Article 10: Nonconformities: Uses, Structures, Parcels, and Signs

Division 10.1 General

Section 10.1.1 Intent

Because nonconforming uses, structures, parcels, and signs are incompatible with the zoning districts in which they are located, they are authorized to continue only until they are discontinued or removed, or until action is taken to conform them to the applicable zoning regulations. These nonconformities may continue as established prior to the adoption of this Chapter only in accordance with Virginia Code § 15.2-2307 and this Article.

Section 10.1.2 General

A. **Change in occupancy.** A change in occupancy or ownership does not affect the status of a nonconforming use, structure, parcel, or sign.

B. **Determination of nonconformity.** A nonconforming use must be determined by the Agent.

Division 10.2 Nonconformities

Section 10.2.1 Nonconforming Uses

A. **Continuance of nonconforming use.** A nonconforming use may continue as it lawfully existed when it became nonconforming, and may be enlarged or expanded only in accordance with this Article.

B. **Establishment of a nonconforming use.** The casual, intermittent, temporary, or illegal use of land or structures is not sufficient to establish a nonconforming use.

C. **Area**

(1) The area occupied by a nonconforming use may be reconstructed, relocated, altered, enlarged, extended, or expanded, including the addition of new accessory uses, only in compliance with this Section.

(2) A nonconforming use may be extended throughout those parts of a structure that are lawfully arranged or designed for such use at the adoption of this Chapter, provided that the structure may not be altered, expanded, or enlarged unless required by law or lawful order.

(3) A nonconforming use on a portion of a parcel may continue only on that portion of the parcel, except that a nonconforming quarry or cemetery may be enlarged or extended to either occupy or use an additional area of the parcel, or other abutting parcels under identical ownership as of the effective date of this Article.

D. **Abandonment**

(1) A nonconforming use is deemed abandoned and may not be resumed as it originally existed if the use:

a) Becomes less nonconforming than the original nonconforming use;

b) Occupies less area of the parcel or the structure or structures in which it is located; or

c) Is changed to a conforming use.

(2) If the nonconforming use is discontinued for two or more years, the use loses its nonconforming status, regardless of whether equipment or fixtures associated with the use are removed. Any further use must conform to the requirements of this Chapter.

E. **Enlargement or extension.** A nonconforming use may be enlarged or extended only if the zoning administrator determines the use is substantially similar as what existed on the effective date of the applicable zoning regulations, based on:

(1) The effects that these changes have upon the purposes of this Chapter; and

(2) The magnitude of the change in the size, scope and character of the use.

a) In evaluating the change 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, will be considered.

b) 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, will not be deemed an enlargement or extension of the use.

F. **Home occupation.** A nonconforming dwelling unit may contain a home occupation that complies with Articles 6 and 7 of this Chapter.

Section 10.2.2 Nonconforming Structures and Improvements.

A. **Continuance of nonconforming structure.** A nonconforming structure or improvement may continue as it lawfully existed when it became nonconforming, and may be reconstructed, altered, or expanded only in compliance with this Article.

B. **Establishment of a nonconforming use.** The nonconforming status of a structure does not provide legal nonconforming status to a use. Nonconforming uses may be established only in compliance with Section 10.2.1.

C. **Alteration or expansion.** A nonconforming structure may be altered or extended only as follows:

(1) Such alteration or extension does not increase any nonconformity in any respect;

(2) Any structure that is nonconforming due to front setback requirements may be enlarged or extended only if:

a) The proposed enlargement or extension is no closer to a public street or private road right-of-way than the existing nonconforming structure;

b) The proposed enlargement or extension is a minimum of 25 feet from the right-of-way, or the minimum district setback, whichever is less; and

c) The applicable rear and side yard setback requirements are met pursuant to any other applicable provisions of this Article; or

(3) Any detached single-family dwelling that is nonconforming due solely to any setback requirements may be enlarged or extended only if the proposed enlargement or extension is:

a) No closer to a public street or private road right-of-way than the existing nonconforming structure;

b) A minimum of 25 feet from the right-of-way or the minimum district setback, whichever is less;

c) A minimum of six feet from a side or rear property line; and

d) No closer to any other property line than the existing dwelling; or

(4) An enlargement or extension to house the first potable water supply, toilet, or other sanitary facilities may be permitted, if:

a) The enlargement or extension is limited to only the area necessary to accommodate the facilities; and

b) The location is approved by the Agent.

D. **Critical slopes.** A structure nonconforming to the requirements of Section XX (Critical Slopes) may be reconstructed or structurally altered only if it qualifies for the exemption provided in Section ZZ.

E. **Re-establishment.** A nonconforming structure that is demolished or removed may be re-established only as provided under Section 10.2.3.

F. **Nonconforming manufactured homes.** A land owner or home owner may remove a valid nonconforming manufactured home from a mobile or manufactured home park and replace that home with another comparable manufactured home that meets the current HUD manufactured housing code, Virginia Code § 15.2-2307, and in accord with this Article.

Section 10.2.3 Repairs and Maintenance of Nonconforming Structures

A. **Improvements for safety.** Notwithstanding any other provisions of this Chapter, all or part of a structure declared to be unsafe by a public safety official may be strengthened or restored to a safe condition.

