

ALBEMARLE COUNTY CODE

CHAPTER 18

ZONING

SECTION 6

NONCONFORMITIES

Sections:

- 6.1 PURPOSE (Amended 6-14-00)**
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6.1 PURPOSE.

The purpose of this section 6 is to regulate nonconforming uses, structures and lots in a manner consistent with sound planning and zoning principles, except for nonconforming signs regulated by section 4.15, and nonconforming uses and structures within the flood hazard overlay district regulated by section 30.3. Nonconforming uses, structures and lots are declared to be incompatible with the zoning districts in which they are located and, therefore, are authorized to continue only under the circumstances provided herein until they are discontinued, removed, changed or action is taken to conform to the zoning regulations applicable to the district in which the use, structure or lot is located.

(Ord. 00-18(4), 6-14-00)

State law reference – Va. Code § 15.2-2307.

- 6.1.1 (Repealed 6-14-00)
- 6.1.2 (Repealed 6-14-00)
- 6.1.3 (Repealed 6-14-00)
- 6.1.4 (Repealed 6-14-00)

6.2 NONCONFORMING USES.

A nonconforming use may continue, subject to the provisions, conditions and prohibitions set forth herein.

A. *Change, enlargement or extension of area used by a nonconforming use.* The area occupied or used by a nonconforming use shall not be:

1. *Occupation or use of additional area.* Changed, enlarged or extended to either occupy or use an additional area of the same lot or structure other than that which existed on the effective date of the zoning regulations applicable to the district in which the use is located; except that: (i) a nonconforming use may be enlarged or extended throughout any part of a structure that was arranged or designed for such nonconforming use on the effective date of the zoning regulations applicable to the

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district in which the use is located, but only if the enlargement or extension does not change the character of the nonconforming use; and (ii) a nonconforming quarry or cemetery may be enlarged or extended to either occupy or use an additional area of the lot, or other abutting lots under identical ownership as the lot on which the nonconforming use exists on the effective date of this chapter; or

2. *Occupation or use of additional structure.* Changed, enlarged or extended to occupy a structure not used for the nonconforming use on the effective date of the zoning regulations applicable to the district in which the use is located; or

3. *Relocation to previously unoccupied or unused area.* Moved, in whole or in part, to any portion of the lot or any other lot, unoccupied or unused by the nonconforming use on the effective date of the zoning regulations applicable to the district in which the use is located; or

4. *Relocation to previously unoccupied or unused structure.* Moved, in whole or in part, to another structure unoccupied or unused by the nonconforming use on the effective date of the zoning regulations applicable to the district in which the use is located.

B. *Enlargement or extension of a nonconforming use.* A nonconforming use shall not be enlarged or extended such that the character of the use existing on the effective date of the zoning regulations applicable to the district in which the use is located is changed. The zoning administrator's determination of whether the character of a nonconforming use has changed shall be based on the magnitude of the change in the size and scope of the use and the effects these changes have upon the purposes of this chapter. In evaluating the change in the size and scope of the use, an increase in the volume or intensity of the use and any alteration or variation in the use, such as the provision of additional goods or services, shall be considered. A mere increase in the volume, intensity or frequency of the use that is trivial, insubstantial or reasonably customary or incidental, and that is not accompanied by an alteration or variation in the use, shall not be deemed to be an enlargement or extension of the use.

C. *Enlargement, extension, reconstruction or structural alteration of a structure.* A structure that is used, in whole or in part, for a nonconforming use shall not be enlarged, extended, reconstructed or structurally altered, except in the following circumstances:

1. *Sanitary facilities.* Notwithstanding any other provision of this chapter, the sole purpose of the enlargement or extension is to house a potable water supply, toilet or other sanitary facilities in a location approved by the zoning administrator, provided that: (i) the sanitary facilities are not duplicative of facilities within the existing structure; (ii) the enlargement or extension is limited to only that area which is necessary to house the sanitary facilities; and (iii) the use of the new area is devoted only to the sanitary facilities.

2. *Ordinary repairs and maintenance of structure.* The repairs consist of ordinary repairs and maintenance, and the repair or replacement of nonbearing walls, fixtures, wiring or plumbing, which is necessary to keep the structure in a usable condition.

