent to the adoption of this Ordinance without the proper authorization and permits, and which violated and continues to violate the standards of this Ordinance, is **ILLEGAL** not nonconforming, and shall be handled in accordance with *Article XIII, Administration, Enforcement, and Appeals*, of this Ordinance.

1200.1 Nonconforming Lots of Record

Where the owner of a lot, which was legally platted and recorded prior to the adoption of this Ordinance, does not own sufficient land to enable him to conform with the width or area requirements of this Ordinance, such lot may nonetheless be developed with any use permitted in the District for which it has been designated, provided that said lot and use are approved by the Oglethorpe County Health Department, and that said lot and proposed use/structures shall comply with all other requirements of the District and this Ordinance. Any such use or structure shall not be considered non-conforming for the purposes of this section.

It is not the intention of this exception to allow building as a matter of right on a platted parcel which was never intended as a building site, but rather was numbered on a plat for identification purposes under a scheme in which multiple lots were intended to provide one building site.

1200.2 Nonconforming Structures

Through their violations of maximum and/or minimum size and space standards designed to ensure light, air, privacy, and compatible design, nonconforming structures may significantly impact the use and value of neighboring properties, though rarely will they threaten the integrity of the whole district. So long as they are used in accordance with the district, such structures may remain indefinitely and be maintained, but the nonconformity may not be expanded. Specifically:

1. No such nonconforming structures may be moved, enlarged, or altered in a way which increases its nonconformity; but any structure may be moved on the same lot (but remaining within the same district) or altered, providing it is in a way which decreases or eliminates its nonconformity. Normal repairs and maintenance shall be permitted.
2. Nonconforming structures may not be moved for any reason to another lot or to another district without conforming to all of the regulations of the district into which it is moved.
3. Should any such nonconforming structure be damaged or destroyed by any means, including natural disaster or catastrophe, to an extent exceeding seventy-five (75%) percent of its replacement cost at the time of destruction, as determined by the Zoning Official, it shall not be reconstructed, repaired,

rebuilt, or altered except in conformity with the provisions of this Ordinance unless a variance has been approved by the Maxeys Town Council.

If a nonconforming structure that is damaged or destroyed by any means, including natural disaster or catastrophe, to an extent exceeding seventy-five (75%) percent of its replacement cost at the time of destruction, as determined by the Zoning Official(s), is part of an agricultural operation and constitutes less than fifty (50%) of the total operation, then it may be reconstructed, but in such a way as to reduce the nonconformity wherever feasible, and provided that a building permit is obtained for the work within six (6) months from the date the damages were incurred.

Structures incurring damage equivalent to seventy-five (75%) percent or less of the replacement cost at the time of destruction, as determined by the Zoning Official(s), may be restored and reconstructed to their prior state, provided that a building permit is obtained for the work within six (6) months from the date the damages were incurred.

In either case, the owner of such property shall remove debris, and where deemed necessary, the remainder of the structure itself, from the property within ninety (90) days from the date the damages were incurred. If, at the end of this period, the owner has failed to comply with this regulation, the County may remove the debris and shall assess the owner for the cost of removal which the county shall be entitled to collect in the same manner as property taxes.

1200.3 Non-Conforming Uses of Structures and/or Land

Nonconforming uses vary in their impact on the integrity of a district. Uses which are nonconforming by type, degree, or intensity of use, are incompatible with permitted uses in the zoning district and may only be continued in accordance with the following:

1. When a nonconforming use is discontinued or abandoned, for whatever reason, for twelve (12) consecutive months, or for a total of eighteen (18) months during any two-year period (except when government action impedes access to the land), the use shall be considered abandoned. It shall not be re-established, and the structure and/or land shall thereafter be used in accordance with the regulations for the district in which it is located.
2. Any structure and/or land, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which it is located, and the nonconforming use may not thereafter be resumed.
3. No existing structure, conforming or otherwise, housing a use that is nonconforming by type, shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered, except in changing the use of the structure to a use permitted in the district in which it is located. However, repairs and maintenance shall be permitted.
4. When a structure, conforming or otherwise, housing a use that is nonconforming by type, is damaged or destroyed by any means, including natural disaster or catastrophe, to an extent exceeding fifty (50%) percent of its replacement cost at the time of destruction, as determined by the Zoning Official(s) said nonconforming use shall be permanently discontinued on the site. Any future structure shall be used only in conformance with the regulations of the district in which it is located.

1200.4 Physically Unsafe Structures

If a nonconforming structure, or portion of a structure containing a nonconforming use, becomes physically unsafe or unlawful due to lack of repairs and maintenance, pursuant to the standards in OCGA Section 41-2-10, and is declared by any duly authorized official to be unlawful by reason of physical conditions, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.