B. **General repairs and maintenance.** Repairs and/or maintenance may be done to part or all of a nonconforming structure, only if:

(1) The repair is only routine maintenance necessary to keep the structure in a usable condition; or

(2) The repair causes the structure to comply with the applicable Virginia Department of Health standards or the Uniform Statewide Building Code pursuant to Section 10.2.2(G).

C. **Flood Hazard Overlay District.** Repairs and maintenance of structures located in the Flood Hazard Overlay District must comply with Section 10.2.4.

D. **Damage beyond the owner's control.** A nonconforming structure that is damaged or destroyed by factors beyond the control of the owner or occupant may be repaired, rebuilt, or replaced only as provided in Virginia Code § 15.2-2307.

Section 10.2.4 Nonconforming Uses and Structures in the Flood Hazard Overlay District

Existing uses or structures in the Flood Hazard Overlay District may be expanded or enlarged, only as follows:

A. **Improvements.** Existing uses or structures in the Flood Hazard Overlay District may be improved but not enlarged or expanded, only if the improvements:

(1) Are otherwise authorized by this Article; and

(2) Comply with the Virginia Uniform Statewide Building Code.

B. **Substantial improvements.** Existing uses or structures in the Flood Hazard Overlay District may undergo a substantial improvement (as defined) only if:

(1) The entire use or structure complies with the requirements of the Flood Hazard Overlay District and all other applicable laws; and

(2) The entire structure complies with the Virginia Uniform Statewide Building Code.

C. **Historic structures.** The Agent may relieve the historic structure from only those specific requirement(s) of the Flood Hazard Overlay District that would preclude the structure's continued designation as an historic structure per the applicable federal or state authority. Any relief from any requirement must be only the minimum necessary to preserve the historic character and design of the structure.

Section 10.2.5 Nonconforming Parcels

A. **Continuance of nonconforming parcel.** A nonconforming parcel may continue as it lawfully existed when it became nonconforming and may be altered only in accordance with this Article.

B. **Use of a nonconforming parcel.** A nonconforming parcel may be used only if the Agent determines that the parcel may be occupied consistent with the public health, safety, and general welfare.

C. **Avenues for conformity.** A nonconforming parcel may become a conforming parcel if it meets the requirements of the zoning district in which it is located through any one of the following actions:

(1) Inclusion in a subdivision application as permitted in subsection D;

(2) A boundary line adjustment between two or more parcels as permitted in subsection E;

(3) A zoning map amendment as described in Article 3.4.

D. **Inclusion in a subdivision.** A nonconforming parcel may be included as part of a subdivision application if all of the resulting parcel(s) comply with:

(1) The requirements of the zoning district in which they are located; and

(2) All other applicable requirements of the Albemarle County Code.

E. **Boundary line adjustments.** Notwithstanding subsection F, a boundary line may be adjusted or vacated between a nonconforming parcel and another parcel provided the adjustment will not:

(1) Make a conforming parcel nonconforming;

(2) Increase any nonconformities; or

(3) Increase the number of parcels or dwellings in the Rural Areas zoning district that could otherwise be established on each parcel.

F. **Country store.** A nonconforming parcel for a country store use may have one or more of its boundary lines adjusted or vacated if:

(1) The resulting parcel or parcels serve a country store, Class A or B;

(2) The boundary line adjustment or vacation is required to allow the country store use to meet the requirements of the Virginia Department of Health;

(3) The location of all structures on the resulting parcel or parcels will not increase any nonconformities; and

(4) The size of the resulting parcel or parcels will not increase any nonconformities.

G. **Public use or eminent domain.** The area of a nonconforming parcel may be reduced by the dedication of land for public use or by the exercise of eminent domain.

Section 10.2.6 Nonconforming Signs

A. **Exclusion of billboards.** This section excludes nonconforming billboard signs which are subject to Virginia Code § 33.2-1219.

B. **Continuance of nonconforming sign.** A nonconforming sign may not be enlarged, and must be maintained in good repair and condition.

C. **Refacing.** Any nonconforming sign may be refaced.

D. **Restoration.** A nonconforming sign may be restored only if:

(1) It is damaged as a result of factors beyond the control of the owner of the sign and the owner of the parcel on which the sign is located;

(2) The cost of restoration from the damage is less than 50 percent of its appraised value before the damage;

(3) The replacement or restoration is completed within two years of the date of damage; and

(4) The sign is not enlarged.

E. **Relocation.** A nonconforming sign may be moved or relocated to another location only if such relocation (a) would make the sign less nonconforming and (b) is authorized by the Agent.

F. **Alteration or consolidation.** A nonconforming sign may be either structurally altered or consolidated with another nonconforming sign, only if:

(1) Such alteration or consolidation reduces the nonconforming aggregated sign area or the nonconforming sign height of one of the signs, by at least 25 percent; and

(2) The resulting sign does not have greater sign area or height than any of the signs that were consolidated.

G. **Discontinuation**

(1) A nonconforming sign is considered to be discontinued after a minimum of two consecutive years, and must be removed if:

a) It has no content on its sign face; or

b) It is a sign containing commercial speech and the underlying commercial use has closed.

(2) If the owner refuses to remove the discontinued nonconforming sign, after adequate notice, the County may enter the property and remove such sign. The cost of such removal will be chargeable to the owner of the property.

H. **Removal due to public safety**. Any nonconforming sign deemed unsafe by a public safety official due to the physical condition of the sign must be removed.