3. *Repairs to correct unsafe condition in structure.* Notwithstanding any other provision of this chapter, the repairs are performed to strengthen or restore to a safe condition the structure or any part thereof that has been declared to be unsafe by a public safety official. The repairs may include improvements to provide fire safety and handicapped access, as provided in section 4.9 (buildings and structures: handicapped access) of this chapter, even though these improvements are not mandatory.

4. *Repairs or reconstruction of structure.* The repairs or reconstruction are performed on a structure which is damaged as a result of factors beyond the control of the owner or occupant thereof, provided that: (i) the repairs or reconstruction commence within one (1) year, and are completed within two (2) years, from the date of the damage; and (ii) the structure is not enlarged or extended as a result of the repair or reconstruction.

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D. *Change to more restricted nonconforming use.* If a nonconforming use is changed to a more restricted nonconforming use, the original nonconforming use shall be deemed to be abandoned and the use shall not thereafter be changed back to the original nonconforming use. For purposes of this subsection, a more restricted nonconforming use is a use whose character is either less nonconforming than the original nonconforming use, or that occupies less area of the lot or the structure or structures in which it is located.

E. *Effect of change of ownership.* A change of the ownership or occupancy of the nonconforming use, the structure, or the lot on which the nonconforming use is located, shall not affect the status of the nonconforming use.

F. *Termination of nonconforming status.* The nonconforming status of a use shall terminate and become unlawful if the use is enlarged or extended, or the structure used for the nonconforming use is enlarged, extended, reconstructed or structurally altered, in a manner not authorized by this section. Upon termination of the nonconforming status, the use of the lot or structure shall immediately comply with the regulations set forth in this chapter applicable to the district in which the use is located.

G. *Discontinuance of a nonconforming use.* A nonconforming use and all uses accessory thereto shall be discontinued, and any use of the structure or lot shall thereafter comply with the regulations set forth in this chapter applicable to the district in which the use is located, if the nonconforming use is discontinued for more than two (2) years, regardless of whether the use was continuous or seasonal. The two (2)-year period shall not be tolled during any period during which a structure in which the nonconforming use is conducted is extended, enlarged, repaired, reconstructed or altered as provided in this section 6.2. The continuation of a use that is accessory to the nonconforming use during the two-(2) year period shall not continue the nonconforming use.

(§§ 6.1.1, 6.1.2, 6.1.3, 6.1.4, 6.1.5, 6.2.1, 6.2.2, 6.4.1, 6.4.3, 6.6.1, 12-10-80, 3-5-86, 9-21-88, 9-9-92; Ord. 00-18(4), 6-14-00)

State law reference – Va. Code § 15.2-2307.

6.2.1 (Repealed 6-14-00)

6.2.2 (Repealed 6-14-00)

6.3 NONCONFORMING STRUCTURES.

A nonconforming structure may continue, subject to the provisions, conditions and prohibitions set forth herein.

A. *Extension or enlargement of a nonconforming structure.* A nonconforming structure shall not be enlarged or extended except in the following circumstances, and provided that the enlargement or extension complies with all other applicable requirements:

1. *Conforming use and compliance with setbacks.* The use of the structure complies with the zoning regulations applicable to the district in which the structure is located, and otherwise complies with the front yard, rear and side setback requirements applicable to the district in which the lot is located.

2. *Structure where nonconformity is its noncompliance with requirements of section 4.2 of this chapter.* The structure is a nonconforming structure solely on the basis of the requirements of section 4.2 of this chapter, and qualifies for the exemption provided in section 4.2.6.1 of this chapter.

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3. *Structure where nonconformity is its noncompliance with front yard setback.*

The structure is a nonconforming structure because it does not comply with the front yard setback requirements of the zoning regulations applicable to the district in which the structure is located; provided that the proposed enlargement or extension: (i) is no closer to a public street or private road right-of-way than the existing nonconforming structure; (ii) is a minimum of twenty-five (25) feet from the right-of-way; and (iii) the applicable rear and side yard setback requirements are complied with, unless they can be reduced pursuant to section 4.11 of this chapter.