SECTION 1201: VARIANCES

Where the owner of one or more adjacent lots of record at the time of the enactment of this ordinance does not own sufficient contiguous land to enable him to meet the spatial requirements of this Ordinance; or where the topography, physical shape, or other unique features of such lot(s) of record prevent reasonable compliance with the spatial requirements of this Ordinance, the Maxeys Town Council may authorize, upon appeal in specific cases except as otherwise provided herein, such variances from the spatial requirements of these Regulations as will not be contrary to the public interest or constitute a public health or safety hazard, where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in unnecessary hardship; and so insuring that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done.

1201.1 Variances for Use and Density Prohibited

No variance shall be granted for a use of land, buildings, or structures which is not permitted by right or by conditional use within the district involved, nor shall it be granted for a variance from residential densities, except in the case of a hardship mobile home, as specified in Section 1204, in this Ordinance.

1201.2 Conditions and Findings

Variances may be granted in such individual cases for practical difficulty or unnecessary hardship only upon a finding by the Maxeys Town Council that all of the following conditions exist:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, character, topography, and
2. The application of this Regulation to this particular piece of property would create an unnecessary hardship; and
3. Such conditions are peculiar to the particular piece of property involved; and
4. The special conditions and circumstances do not result from the actions of the applicant; and
5. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this Ordinance; and
6. The variance requested is the minimum necessary to make possible the legal use of the land, building or structure.

1201.3 Application Procedure and Review Process

Application requirements and review process for Variance approval shall be as specified in *Article XIV, Amendments*, in this Ordinance, including submission of application and required fees, deadlines, Planning Commission review, required notification and public hearing, and action by the Maxeys Town Council.

1201.3.1 Application Requirements - The application for a Variance shall include:

1. A statement of ownership;
2. The requested variance
3. The specific grounds for the request - including documentation of unique conditions or hardship
4. A site plan, as specified, with applicable information shown thereon
5. Such other information regarding the property and proposed use as directly affects the application or as may be required by the Planning Commission or Maxeys Town Council.

1201.3.2 Modifications and Conditions

In granting a variance, the Board may make modifications or attach conditions which it finds necessary to protect the best interest of the surrounding property or neighborhood and to otherwise achieve the purposes of this Ordinance. The conditions to an authorized variance shall also be a part of the public record and be a part of the requirements for an issuance of a building permit.

1201.3.3 Rehearing After Denial

If an application for a Variance is denied by the Maxeys Town Council, then the same property may not again be consideration for a Variance and no application for such shall be accepted until the expiration of at least six (6) months immediately following the date of the final decision for denial by the Maxeys Town Council.

1201.3.4 Expiration of Variance Approval

The approval of any application for a Variance shall be effective for a period of no longer than twelve (12) months from the date of final approval by Maxeys Town Council. If during that twelve (12) month period, no action is taken by the applicant to implement the use proposed in the application by obtaining the proper permit and/or license, initiating development plat approval, or otherwise proceeding with the building, occupancy or establishment of the approved use, then such approval shall become null and void.

SECTION 1202: CONDITIONAL USES

Conditional uses, as set out in this Ordinance, are those which possess characteristics which may require certain controls in order to insure compatibility with other uses in and adjacent to the district. Therefore, such conditional uses shall only be permitted by special review by the Planning Commission and approval by the Maxeys Town Council based upon findings that the use is consistent with adopted plans for the area and that the location, construction, and operation of the proposed use will not result in a significant adverse impact upon surrounding development in the district or the County in general.

1202.1 Findings

In determining the compatibility of a Conditional Use with adjacent properties and the overall community, the Maxeys Town Council must make the following findings if the Conditional Use is to be approved:

1. Adequate provision is made by the applicant to reduce any adverse environmental impacts of the proposed use to a safe and acceptable level and that the proposed use will not have a significant adverse effect on natural resources (air quality, water supply, municipal water supply watersheds, groundwater recharge areas, wetlands, rivers and streams, floodplains and erosion control, significant trees and forests, and prime agricultural land, for examples) historic and scenic resources, or rare/endangered plant or animal species.
2. Public facilities and services, and utilities (water and sewer systems, solid waste disposal facilities, roads and bridges, schools, law enforcement, fire protection, emergency medical services, for examples) are capable of adequately serving the proposed use.
3. Vehicular traffic and pedestrian movement on adjacent streets will not be hindered or endangered.
4. Off-street parking and loading, and the entrances to and exits from such parking and loading, will be safe and adequate in terms of location, capacity, and design to serve the use.
5. Adequate provision is made on the proposed site for setbacks, fences, screening, or other improvements to protect adjacent properties from possible adverse effects, such as glare, noise, dust, vibration, odor, electrical disturbances, unsightly views, or similar factors.
6. The proposed use will not have a significant adverse effect on the level of property values or the general character of or quality of life in the area.

