

ARTICLE 17

NONCONFORMING USES

SECTION 17-1. CONTINUATION.

Where at the time of passage of this Ordinance or any amendments thereto lawful use of land and/or structures exist which would not be permitted by this Ordinance, the use may be continued so long as it remains otherwise lawful, provided:

- 17-1-1 No such nonconforming use and/or structure shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance unless said enlargement does not result in an increase in nonconformity or results in a change to a use permitted in the district;
- 17-1-2 No such nonconforming use and/or structure shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use and/or structure at the effective date of adoption or amendment of this Ordinance unless said move results in decreasing the degree of nonconformity or results in conformity with the requirements for the district;
- 17-1-3 No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land. No additional uses of a nature which would be prohibited generally in the district involved shall be permitted.
- 17-1-4 Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land, outside such building;
- 17-1-5 When any nonconforming use is superseded by a permitted use, the use shall thereafter conform to the regulations for the district, and no nonconforming use shall thereafter be resumed;
- 17-1-6 If any such nonconforming use of land and/or structure ceases for any reason for a period of more than two (2) years (except when government action impedes access to the premises) any subsequent use of land and/or structure shall conform to the regulations specified by this Ordinance for the district in which such land is located.
- 17-1-7 If any change in title of possession, or renewal of a lease of any such lot or structure occurs, the existing use may continue.
- 17-1-8 Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing

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development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act. (9/14/10, Case TA-10-332, Ord. No. 2010-37)

- 17-1-8.1 For the purpose of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the City Council has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the City Council has approved an application for a rezoning for a specific use or density; (iii) the City Council or Board of Zoning Appeals has granted a special exception or conditional use permit; (iv) the Board of Zoning Appeals has approved a variance; (v) the City Council or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; (vi) the City Council or its designated agent has approved a final subdivision plat, site plan of development for the landowner's property; or (vii) the Administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of [§15.2-2311](#) of the Code of Virginia, as amended. (9/14/10, Case TA-10-332, Ord. No. 2010-37)

SECTION 17-2. PERMITS.

- 17-2-1 All nonconforming uses shall be issued a Certificate of Occupancy within twelve (12) months from the adoption of this Ordinance.
- 17-2-2 The construction or use of a nonconforming building or land area for which a building permit was issued legally prior to the adoption of this Ordinance may proceed, provided such building is completed within one (1) year, or such use of land established within thirty (30) days after the effective date of this Ordinance. However, the time period may be extended by the Governing Body, upon recommendation by the Planning Commission.

SECTION 17-3. REPAIRS AND MAINTENANCE.

- 17-3-1 On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done for any period of twelve (12) consecutive months on ordinary repairs or on repair or replacement of non-bearing walls, fixture wiring, or plumbing, to an extent not exceeding ten (10) percent of the current replacement cost of the nonconforming structures or nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increased.

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17-3-2 If a nonconforming structure or portion of a structure thereof containing a nonconforming use, becomes physically unsafe or declared by any duly authorized official to be unsafe or unlawful because of physical condition, it shall not thereafter be restored, repaired, rebuilt, or used except in conformity with the regulations of the district in which it is located.

17-3-3 Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of a building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

SECTION 17-4. CHANGES IN DISTRICT BOUNDARIES.

17-4-1 Whenever the boundaries of a district are changed, any uses of land or buildings which become nonconforming as a result of such change shall become subject to the provisions of this Article.

SECTION 17-5. RESTORATION OR REPLACEMENT.

17-5-1 If a nonconforming structure or a conforming structure devoted to a nonconforming activity is destroyed or damaged in any manner, to the extent that the cost of restoration to its condition before the occurrence shall not exceed fifty (50) percent of the cost of reconstructing the entire structure, it may be repaired or restored, provided any such repair or restoration is started within six (6) months and completed within twelve (12) months from the date of partial destruction.

17-5-2 If the cost of restoration to its condition before the occurrence shall exceed fifty (50) percent of the cost of reconstructing the entire structure, it may be repaired or restored only upon the issuance of a special use permit by the Administrator with the approval of the Board of Zoning Appeals.

17-5-3 In approving such permit the Board shall consider the stated purpose for establishing the zoning district in which the structure is located, the uses in the area immediately surrounding the structure in question, particularly the other nonconforming uses, and the hardship which would result from a denial of the special use permit. The permit shall include conditions as to the time within which the repair or restoration must be started and completed and may contain any other conditions regarding the repair and restoration which in the opinion of the Board shall be necessary to carry out the intent of this section and the Ordinance.

17-5-4 The cost of land or any factors other than the cost of the structure are excluded in the determination of the cost of restoration for the purpose of calculating the percent of damage. (10/11/83, Case TA-83-06, Ord. No. 034-83)

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- 17-5-5 Where nonconforming status applies to a use and/or structure, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as the cost of reconstructing the entire structure to its condition before the occurrence. (10/11/83, Case TA-83-06, Ord. No. 034-83)

SECTION 17-6. NONCONFORMING LOTS OF RECORD.

- 17-6-1 Where a lot of record at the time of the effective date of this Ordinance has less area or width than herein required in the district in which it is located, said lot may nevertheless be used for a single-family detached dwelling if that use is permitted in the district in which it is located. Provided, however, that side yards of not less than ten percent (10%) of the required lot width, with a minimum width of five (5) feet, are provided; and that the setback and rear yard requirements shall be as required by the zoning district in which the lot is located. If the lot is a corner lot, a side yard facing on the side street of not less than twenty percent (20%) of the required lot width, with a minimum of ten (10) feet shall be provided. (11/15/78; 12/12/95, Case TA-95-06, Ord. No. 057-95)
- 17-6-2 In any district, existing single-family detached dwellings may be enlarged on any nonconforming lot of record, provided, however, that side yards of not less than ten percent (10%) of the lot width, with a minimum width of five (5) feet, are provided, and that the setback and rear yard requirements shall be as required by the zoning district in which the lot is located. If the lot is a corner lot, a side yard facing on the side street of not less than twenty percent (20 %) of the required lot width, with a minimum of ten (10 feet shall be provided. (11/15/78; 12/12/95, Case TA-95-06, Ord. No. 057-95)
- 17-6-3 In any district, existing permitted structures other than single-family detached dwellings may be enlarged on any nonconforming lot of record, provided that the setback and yard requirements are met. (11/15/78)
- 17-6-4 In any district, permitted structures, other than single-family detached dwellings, may be erected on a nonconforming lot of record, provided that a variance of lot width, setback, and/or yard requirements is obtained through action of the Board of Zoning Appeals. (11/15/78)
- 17-6-5 Where a lot of record at the time of the effective date of this Ordinance has less area or width than herein required in the district in which it is located, said lot may nevertheless be used for a community garden, if that use is permitted in the district in which said lot is located. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

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SECTION 17-7. HIGHWAY REALIGNMENT OR CONDEMNATION.

Any lot, which by reason of realignment of a federal or state highway or by reason of condemnation proceedings, has been reduced in size to an area less than that required by law, shall be considered a nonconforming lot of record subject to the provisions set forth in this section; and any lawful use or structure existing at the time of such highway realignment or condemnation proceedings which would thereafter no longer be permitted under the terms of this Ordinance shall be considered a nonconforming use of structure as that term is used in this Ordinance.

SECTION 17-8. ENLARGEMENT OF NONCONFORMING STRUCTURES.

17-8-1 In any district, existing permitted residential structures that do not meet setback, side, and rear yard requirements may be enlarged in line with the existing building, provided that the existing nonconforming setback, side, and rear yards are not reduced.

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