4. *Detached single family dwelling where nonconformity is its noncompliance with setback.*

The detached single family dwelling is a nonconforming structure because it does not comply with any setback requirements of the zoning regulations applicable to the district in which the structure is located, and the zoning district in which the dwelling is located authorizes detached single family dwellings as a permitted use; provided that the proposed enlargement or extension is: (i) no closer to a public street or private road right-of-way than the existing nonconforming dwelling; (ii) a minimum of twenty-five (25) feet from the right-of-way; (iii) a minimum of six (6) feet from a side or rear property line; and (iv) no closer to any other the property line than the existing dwelling.

5. *Sanitary facilities.*

Notwithstanding any other provision of this chapter, the sole purpose of the enlargement or extension is to house a potable water supply, toilet or other sanitary facilities in a location approved by the zoning administrator, provided that: (i) the sanitary facilities are not duplicative of facilities within the existing structure; (ii) the enlargement or extension is limited to only that area which is necessary to house the sanitary facilities; and (iii) the use of the new area is devoted only to the sanitary facilities.

B. *Repairs, reconstruction or structural alterations of a nonconforming structure.*

A nonconforming structure shall not be reconstructed or structurally altered, except in the following circumstances:

1. *Damage caused by factors beyond control of owner or occupant.*

The nonconforming structure (other than a nonconforming sign) is damaged as a result of factors beyond the control of the owner or occupant thereof, provided that: (i) the repairs, reconstruction or structural alterations commence within one (1) year, and are completed within two (2) years, from the date of such damage; and (ii) the structure is not enlarged or extended as a result of such repair, reconstruction or structural alteration.

2. *Repair to correct unsafe condition in structure.*

Notwithstanding any other provision of this chapter, the nonconforming structure may be repaired to strengthen or restore the structure or any part thereof to a safe condition that has been declared to be unsafe by a public safety official. The repairs may include improvements to provide fire safety and handicapped access, as provided in section 4.9, buildings and structures: handicapped access, of this chapter, even though these improvements are not mandatory.

3. *Structural alteration reducing size of nonconforming structure.*

A nonconforming structure may be structurally altered to reduce its height or floor area. However, if a nonconforming structure is altered so as to reduce either the height or the floor area of the structure, the height or the floor area of the original nonconforming structure shall be deemed to be abandoned and the structure shall not thereafter be altered to the original nonconforming structure.

4. *Structure where nonconformity is its noncompliance with requirements of section 4.2 of this chapter.*

The structure is a nonconforming structure solely on the basis of the requirements of section 4.2 of this chapter, and qualifies for the exemption provided in section 4.2.6.1 of this chapter.

C. *Relocation of a nonconforming structure.*

A nonconforming structure shall not be moved to another location on the same lot or to any other lot unless the structure becomes conforming as a result of the relocation.

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D. *Replacement of a nonconforming manufactured home.* A nonconforming manufactured home may be replaced with another manufactured home, provided it is labeled in accordance with the current edition of the Virginia Manufactured Home Safety Regulations, and is installed in accordance with the current edition of the Virginia Uniform Statewide Building Code. Section 4.1.6 of this chapter shall apply to the replacement of the manufactured home.

E. *Effect of change of ownership.* A change of the ownership or occupancy of the nonconforming structure or the lot on which the nonconforming structure is located shall not affect the status of the nonconforming structure.

F. *Termination of nonconforming status.* The nonconforming status of a structure shall terminate and become unlawful if the structure is enlarged, extended, repaired, reconstructed, structurally altered or replaced in a manner not authorized by this section. Upon termination of the nonconforming status, the structure shall immediately comply with the regulations set forth in this chapter applicable to the district in which the structure is located.

G. *Discontinuance of use of nonconforming structure.* Use of a nonconforming structure shall be discontinued, and the structure shall thereafter comply with the regulations set forth in this chapter applicable to the district in which the structure is located, if the occupation or use is discontinued for more than two (2) years, regardless of whether the prior occupancy or use of the structure was continuous or seasonal. The two (2)-year period shall be tolled during any periods during which the owner diligently and in good faith pursues obtaining an occupant or use for the structure and during the period during which the owner diligently and in good faith extends, enlarges, repairs, reconstructs or alters a structure as authorized in this section 6.3.

