

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE VI. NONCONFORMANCE

INDEX

- Sec. 1. Purpose.
- Sec. 2. Nonconforming lots.
- Sec. 3. Nonconforming structures.
- Sec. 4. Nonconforming uses.
- Sec. 5. Nonconforming signs.
- Sec. 6. Nonconforming adult business establishments and drinking places.
- Sec. 7. Off-street parking and loading spaces.
- Sec. 8. Transfer of ownership.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE VI. NONCONFORMANCE

Sec. 1. Purpose.

The purpose of this article is to regulate nonconforming lots, uses and structures, as defined in this Code, such that they can be reasonably developed, maintained, or repaired, or changed to other less nonconforming uses or brought into conformance with this Code.

Sec. 2. Nonconforming lots.

- (a) *Use of Single, unimproved lots.* A single, unimproved, nonconforming lot which is not contiguous with any other lot in the same ownership may be used as if it were a conforming lot provided that all of the following are met:
- (1) *Lot Frontage* - The lot shall have at least fifty (50) feet of frontage; except for lots in the Riverfront and Downtown Residential Districts, which shall have at least forty (40) feet of frontage and for lots in the Centreville and Mill District which shall have at least twenty-five (25) feet of frontage.
 - (2) *Lot Size and Use* - The use does not require a lot size greater than the established minimum lot size for the particular district;
 - (3) *Conformance of Use* - The use conforms to all other requirements of the particular district, or a variance has been obtained from the board of appeals;
 - (4) *Conformance to Local and State Regulations* - The use conforms to all other applicable local and state land use regulations; and
 - (5) *Conformance of Structures to Space and Bulk Requirements* - All structures conform to all space and bulk requirements except lot size and frontage.
- (b) *Combine Multiple unimproved lots.* Two or more contiguous, unimproved nonconforming lots held in the same ownership of record at the time of adoption or amendment of this Code shall be combined to the extent necessary to comply with the space and bulk regulations of the district in which they are located and thereafter shall be considered under the provisions of subsection 2(a) of this article.
- (c) *Single, unimproved lots adjacent to developed lot.*
- (1) *Developable Unimproved Lot Requirements* - A single, unimproved, nonconforming lot contiguous with a developed conforming lot held in the same ownership at the time of adoption or amendment of this Code shall be developable only if the unimproved lot is a lot of record and satisfies the requirements of subsections 2(a)(1)--(5) of this article. If the unimproved lot does not meet said requirements, it shall be combined with the developed lot.
 - (2) *Unimproved Lot on Parallel Street* - If an unimproved lot has frontage on a parallel or nearly parallel street from a contiguous nonconforming developed lot held in the same ownership at the time of adoption of this Code and complies with subsection 2(a) of this article, the lots may be conveyed separately or together.
- (d) *Multiple unimproved lots adjacent to improved lot.* If two or more unimproved nonconforming lots are held in contiguous ownership with a developed lot, any subsequent division of the lots shall comply with the requirements of this Code.
- (e) *Single developed, nonconforming lots.* A nonconforming lot containing a legally existing

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE VI. NONCONFORMANCE

structure may be used as if it were a conforming lot provided that any change or expansion of the use or structure shall comply with all applicable space and bulk regulations of the district in which it is located and shall not increase any nonconformity with respect to lot area, floor area ratio or impervious surface ratio.

- (f) *Multiple developed nonconforming lots.* If two or more contiguous, nonconforming lots or parcels are in the same ownership of record at the time of adoption or amendment of this Code, and if a principal structure or use exists on each lot, the nonconforming lots may be conveyed separately or together, providing all other state law and local land use ordinance requirements are met.

(Ord. No. 89-3, 4-7-89; Ord. No. 90-2, 5-17-90; Ord. No. 92-19, 9-10-92; Ord. No. 94-10, 8-18-94; Ord. No. 03-15, 12-18-03, Ord. No. 20-10d, 11-05-20; Ord. No. 21-08c, 10-21-21)

Sec. 3. Nonconforming structures.

