

# ATTACHMENT E

## Article-9 Nonconforming Uses, Lots, and Structures

### Division 9-1 General

#### Section 9-1-1 Intent

With the adoption of this Ordinance or subsequent amendments, there exist lots, structures, and use of land and structures in combination which were lawful before this Ordinance was adopted or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit these nonconformities to continue as established prior to Ordinance adoption and in accordance with the Code of Virginia § 15.2-2307.

#### Section 9-1-2 General

- A. A change in occupancy or ownership will not affect the right for the nonconforming use to continue or the nonconforming building or structure to remain.
- B. If a building, structure, lot, or use does not conform to the zoning prescribed for the district in which such is situated, the owner, lessee, or contract purchaser of such building, structure, or use may apply for a rezoning or a Special Use Permit without charge by the County or any agency thereof for fees associated with such filing, provided that:<sup>1</sup>
  - (1) A business license was issued by the County for such building, structure, lot, or use;
  - (2) The holder of such business license has operated continuously in the same location for at least fifteen (15) years; and
  - (3) All relevant local, state, and federal taxes or delinquent charges related to such building, structure, or use have been paid.

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<sup>1</sup> Editor's Note: This section has been expanded to include buildings, structures, and lots beyond the current provision that only applies to uses.

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## Division 9-2 Nonconformities<sup>2</sup>

### Section 9-2-1 Nonconforming Uses

- A. A legal nonconforming use may continue as it existed when it became nonconforming. A nonconforming use will not be reconstructed, relocated, altered, or expanded in any manner, including the addition of new accessory uses, except as provided for in this Section.<sup>3</sup>
- (1) A nonconforming use may change to a conforming use.
  - (2) A nonconforming use may be changed to another nonconforming use of the same or of a more restricted classification. Whenever a nonconforming use of land or buildings has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.
  - (3) No additional uses which would be prohibited generally in the Zoning District involved shall be permitted.
  - (4) The nonconforming use may be extended throughout those parts of a building which are lawfully and manifestly arranged or designed for such use at the time of enactment of this Ordinance provided there are no structural alterations, expansion, or enlargement except those required by law or lawful order.
  - (5) A nonconforming dwelling unit may have a home occupation subject to the requirements of Article 6, Use Matrix, and Article 7, Use Performance Standards, of this Ordinance.
- B. A nonconforming use shall lose its nonconforming status, and any further use shall conform to the requirements of this Ordinance when:
- (1) The nonconforming use is discontinued for a period of two (2) years, regardless of whether or not equipment or fixtures are removed, and shall be deemed abandoned.<sup>4</sup>

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<sup>2</sup> Editor's Note: This division includes many of the sections found in Article 11 but has streamlined and clarified many of the provisions.

<sup>3</sup> Editor's Note: This provision updates and clarifies conflicting language found in section 11-1-4, that did not allow for any expansion or enlargement of a nonconforming use, and 11-4-1, that allowed expansion of a nonconforming use of up to fifty percent. This section now only allows for the expansion of a nonconforming use into a pre-existing building.

<sup>4</sup> Editor's Note: The current allowance for an extension to the two year discontinued use removing a nonconforming status has been removed in this section.

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- (2) The nonconforming use is intentionally abandoned, regardless of the length of time that has passed.
  - (3) The removal of a structure in which a nonconforming use is carried out inside; removal of the structure shall eliminate the nonconforming status of the land, and the nonconforming use may not continue in a new structure.
- C. All nonconforming uses shall obtain a certificate of occupancy. Such permits shall be issued promptly upon the written request of the owner or operator of a nonconforming use.
- D. The casual, intermittent, seasonal, temporary, or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on a part of a lot shall not be construed to establish a nonconforming use on the entire lot.
- E. When evidence available to the Agent is deemed to be inconclusive, whether a nonconforming use exists shall be a question of fact and shall be decided by the Board of Zoning Appeals (BZA) after public notice and hearing in accordance with **Article 3, Permits and Applications, Division 11, Public Hearings**, of this Ordinance, and in accordance with the rules of the BZA as provided in **Article 2, Administration, Division 3, Board of Zoning Appeals**, of this Ordinance.

## Section 9-2-2 Nonconforming Lots of Record

- A. Any lot of record at the time of the adoption or amendment of this Ordinance does not meet the minimum area, length, or width required for the Zoning District it is in, it may be used or built upon without variance, provided that setbacks and other district requirements can be met.
- (1) The front setback requirement shall be no greater than the average of the adjoining lots' existing structure setbacks fronting on the same street.<sup>5</sup>
  - (2) A lot of record without road frontage shall have a legally recorded access easement.
  - (3) If the lot cannot meet setback and other requirements, a variance shall be obtained through the variance processes outlined in **Article 3, Permits and Applications**, of this Ordinance.

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<sup>5</sup> Editor's Note: This provision updates section 11-1-2 to allow for nonconforming lots to be used when front setbacks can not be met in special circumstances rather than not be used at all. The County should consider if they want to specify only specific areas for this to apply.

