

## **ARTICLE 29. NONCONFORMING LOTS, STRUCTURES, AND USES**

### **Sec. 15-481 Statement of intent**

Lots, structures, uses of land, uses of structures, and characteristics of use lawfully exist which have or may be in the future prohibited, regulated, or restricted under the adoption or amendment of the zoning ordinance. Generally, this article intends to permit these nonconformities to continue until they are discontinued or removed, but not to encourage their survival. Nonconformities cannot be enlarged upon, expanded, or extended, nor be used as grounds for adding other prohibited structures or uses.

- A. To avoid undue hardship, no change will be required in the plans, construction or designated use of any building on which actual construction has lawfully begun and is being diligently pursued prior to the effective date of a zoning ordinance amendment which would render the building nonconforming. Construction includes the placing and permanent fastening of construction materials. Where substantial excavation, demolition, or removal of an existing building has begun preparatory to rebuilding, the excavation, demolition or removal will constitute construction if the work has been diligently pursued.
- B. Advertising structures that become nonconforming because of an amendment to the zoning ordinance must be relocated to a permitted district within 24 months of their becoming nonconforming.
- C. Temporary seasonal uses which become nonconforming through the adoption or amendment of the zoning ordinance, but which have been in continuous use seasonally for at least two consecutive years will be considered nonconforming uses.

### **Sec. 15-482 Nonconforming lots of record**

In any district in which single family dwellings are permitted, a single family dwelling and customary accessory buildings may be erected on any lot that has already been recorded in compliance with the existing ordinance at the time of recordation, but only if the district yard dimensions and requirements other than lot area and width conform to the current district requirements. A variance to the yard requirements can only be obtained through a variance approved by the board of zoning appeals.

### **Sec. 15-483 Nonconforming uses of land**

When a lawful use of land exists which would not be permitted by the adoption or amendment of the zoning ordinance, the use may be continued so long as it remains otherwise lawful, provided:

- A. The nonconforming use cannot be enlarged or increased, nor extended to occupy a greater area of land than was occupied before it became nonconforming.
- B. The nonconforming use cannot be moved in whole or in part to any portion of the lot or parcel other than that occupied by it before it became nonconforming, unless moving the use makes it conform to the current zoning ordinance.
- C. If the nonconforming use ceases for any reason for a period of more than two years, then it loses its nonconforming status and cannot lawfully be restarted unless it comes into compliance with the zoning ordinance.
- D. Any additional structures for the nonconforming use must comply with the zoning ordinance.

- E. If the nonconforming use was issued a business license for the use and the business license holder has operated the use continuously in the same location for at least 15 years and has paid all local taxes related to the use, then the business license holder may apply for a rezoning or a conditional use permit without paying any filing fees.

#### **Sec. 15-484 Nonconforming structure**

Where a lawful structure exists but becomes nonconforming by virtue of the adoption or amendment of the zoning ordinance related to restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, it may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. The nonconforming structure cannot be enlarged or altered in a way which increases its nonconformity, but it may be altered to eliminate its nonconformity.
- B. If the nonconforming structure is moved for any reason and for any distance, it must thereafter conform to the zoning ordinance requirements.

#### **Sec. 15-485 Nonconforming use of structure or of structure and premises**

If a lawful use involving individual structures, or involving both structure(s) and property, becomes nonconforming by virtue of the adoption or amendment of the zoning ordinance, the lawful use may continue so long as it remains otherwise lawful, subject to the following provisions:

- A. The structure cannot be enlarged, extended, constructed, reconstructed, moved, or structurally altered except if the modification eliminates the nonconformity.
- B. The nonconforming use may be extended throughout any parts of a structure which were manifestly arranged or designed for such use before it become nonconforming, but the nonconforming use cannot extend to occupy any land outside the structure.
- C. If no structural alterations are made, nonconforming uses of a structure, or structure and property, may, through a conditional use permit, be changed to another nonconforming use provided that the board of supervisors finds that the proposed use is equally appropriate or more appropriate in the district than the existing nonconforming use. In permitting such change, the board of supervisors may require appropriate conditions and safeguards.
- D. Any structure, or structure and property, in or on which a nonconforming use is superseded by a permitted use, must thereafter conform to the zoning ordinance, and the nonconforming use may not thereafter be resumed.
- E. When a nonconforming use of a structure or structure and property is discontinued or abandoned for more than two years (except when government action impedes access to the premises), the structure, or structure and property, can only be used thereafter in conformity with the zoning ordinance.

#### **Sec. 15-486 Public utility lot**

A public utility lot is a lot created prior to September 4, 2018, on which a well or other structure was constructed to provide utility service to multiple residences. A public utility lot which is not in use to provide utility service to multiple residences does not become a buildable lot. A public utility lot which is currently being used to provide utility service to multiple residences may, without losing prior nonconforming status, be increased in area solely to accommodate utility service improvements, provided the larger lot continues to be used to provide utility service to multiple residences, and provided the larger lot meets these design standards:

- A. Minimum setback of 15 feet from any public right-of-way, or at least equal to the setback of the existing well or other structure;
- B. Minimum yard setbacks of five feet, or at least equal to the setbacks of the existing well or other structure; and
- C. Well or other structure is adequately screened from adjacent residential uses.

#### **Sec. 15-487 Repairs and maintenance**

For any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of 12 consecutive months for ordinary repairs or to repair or replace nonbearing walls, fixtures, wiring, or plumbing so long as the repairs or replacement do not exceed 25% of the value of the nonconforming structure as appraised by the county assessor.

- A. If any residential or commercial building is damaged or destroyed by a natural disaster, accidental fire, or other act of God, the owner may, without obtaining a variance, repair, rebuild, or replace the building to eliminate or reduce the nonconforming features to the extent possible. If the building is damaged greater than 50% and cannot be repaired, rebuilt, or replaced except to restore it to its original nonconforming condition, then owner has the right to do so, so long as any work to repair, rebuild, or replace the building is done in compliance with the Virginia Uniform Statewide Building Code, the provisions of the local flood plain regulations, and if the building is repaired, rebuilt, or replaced within two years from when it was damaged or destroyed. However, if the damaged or destroyed nonconforming building is located in an area under a federal disaster declaration and the damage or destruction was caused by the circumstance that was the cause for the declaration, then the owner has up to four years to repair, rebuild, or replace the building.
- B. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it cannot thereafter be restored, repaired, or rebuilt except in conformity with the zoning ordinance.
- C. Nothing in this article shall be deemed to prevent the strengthening or restoring to safe condition of any building or part thereof which any official charged with protecting the public safety has declared to be unsafe and ordered that it be restored to a safe condition.

Secs. 15-488 through 15-490. Reserved.