

## Article XVI Nonconforming Uses

### Sec. 70- 162 Continuation of Use

- (a.) If, at the time of the enactment of this chapter or any subsequent amendment thereto, any legal activity is being pursued or any lot or structure legally utilized in a manner or for a purpose which does not conform to the provisions of this chapter, such manner of use or purpose may be continued as herein provided.
- (b.) If any change in title of possession or renewal of a lease of any such lot or structure occurs, the use existing may be continued.
- (c.) If any nonconforming use, structure or activity is discontinued for a period exceeding two (2) years after the enactment of this chapter or any amendment thereto, it shall be deemed abandoned, and any subsequent use shall conform to the requirements of this chapter.
- (d.) Temporary seasonal nonconforming uses that have been in continual operation for a period of two (2) years or more prior to the enactment or amendment of this chapter shall be considered nonconforming uses for the purposes of this Article.
- (e.) A nonconforming structure, lot or use shall be changed only to a more limited use.
- (f.) Whenever a nonconforming structure, lot or activity has been changed to a more limited use, such existing use may be changed only to an even more limited use.
- (g.) When any nonconforming use is changed to a conforming use, the use shall thereafter conform to the regulations of the district in which it is located, and no nonconforming use shall thereafter be resumed.
- (h.) No nonconforming use, structure or activity shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use, structure or activity at the date of the enactment or amendment of this chapter unless said move results in conformity with the requirements for the district.
- (i.) No nonconforming use, structure or activity shall be moved in whole or in part to a different lot or parcel unless it shall hereafter conform to the zoning regulations for the district in which it is located after it has been moved. Removal of such use, structure or activity to a different lot or parcel shall eliminate the nonconforming status of the lot or parcel from which such use, structure or activity was removed.
- (j.) No additional structure not conforming to the requirements of this chapter shall be erected in connection with such nonconforming use of land.

### Sec. 70- 163 Permits

- (a.) All nonconforming uses shall obtain a zoning certificate within twelve (12) months from the date of enactment of this chapter, or any amendments thereto. Such certificate shall be issued promptly upon receipt of a written request of the owner or operator of a nonconforming use.
- (b.) The construction or use of a nonconforming building or land area for which a zoning permit was issued legally prior to the enactment or amendment of this chapter may proceed, provided that such building is completed within one (1) year or such use of land is established within thirty (30) days after the effective date of this chapter. However, this time period may be extended one time, for a period of up to six (6) months, by the town council, upon recommendation of the planning commission. If construction is discontinued for a period of six (6) months or more, further construction shall be in conformity with the provisions of this chapter for the district in which the operation is located.

#### Sec. 70- 164 Changes in District Boundaries

Whenever the boundaries of a district are changed, any use of land or building which becomes nonconforming as a result of such change shall become subject to the provisions of this Article.

#### Sec. 70- 165 Expansion or Enlargement

- (a.) No nonconforming use, structure or activity shall be enlarged, increased or extended. However, should a conforming use be located within a nonconforming structure, the nonconforming structure may be enlarged or expanded provided that such enlargement or expansion is in conformance with current law, including but not limited to all applicable Town zoning ordinances, and provided that such enlargement or expansion does not increase the nonconformance of such structure. This section shall not be construed to allow the enlargement or expansion of a structure that does not meet current lot size requirements.
- (b.) Any nonconforming activity may be extended throughout any part of a structure which was manifestly arranged or designed for such use at the time of enactment or amendment of this chapter, but no such use shall be extended to occupy any land outside such structure.

#### Sec. 70- 166 Repairs and Maintenance

On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing to any extent not exceeding fifty (50) percent of the current replacement value of the structure; provided that the cubic contents of the structure as it existed at the time of passage or amendment of this chapter shall not be increased.

### Sec. 70- 167 Restoration or Replacement

If a residential or commercial building is damaged or destroyed by a natural disaster or other act of God, such building shall be repaired, rebuilt or replaced to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance as provided in Section 15.2-2310 of the Code of Virginia, as amended. If such building cannot be repaired, rebuilt, or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. The owner shall ensure that all work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code and the local flood plain regulations. Unless such building is repaired, rebuilt or replaced within two years from the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in compliance with all Town zoning ordinances and other applicable law as it exists at the time of the commencement of such repair, rebuilding or replacement or in compliance with the following provisions:

1. The structure may only be repaired, rebuilt or replaced with the approval of the Town Council. The fee and procedure for the consideration of such a special permit shall be the same as the fee and procedure for the consideration of a conditional use permit, as provided in Article XV of this chapter.
2. 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 Town Council, shall be necessary to carry out the intent of this chapter. This special permit shall be in addition to the required zoning permit and zoning certificate.
3. In approving such permit, the Town Council shall consider, among other relevant factors, the following:
  - a. The state purpose and intent for the establishment of the zoning district in which the structure is located;
  - b. The uses of the area immediately surrounding the structure in question, particularly the nonconforming uses;
  - c. Any applicable elements of the Town's Comprehensive Plan; and
  - d. The hardship which would result from a denial of the special permit.

### Sec. 70- 168 Nonconforming Lots of Record

In any district, where any single lot of record at the time of enactment or amendment of this chapter does not contain land of sufficient area or width to permit conformity with the minimum dimensional requirements of this chapter, such lot may be used or built upon, provided that the yard dimensions and all other requirements other than those applying to area or width of lot shall conform to the regulations for the district in which such lot is located. Variances of yard

and/or setback requirements, if required, may be obtained only through appeals to the board of zoning appeals, as provided in Article XIX of this chapter, except as follows:

- (a.) For single-family detached dwellings only in the B-1 Business District:  
Where a lot of record prior to the adoption or amendment of this chapter is less than fifty (50) feet in width as measured at the point of required front setback, each required side yard may be reduced to not less than five (5) feet.
- (b.) In all districts except for the M-1 Industrial District:  
No building need be set back more than the average of the two adjacent structures on either side. However, if either adjacent structure is not in compliance with the applicable setback regulations, and has not received a variance thereof, or is not a nonconforming structure by reason, this exception shall not apply. A vacant lot shall be assumed to be occupied by a building housing a minimum setback.

Sec. 70- 169 Highway Realignment or Condemnation

- (a.) 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 this chapter shall be considered a nonconforming lot of record and shall be subject to the provisions of this Article.
- (b.) 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 chapter, shall be considered a nonconforming use or structure and shall be subject to the provisions of this Article.