

Article XVI
Nonconforming Lots, Uses, and Structures

(Repealed and Replaced March 28, 2006)

Section 1 - Intent

The purpose of this Article is to regulate nonconforming uses in a manner consistent with good planning practices and sound zoning principles. It is the intent that over time, nonconforming uses will be discontinued in favor of uses conforming to this Ordinance and the zoning map. It is also recognized that under certain circumstances, nonconforming uses may change so as to become less non-conforming according to law and the provisions of this Ordinance.

A change in title or possession, or renewal of a lease, of any such nonconforming land, lot, building, or structure does not constitute a change affecting the continuance of the use.

Section 2 - CONTINUATION OF NONCONFORMING USES

A nonconforming use may continue as it existed when it became nonconforming. A nonconforming use shall not be changed, altered, repaired, restored, replaced, relocated or expanded in any manner, including the addition of new accessory or incidental uses, except as provided for in this Article.

Section 3 - DISCONTINUANCE OR ABANDONMENT OF A NONCONFORMING USE

If any nonconforming use is discontinued for a period of two (2) years, it shall lose its nonconforming status, and any further use shall conform to the provisions of this Ordinance.

Section 4 - PERMITTED CHANGES OF NONCONFORMING USES

A nonconforming use may only be changed, altered, repaired, restored, replaced, relocated or expanded only as follows:

- A. A nonconforming use may change to a conforming use.
- B. A nonconforming use may change to a more restrictive nonconforming use in accordance with the following provisions:
 - 1. A nonconforming use may only be changed to a more restrictive nonconforming use upon approval by the zoning administrator. The zoning administrator's approval, which shall not be given until the nonconforming status of the use has been verified in accordance with Section 8 of this Article, shall include a determination in writing that the proposed use is "more restrictive" than the existing nonconforming use. If the zoning administrator determines the proposed use is not "more restrictive" than the existing nonconforming use, the application for a change to a more restrictive nonconforming use shall be denied. An appeal of such a determination may be made to the Board of Zoning Appeals as provided for in this Ordinance.

2. In determining whether a proposed use is a “more restrictive” nonconforming use, the administrator shall consider, among other things, the following factors:
 - a. Whether the proposed use will change the size and scope of the existing use, and the magnitude of such change; and
 - b. Whether the proposed use will increase the intensity of the nonconforming use, including hours of operation, traffic, noise, and similar impacts; and,
 - c. Whether the proposed use will have a more or less detrimental effect on conforming uses in the neighborhood.
 3. Upon approval of the change to a more restrictive nonconforming use, site plan approval, as set forth in this Ordinance, shall be required.
- C. Minor alterations, cosmetic modifications, interior renovations and similar changes for nonconforming uses may be permitted subject to the following standards:
1. The change(s) shall not increase the physical area occupied by any component of the nonconforming use, and shall not increase the gross floor area of any nonconforming structure; and
 2. The construction shall meet all current zoning ordinance requirements for the zoning district in which the nonconforming use is located, or the zoning district assigned by the zoning administrator as a part of the nonconforming use verification process, whichever requirements are more strict.
- D. A nonconforming use may be repaired so long as the repair constitutes only routine maintenance necessary to keep the structure in the same general condition it was in when it originally became nonconforming.
- E. A nonconforming use may be restored or replaced as follows:
1. A nonconforming use that is damaged by any cause to any extent not exceeding fifty (50) percent of its current appraised value according to the records of the Commissioner of Revenue may be restored to its condition prior to such damage, provided such restoration is begun within twelve (12) months of the date of the damage and completed within eighteen (18) months of the date of the damage.
 2. Restoration shall not include any minor alterations, cosmetic modifications, interior renovations or similar changes except as permitted in subsection C of this Section, nor shall such restoration include any expansion unless approved under the provisions of subsection F of this Section. Restoration may include changes that make the use less nonconforming provided a determination that the use is less nonconforming is made in accordance with subsection B of this Section.
 3. Prior to any restoration permitted by this Section, the nonconforming status of the structure shall be verified as set forth in Section 8 of this Article.