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- B. A developed nonconforming lot may continue in existence but may not be altered except in accordance with this Article.
- C. Any lot which is reduced in size and becomes less in area or width than the minimum required by the Zoning District, as the result of voluntary or required dedication of right-of-way shall be considered a nonconforming lot of record.
- D. A nonconforming lot may become a conforming lot by meeting the current minimum lot size, lot width, and lot frontage requirements of the Zoning District in which the lot is located through the following actions:
  - (1) A consolidation of the nonconforming lot with an adjacent lot;
  - (2) A boundary adjustment between two (2) contiguous lots, one (1) being nonconforming and the other being conforming, provided such adjustment does not make the conforming lot nonconforming, does not create an additional lot, and does not increase the nonconforming lot's nonconformity; or
  - (3) Rezoning to a different Zoning District to meet the lot size, lot width, and lot frontage requirements of that District.

## Section 9-2-3 Nonconforming Structures, Buildings, and Improvements

- A. The construction of a nonconforming building for which a permit was issued legally prior to the adoption of this Ordinance may proceed in accordance with **Article 1, General, Division 4, Transition of Regulations After Adoption,** of this Ordinance.
- B. A nonconforming structure or nonconforming improvement may continue as it existed when it became nonconforming. A nonconforming structure or nonconforming improvement shall not be reconstructed, altered, or expanded in any manner, except as provided for in this Section.
- C. A nonconforming building or structure shall include those circumstances where Nelson County has:
  - (1) Issued a building permit or other permit authorizing construction and the building or structure was constructed in accordance with the building permit, and upon completion, the County issued a certificate of occupancy; or
  - (2) The owner of the building or structure has paid real estate taxes to the County for such building or structure for a period of more than the 15 years.

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- (3) In no instances shall the nonconforming circumstance of the structure relate, or provide nonconforming status to, a use. Nonconforming uses are established as outlined in **Section 9-2-1, Nonconforming Uses**, above.
- (4) Additionally, a nonconforming building or structure will include those circumstances where:
  - (a) A permit was not required, an authorized governmental official informed the property owner that the structure would comply with the Zoning Ordinance, and the improvements were then constructed accordingly.
  - (b) However, in any proceeding when the authorized County official is deceased or unavailable to testify, uncorroborated testimony of the oral statement of such official will not be sufficient evidence to prove that the authorized County official made such statement.
- D. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming uses of land.
- E. A nonconforming structure may be changed to make it a conforming structure.
- F. Any extension, alteration, or enlargement of a nonconforming structure shall conform with the provisions of this Ordinance, provided such extension, alteration, or enlargement does not increase the degree of nonconformity in any respect.
- G. Any nonconforming building or structure may be brought into compliance with the Uniform Statewide Building Code without affecting the nonconforming status of the building or structure.
- H. If a nonconforming structure is demolished or removed, no nonconforming structure shall be reestablished, except as provided under **Section 9-2-4, Repairs and Maintenance**, below.
- I. If a nonconforming structure is moved for any reason to another parcel of land, regardless of distance, every portion of the structure and its principal use must then conform with the requirements for the Zoning District in which it is located.
- J. Nothing in this Article shall be construed to restrict an owner from seeking a variance in order to bring a nonconforming structure or building into compliance in accordance with **Article 3, Permits and Applications, Division 5, Variances** of this Ordinance.

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## Section 9-2-4 Repairs and Maintenance

- A. On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of 12 consecutive months if:
  - (1) Such repair constitutes routine maintenance necessary to keep the structure or improvement in the same general condition it was in when it originally became nonconforming; or
  - (2) Such repairs constitute minor exterior repairs, cosmetic modifications, interior renovations, and similar changes.
  - (3) The cubic content of the structure, as it existed at the time of passage or amendment of this Ordinance, shall not be increased.
- B. Nothing in this Ordinance shall permit a complete rebuild of a nonconforming structure, nor serve to circumvent the requirements of this Article, except for necessary rebuilds in accordance with **Section 9-2-4 (D)**, below.
- C. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety, on order of such official.
- D. If 50% or more of a nonconforming building or structure or a conforming building with a nonconforming use is damaged or destroyed by fire, natural disaster or other Act of God, such building or structure may be repaired, rebuilt, or replaced provided that:
  - (1) The nonconforming features are eliminated or reduced to the extent possible, without the need to obtain a variance;
  - (2) The owner shall apply for a building permit and any work done to repair, rebuild, or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code;
  - (3) The requirements of the Floodplain District of this Ordinance are met, if applicable; and
  - (4) The work is done within two (2) years unless the building is in an area under a federal disaster declaration and was damaged or destroyed as a direct result of the disaster, in which case the time period shall be extended to four (4) years.

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- E. Owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an Act of God. Nothing herein shall be construed to enable the property owner to commit an arson and obtain vested rights under this Section.
- F. An owner of real property shall be permitted to replace an existing on-site sewage system for any existing building in the same general location on the property even if a new on-site sewage system would not otherwise be permitted in that location, unless access to a public sanitary sewer is available to the property. If access to a sanitary sewer system is available, then the connection to such system shall be required. Any new on-site system shall be installed in compliance with applicable regulations of the Department of Health in effect at the time of the installation.
- G. Pursuant to the Code of Virginia § 15.2-2307(H), if a nonconforming manufactured home is removed other than by natural disaster, an Act of God, or public action, it may not be replaced except as provided for below unless it complies with regulations within the Ordinance. Any such replacement home shall retain the valid nonconforming status of the prior home.
  - (1) Nothing in this Section shall be construed to prevent the landowner or homeowner from removing a valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home.
  - (2) The owner of a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code.