(§§ 6.1.1, 6.1.2, 6.1.3, 6.2.1, 6.2.2, 6.4.2, 6.6.1, 6.6.2, 12-10-80, 9-21-88, 9-9-92; Ord. 00-18(4), 6-14-00)

State law reference – Va. Code § 15.2-2307.

6.4 NONCONFORMING LOTS.

A nonconforming lot may continue, subject to the provisions, conditions and prohibitions set forth herein.

A. *Uses allowed on a nonconforming lot.* A nonconforming lot may be used as though it satisfies the zoning regulation that makes it nonconforming, provided that:

1. The use is either a nonconforming use or is a use that complies with the zoning regulations applicable to the district in which the lot is located; and

2. The zoning administrator determines that the lot may be occupied consistently with the public health, safety and general welfare.

B. *Subdivision that includes a nonconforming lot.* A nonconforming lot may be subdivided as part of a subdivision provided that all of the resulting lots comply with the requirements of the zoning district in which they are located and all other applicable requirements of the Albemarle County Code.

C. *Combination of a nonconforming lot with another lot.* A nonconforming lot may be combined with a conforming lot or a nonconforming lot provided the size, area or frontage of the resulting lot is increased to make it conforming or not more nonconforming.

D. *Boundary line adjustment between a nonconforming lot and a conforming lot.* One or more boundary lines between a nonconforming lot and a conforming lot may be adjusted provided:

1. The boundary line adjustment does not make the conforming lot nonconforming or the nonconforming lot more nonconforming; and

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2. If the lots are in the rural areas zoning district, the boundary line adjustment does not result in an increase in the number of lots or dwelling units that could otherwise be established on each lot.

E. *Boundary line adjustment between nonconforming lots.* One or more boundary lines between two or more nonconforming lots may be adjusted provided:

1. The boundary line adjustment does not make either nonconforming lot more nonconforming; and

2. If the lots are in the rural areas zoning district, the boundary line adjustment does not result in an increase in the number of lots or dwelling units that could otherwise be established on each lot.

F. *Subdivision, combination, or adjustment of boundary line of nonconforming lot used by country store.* A nonconforming lot may be subdivided, combined with any other lot, or have one or more of its boundary lines adjusted provided: (i) the resulting lot or lots serve a country store, Class A or B; (ii) the subdivision, combination or boundary line adjustment is required to allow the country store use to meet the requirements of the Virginia Department of Health; (iii) the location of all structures on the resulting lot or lots will not become nonconforming or more nonconforming; (iv) the size of the resulting lot or lots will not become more nonconforming.

G. *Change to nonconforming lot resulting from public dedication or eminent domain.* The area of a nonconforming lot may be reduced by the dedication of land for public use or by the exercise of eminent domain.

H. *Setbacks applicable to a nonconforming lot.* The current front, rear and side yard minimum setbacks applicable to the district in which the lot is located shall apply to a nonconforming lot; provided, that, if any such setback is thereafter reduced as a result of an amendment to the setbacks applicable to the district in which the lot is located, and is in effect when an existing structure is extended or enlarged, then that reduced setback shall apply.

I. *Effect of change of ownership.* A change of the ownership or occupancy of a nonconforming lot shall not affect the status of the nonconforming lot.

(§§ 20-6.1.1, 6.1.2, 6.5.1, 6.5.2, 6.5.4, 12-10-80, 4-15-81, 9-21-88, 6-14-89, 9-9-92; § 18-6.4, Ord. 98-A(1), 8-5-98; Ord. 00-18(4), 6-14-00; Ord. 08-18(7), 11-12-08; Ord. 09-18(10), 12-2-09)

State law reference – Va. Code § 15.2-2307.

6.4.1 (Repealed 6-14-00)

6.4.2 (Repealed 6-14-00)

6.4.3 (Repealed 6-14-00)

6.5 (Repealed 6-14-00)

6.6 (Repealed 6-14-00)