4. Restoration of nonconforming structures, except for single family detached dwellings, shall require site plan approval as set forth in this Ordinance.
 5. Nonconforming uses other than signs and buildings (such as, but not limited to, underground storage tanks, private sewage disposal systems, and parking lots) may be restored or replaced when such structures become unsafe or unsound.
 - a. A relocation of the use on the same lot may be approved by the administrator provided the new location is less nonconforming than the original location, and further provided that the new location shall not cause a greater detrimental impact on conforming uses in the neighborhood.
 - b. Nonconforming signs may be repaired or replaced in accordance with the provisions of Section 5 of this Article.
- F. A nonconforming use may be expanded as follows:
1. Nonconforming structures occupied by, or used as a part of, a conforming use may be expanded, provided the expansion meets all current zoning regulations for the zoning district in which the structure is located.
 2. A nonconforming use may be extended throughout any part of a structure originally arranged or designed for that activity, provided that current parking standards as set forth in this Ordinance are met.
 3. No structure used as a part of a nonconforming use shall be moved to any other lot unless the lot is zoned to permit the use, nor shall the structure be moved within the lot on which it exists, unless a relocation is specifically provided for in this Section.
 4. Whenever a percentage limitation is placed on expansion, that limitation shall be the total expansion allowed, whether in increments of any size that add up to the total, or all at once.
 5. No area of any lot not originally devoted to the nonconforming use may be utilized for an expansion, except when it would result in a conforming use.
 6. Any permitted expansion of a use and/or new or expanded accessory structures and uses shall meet all zoning ordinance requirements, including height, yard and setbacks, for the zoning district in which located.
 7. In no case shall a nonconforming single family dwelling be modified to accommodate additional dwelling units.
 8. Prior to the approval of expansion of a nonconforming use under this Section, the nonconforming use shall be verified as set forth in Section 8 of this Article.

- G. All changes to nonconforming uses as set forth herein are subject to verification of the nonconforming use and obtaining all appropriate permits and approvals including, site plan approval, building permit approval and zoning approval.

SECTION 5 - NONCONFORMING SIGNS

Nonconforming signs shall be governed by the regulations set forth elsewhere in this Article, except where such regulations conflict with the following provisions:

- A. Nonconforming signs shall not be expanded.
- B. Nonconforming signs may be changed to reduce any nonconformity as to the number of signs permitted on a lot, sign height, sign size and sign type.
- C. Signs that are nonconforming as to location may be relocated to be less nonconforming.
- D. The message or copy on a nonconforming sign may be changed, provided such change does not alter the sign type, unless the new sign type will result in a conforming sign in all respects.
- E. A sign permit, as required by this Ordinance, shall be required for any changes permitted by subsections B through D of this Section.

Section 6 - USE OF NONCONFORMING LOTS

- A. Any unimproved lot of record, located in any preservation district, that is nonconforming with respect to the lot area, lot width, or lot depth, or any combination thereof, as required in the zoning district in which the lot is located may be used for any permitted use in such zoning district, provided all other standards of the zoning district are met.
- B. Any unimproved lot of record existing on the effective date of this Article that could have been used for a single-family dwelling use under the zoning ordinance in effect immediately prior to the adoption of this Article may be used for a single-family dwelling use, provided all other standards of the zoning district in which the lot is located are met, except that for nonconforming lots in the RP zoning district, the minimum lot area and lot width standards do not have to be met.
- C. In addition to the changes that may be allowed to nonconforming lots by Section 4 of this Article, nonconforming lots may change as follows:
 - 1. A nonconforming lot may be increased in lot size, lot width, or both, to make the lot less nonconforming.
 - 2. The boundaries of a lot that is nonconforming as to lot size or lot width, or both, may be adjusted along with the boundaries of any contiguous conforming lot, provided such adjustment does not make the conforming lot nonconforming and does not make the nonconforming lot more nonconforming.
 - 3. A boundary adjustment between two (2) nonconforming lots, or among three (3) or more nonconforming lots, shall be permitted provided that no new lot is created, that lot width is

not decreased to less than the required front setback line, as set forth in this Ordinance, and that, in the RP zoning district, lot size is not decreased to less than one acre.

