

ATTACHMENT E

ARTICLE IX. – Nonconforming Uses, Lots, and Structures.

Division 1. General.

Section 9-1-1. Intent.¹

With the adoption of this Ordinance or subsequent amendments, there exists 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, as amended.

Section 9-1-2. General.

Except as otherwise provided in this Ordinance, any lawful use, building, or structure existing at the time of an amendment to this Ordinance may be continued even though such use, building, or structure may not conform to this Ordinance’s provisions and shall be deemed nonconforming. A change in occupancy or ownership shall not affect the right for the nonconforming use to continue or the nonconforming building or structure to remain.

Division 2. Nonconformities.

Section 9-2-1. Nonconforming Uses.²

A legal nonconforming use may continue as it existed when it became nonconforming. A nonconforming use shall not be reconstructed, relocated, altered, or expanded in any manner, including the addition of new accessory uses, except as provided for in this section.

- (1) A nonconforming use may change to a conforming use.
- (2) 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.
- (3) 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.
- (4) A nonconforming dwelling unit may have a home occupation subject to the requirements of Article VI and Article VII.

¹ Editor’s Note: New text to introduce the article.

² Editor’s Note: Newly introduced text is found in items (C)(4), (C)(6), and (C)(7).

- (5) A nonconforming use shall lose its nonconforming status, and any further use shall conform to the requirements of this Ordinance when:
 - (i) 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.
 - (ii) The nonconforming use is intentionally abandoned, regardless of the length of time that has passed.
 - (iii) The removal of a structure that had a nonconforming use 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.
- (6) The casual, intermittent, 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 or tract shall not be construed to establish a nonconforming use on the entire lot or tract.
- (7) When evidence available to the Zoning Administrator 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 after public notice and hearing and in accordance with the rules of the Board.

Section 9-2-2. Nonconforming Lots of Record.³

- (A) Any lot of record at the time of the adoption or amendment of this Ordinance that is less in area or width than the minimum required by the zoning district may be used or built upon, provided that if yard and/or setback requirements cannot be met:
 - (1) The side yard requirements for existing nonconforming lots which are under 60 feet in width may be reduced to 10% of the lot width. However, in no case shall the side yard requirement be reduced to less than 5 feet⁴; or
 - (2) A variance shall be obtained through the variance processes outlined in Article III of this Ordinance.
- (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 the widening or realignment of any State or Federal highway or by voluntary or required dedication of right-of-way along an existing State or Federal highway by reason of any condemnation proceedings, 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:

³ Editor's Note: This section mainly consists of newly introduced text that simplifies provisions for nonconforming lots. Item (c) has been carried over from the existing ordinance.

⁴ Editor's Note: This provision is in the existing Ordinance.

- (1) A consolidation of the nonconforming lot with an adjacent lot;
- (2) A boundary adjustment between two contiguous lots, one 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.⁵

- (A) The construction of a nonconforming building for which a permit was issued legally prior to the adoption of this Ordinance may proceed, provided such building is completed within one (1) year after the 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 in this Section.
- (C) A nonconforming building or structure shall include those circumstances where the 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 previous 15 years.
- (D) Additionally, a nonconforming building or structure shall include those circumstances where:
 - (1) A permit was not required, and an authorized governmental official informed the property owner that the structure would comply with the Zoning Ordinance; and
 - (2) The improvements were then constructed accordingly.
 - (3) However, in any proceeding when the authorized County official is deceased or unavailable to testify, uncorroborated testimony of the oral statement of such official shall not be sufficient evidence to prove that the authorized County official made such statement.
- (E) A nonconforming structure may be changed to make it a conforming structure.
- (F) A building or structure nonconforming only as to height, area, or bulk requirements may be altered or extended, provided such alteration or extension 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.

⁵ Editor's Note: This section has been expanded with additional text to provide more clarity and provisions for nonconforming structures.

- (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.
- (I) If a nonconforming structure is removed for any reason to another parcel of land, regardless of distance, or the lot lines of the parcel on which it is located change, the structure shall thereafter conform to the requirements of the district in which it is located.

Section 9-2-4. Repairs and Maintenance.⁶

- (A) On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done 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) On ordinary repairs or on repairs or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding 40 percent of the current replacement value of the structure; provided, that 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 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.
- (C) If a nonconforming building or structure is damaged or destroyed, even if 50 percent or greater, 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 Management Overlay district regulations of this Ordinance and/or requirements of the Wetlands Ordinance of the County Code are met, if applicable; and
 - (4) The work is done within two 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 years.

⁶ Editor's Note: This section consists of new text that provides for repair and maintenance of nonconforming structures with an allowance for 40 percent of the replacement value of the structure. Localities allow anywhere from 20 percent to allowing any and all internal replacement. The proposed text allows improvement while also encouraging structures to become conforming instead of completely remodeled. Other new text includes Code of Virginia requirements, such as damage from fire, natural disaster, or another act of God. Added text to meet the Code of Virginia requirements related to replacement of mobile homes.

- (D) 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.
- (E) If a nonconforming mobile home is removed other than by natural disaster 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.