1202.2 Application Procedure And Review Process

Application requirements and review procedures for Conditional Use approval shall be as specified in *Article XIV, Amendments*, in this Ordinance, including submission of application and required fees, accompanying data, including any additional data specifically required for certain uses or within certain districts as set out elsewhere in this Ordinance, drawings, narratives and other supporting documentation, deadlines, Planning Commission review, required notification and public hearing, and action by the Maxeys Town Council, and any other requirements specified therein.

SECTION 1203: TEMPORARY USES

Certain temporary, incidental uses which are not normal accessory uses under the applicable zoning district, may be permitted by the Maxeys Town Council, provided said temporary uses do not constitute a danger to the public health, safety, and welfare and provided that the owner of the property upon which said temporary use is proposed first obtains a Temporary Use Permit from the Maxeys Town Council, as specified herein.

1203.1 Temporary Building(s) for Construction Project or Land Subdivision Development

A temporary building or buildings for use in connection with a construction project or land subdivision development, such as a real estate sales office, contractor's office, or equipment shed, shall be permitted on the same property as the project during the construction period, provided that:

1. No cooking or sleeping accommodations are maintained in the structure.
2. No temporary or permanent sanitary facilities shall be maintained in the structure unless approved and certified by the Health Department.
3. Such structure observes all appropriate front, side, and rear yard setback requirements for the district in which it is located.
4. Such temporary buildings shall be removed upon completion of the construction phase and shall not remain as sales or advertising offices.

1203.2 Temporary Sawmills

Temporary sawmills used to process timber grown and harvested on the property where it is processed shall meet the following conditions:

1. The sawmill shall be located no closer than two hundred (200') feet from the nearest residential district or use.
2. Hours of operation shall be restricted to 7:00 a.m. to 7:00 p.m., Monday through Saturday.

1203.3 Temporary Entertainment, Recreational, Community or Religious Uses

Other temporary, incidental uses, such as fairs, carnivals, civic, charitable and semi-public events, may be permitted as specified herein, provided they meet the following requirements:

1. All facets of such activities, including parking and storage, shall observe a fifty (50') foot minimum side and rear yard setback, except when adjacent to a residential district, when the minimum setbacks shall be one hundred (100') feet.
2. All uses shall observe the minimum front yard setback of the district in which they are located.
3. Ingress and egress from a street shall be maintained so as not to impede the normal flow or circulation of traffic and shall be approved by the Zoning Official(s).
4. Adequate temporary or permanent sanitary facilities shall be provided.
5. All appropriate permits shall be obtained from the Zoning Official(s) prior to operation.
6. The operation shall comply with the Oglethorpe County Noise Ordinance.
7. Any outdoor lighting shall be installed to preclude direct view of the light source and the direct illumination of adjacent properties, or the creation of glare beyond the property line or on the street.
8. The Maxeys Town Council may impose any conditions it deems necessary in order to make the requested use acceptable and consistent with the district involved, including the requirement that security personnel and surety bond be provided by the applicant.

9. An application for such Temporary Use shall include the following information, as applicable:
 - a. A location map showing the relationship of the property to surrounding uses, including residential property.
 - b. A sketch plan of the area to be used for off street parking, including total parking capacity and safe access to public streets.
 - c. A statement of the dates and hours of operation of the event or use, including the first and last days of the event.
 - d. Details of any proposed exterior lighting and/or sound facilities
 - e. A statement of estimated number of attendees/participants and estimated number of required automobile parking associated therewith.
 - f. Provisions for safe and adequate traffic management and control.
 - g. Provisions for adequate temporary or permanent sanitary facilities.
 - h. Provisions for trash disposal.
 - i. Provisions for post-use clean up of the site.
 - j. A statement of the number and qualifications of security personnel to be retained by the applicant for traffic safety and security purposes, or a statement that none are planned.
 - k. Details and dollar amount of surety bond proposed to be provided by the applicant, to secure the cost of security personnel and clean up associated with the use, or a statement that none is intended.