4. When a building a structure or a structure is expanded and said structure is located on more than one nonconforming lot, a boundary adjustment shall be required to consolidate the lots to make them less nonconforming.
5. A subdivision plat shall be filed, approved and recorded in accordance with law, whenever any nonconforming lot is modified as set forth in this Section.

SECTION 7 - SPECIAL PROVISIONS REGARDING NONCONFORMING USES AND STRUCTURES IN FLOOD HAZARD OVERLAY DISTRICT

A structure, or the use of a structure or premises, which was lawful prior to August, 1989, but which is not in conformity with the provisions of this Section, may be continued subject to the following conditions:

- A. No structural alteration, addition or repair, singularly or cumulatively, to any nonconforming structure shall exceed fifty (50) percent of its appraised value as shown in the assessment records of Caroline County at the time of its becoming a nonconforming use, unless the structure is permanently changed to a conforming use; provided, however, that if any such alteration, addition or repair exceeds twenty (20) percent of the aforementioned value such alterations shall be in compliance with this Ordinance.
- B. Existing structures located in a floodway area shall not be expanded or enlarged below the level of the one hundred (100) year flood elevation. A certification of elevation prepared by an engineer or surveyor, licensed by the Commonwealth of Virginia shall be required to be submitted as part of the permit application.
- C. If such use is discontinued for twenty-four (24) consecutive months, any subsequent use of the subject property shall conform to Section 2 of this Article notwithstanding the intention of the landowner to continue such use.
- D. If any nonconforming use or structure is damaged or destroyed by any cause whatsoever, to an extent of fifty (50) percent or more of its fair market value, it shall be reconstructed only in conformity with the requirement of this Ordinance and all rights as a nonconforming use are terminated.
- E. Notwithstanding any of the above regulations, structures designated on the National Register or the Virginia Registry of Historic Structures shall be exempt from the provisions of this Section.

Section 8 - VERIFICATION OF NONCONFORMING USES

Prior to approval of any change in a nonconforming use permitted by Section 5 of this Article, the zoning administrator shall verify the lawful status of the use. The zoning administrator may also verify the lawful status of a nonconforming use not proposed to change, upon the request.

- A. In verifying the status of a nonconforming use, the zoning administrator shall determine the following:
1. Whether the use is in fact a lawful nonconforming use as defined by this Ordinance, and if so, then,
 2. The location and gross floor area (in square feet) of all buildings associated with the nonconforming use; and
 3. The location, use and size of all structures other than buildings associated with the nonconforming use; and
 4. The area of land (in square feet) devoted to all aspects of the nonconforming use (including buildings, parking, outside storage, travel ways, open spaces, etc.); and
 5. A description of the principal use(s) and all accessory uses that make up the lawful nonconforming use as a whole.
- B. If the determination verifies the use, or any portion, as a lawful nonconforming use, the zoning administrator shall classify the overall nonconforming use based on the zoning district in which the use would be a permitted use. If the use would be permitted in more than one zoning district, the assigned classification shall be based on the zoning district that is the least intense of all districts where the use would be permitted. The assignment of such a zoning classification shall not operate to change the zoning of the property on which the nonconforming use is located, but shall be used only in determining the applicable criteria for change of the nonconforming use under Section 4 of this Article.
- C. The decision of the zoning administrator under subsections A and B shall be final after thirty (30) days unless an appeal is filed to the Board of Zoning Appeals in accordance with this Ordinance.
- D. The decision of the zoning administrator shall be based on information provided by the owner of the property on which the nonconforming use is located, on information provided by other persons with knowledge of the property, and on any other information available to the zoning administrator as public record. Information may include, but shall not be limited to, permits, licenses, tax records, receipts, business records, photographs, plats, plans, bills, utility information, assessment information, and sworn affidavits from individuals with personal knowledge of the use and/or the property on which the use is located.
- E. The zoning administrator shall keep a record of all verified nonconforming uses. Not less than every two (2) years after the original date of verification, the owner or operator of a verified nonconforming use shall file a report with the zoning administrator, on forms available from the Department of Planning & Community Development, showing that the nonconforming use has not ceased for a two (2) year period, or been abandoned, and that the use is being operated in accordance with the decision rendered as a part of the nonconforming use verification process, and any subsequent changes approved.