1203.4 Temporary Signs

Temporary signs which are not permitted as exempt signs, as specified in *Article XI, Section 1104, Exempt Signs*, in this Ordinance, shall require a temporary use permit as follows:

1. Such signs shall be erected no earlier than fourteen (14) days prior to the event and shall be removed no later than five (5) business days following the event.
2. No sign or advertising shall be posted on any building, structure, or property belonging to another without the written consent of the owner thereof. If applicable, such written consent shall be submitted with the temporary use application.
3. In addition to the temporary permit application, applicant for a permit to place a temporary sign shall file a bond in the amount specified by the Maxeys Town Council. Said bond shall be remitted upon removal of all signs by the applicant and subject to compliance with the requirements of this Ordinance and all other applicable laws and regulations.
4. Each application for a temporary sign permit shall contain an agreement to indemnify and save the county harmless of all damages, demands or expenses of every character which may in any manner be caused by the sign or sign structure. In addition, a certificate of liability insurance may be required by the county and shall be presented by the applicant upon request, prior to the issuance of the permit.

1203.5 Other Temporary Uses

The Maxeys Town Council may permit any other temporary use, not to exceed twelve (12) months, which it finds to be compatible with existing uses in the district for which it is proposed, for a period of time which the Board deems appropriate for the use, provided that such use is clearly of a temporary nature, and will not create a hazard or nuisance for surrounding properties.

1203.6 Exemptions

The following temporary uses shall be exempt from the requirement for a Temporary Use Permit as specified herein:

1. Established places of worship, schools, or other public or semi-public facilities where such occasional and temporary land uses are normal accessory uses to the established facility, where existing off street parking and facilities are adequate to accommodate said use, where the use is conducted wholly on the property of said existing facility, where new or substantially altered driveways are not required, and where the use complies with applicable laws and ordinance. This exemption shall apply to temporary, incidental uses, only, and not to permanent or extended uses, buildings, structures, or site improvements which would otherwise require rezoning, permits, or other government action.
2. Certain Temporary Signs, as specified in *Article XI, Sign Regulations*, in this Ordinance, which are directly related to and on the same property as the uses listed in paragraph #1, above.

SECTION 1204: HARDSHIP MANUFACTURED HOUSING

Hardship manufactured housing shall be considered a temporary use. In order to be approved by the Maxeys Town Council, hardship manufactured housing shall be subject to the conditions set forth below. The applicant shall bear the burden of providing conclusive evidence to the Maxeys Town Council that these conditions have been met. The Maxeys Town Council may modify the conditions listed below to be more restrictive, or place additional conditions, which may also be more restrictive than the conditions listed below, on any approval granted the applicant. If the hardship manufactured housing is approved, the applicant is responsible for the operation of said manufactured housing in conformance with these conditions.

1. The manufactured housing shall be permitted only if a genuine hardship exists based on medical reasons or natural disaster. Written documentation, such as a letter on professional stationery and signed by the attending physician in the case of a medical hardship, or verification of the circumstances surrounding the hardship in the case of a natural disaster, shall be submitted by the applicant.
2. The proposed manufactured housing shall only be occupied by a relative by blood, marriage, or adoption of the owner of the property, or by a legally appointed guardian of the person upon whose condition the hardship is based.
3. An application for hardship manufactured housing approved by the Maxeys Town Council shall be reviewed in twelve (12) months from the date of approval and on an annual basis thereafter to determine whether the conditions under which the approval was granted still exist to warrant a continuance.
4. The manufactured housing shall be removed from the property within six (6) months after the specified hardship ceases to exist. The manufactured housing shall not be rented or otherwise occupied once the hardship has ceased to exist.
5. The applicant shall submit a written description and photographs of the proposed manufactured housing demonstrating that it will comply with each of the conditions listed herein.
6. The applicant shall submit a site plan or plat showing the dimensions of the lot, the location of the proposed manufactured housing on the lot and its distance from all property lines.
7. The applicant shall submit written approval from the Oglethorpe County Health Department for water supply and sewage disposal for the proposed manufactured housing.
8. The lot which contains the hardship manufactured housing shall be an approved, recorded lot and shall front a publicly maintained road, or it shall be a lot of record as defined in this Ordinance.
9. The proposed hardship manufactured housing shall meet the minimum setback requirements of the zoning district in which it is to be located.

10. Only one hardship manufactured housing unit shall be permitted on a tract of land at one time.

1204.1 Minimum Safety and Installation Requirements

1. At minimum, such structure shall conform to the American National Standards Institute (ANSI) 119.1 (1975), also cited as National Fire Protection Association (NFPA) Code 501(b) and shall otherwise conform to Section 901 of this Ordinance, and shall be inspected and approved by Zoning Official(s)
2. Such structure shall be installed according to the minimum standards of the State of Georgia, the manufacturer's installation instructions (when available), or Appendix "H" of the Georgia State Building Code, and including the use of approved tie-downs and ground anchors able to withstand winds of 100 miles an hour, so as to resist wind overturning and sliding.