- (a) *Maintenance and enlargement.* A structure in lawful existence as of the effective date of this Code that does not meet space and bulk regulations of the district in which it is located, may be repaired and maintained. It may be enlarged and/or accessory structures may be added to the site without a variance upon obtaining a building permit from the code enforcement official, provided that all of the following are met:

- (1) The enlargement in combination with the existing structure does not exceed, or worsen any existing nonconformity, and
- (2) The enlargement or accessory structure itself meets the prescribed setback requirements and yard requirements; provided, however, that vertical and horizontal expansions of a structure, which do not meet the prescribed setback requirements and yard requirements, may be built;
 - (a) if the expansion does not extend any further into the required yard or setback than does the existing structure; and
 - (b) if the expansion will not result in undue impact on adjacent properties, due to the placement of buildings or structures, location of service, parking or storage areas, diversion of surface water or blocking of solar access.
 - (c) the expansion may be built no closer than five feet to a property line unless otherwise permitted by a district regulation.

- (b) *Reconstruction of any Nonconforming Structure with Less than 80% Damage -.* A nonconforming structure which is damaged or destroyed by fire, flood, lightning, wind, structural failure or any other cause to an extent less than 80 percent of the market value of the structure at the time of such damage or destruction may be reconstructed. The reconstructed structure need not comply with the space and bulk regulations of the district in which it is located, Article VI, Section 2, or Article XII, Section 17 (d), but shall be the same size or less than the previous structure, and comply with all other requirements of this Code.

- (c) *Reconstruction of a Nonconforming Commercial Structure with greater than 80% damage -* A nonconforming structure, other than a single-family detached dwelling, two-family dwelling, or three-unit multifamily dwelling, that is damaged or destroyed by fire,

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE VI. NONCONFORMANCE

flood lightning, wind, structural failure or any other cause to an extent of 80 percent or more of the market value may be reconstructed only in conformance with space and bulk regulations of the district in which it is located.

- (d) *Reconstruction of a Nonconforming Residential Structure with greater than 80% damage* - A nonconforming single-family detached dwelling, two-family dwelling, or three-unit multifamily dwelling damaged or destroyed by fire, flood, lightning, wind, structural failure or other cause to an extent of 80 percent or more of the market value of the structure at the time of such damage or destruction may be reconstructed. The reconstructed structure need not comply with the space and bulk regulations of the district in which it is located, Article VI, Section 2, or Article XII, Section 17(d), but shall be the same size or less than the previous structure and comply with all other requirements of this Code.
- (e) *Reconstruction Timeframe* - Any reconstruction permitted by this subsection shall begin within one (1) year and be completed within two (2) years of the date of such damage or destruction. The board of appeals may extend the period for reconstruction upon a showing that work could not begin or be completed for reasons outside the control of the owner. The request to the board must be filed before the expiration of the applicable time and not more than a one (1) year extension shall be granted.

(Ord. No. 89-3, 4-7-89; Ord. No. 89-9, 7-20-89; Ord. No. 92-19, 9-10-92; Ord. No. 15-07, 8-13-15; Ord. No. 20-10d, 11-05-20; Ord. No. 21-08c, 10-21-21)

Sec. 4. Nonconforming uses.

- (a) *Continuance of a Nonconforming Use.* The use of land, buildings, structures, lawful at the time of adoption or subsequent amendment of this Code, may continue, although such use does not conform to the provisions of this Code. This shall include the replacement of mobile homes in a nonconforming mobile home park, provided all other provisions of article XII, section 14 are met, as well as the replacement of mobile homes on individual lots, provided all other provisions of Article XII, sections 2, 4, and section 13, subsections (2) through (6) are met. Permitted uses that were made conditional uses as a result of the adoption or amendment of this Code shall be treated as conditional uses for which a permit was duly issued, and any expansion of such structure or use shall occur only after the issuance of a conditional use permit in accordance with Article X.
- (b) *Resumption of Nonconformance Prohibited After Coming into Compliance* - Whenever a nonconforming use of land and/or a structure is superseded by an allowed use, such structure and/or land shall thereafter conform to the provisions of this Code and the nonconforming use may not be resumed, except as provided below in section 4(c)(2).
- (c) *Abandonment of Nonconforming Use*
 - (1) *Non-residential Abandonment* - Except for single-family detached dwellings on individual lots and two-family dwellings on individual lots, if any nonconforming use of a building, structure or land is discontinued for a period of 12 consecutive months or more, abandonment, except as provided below, is conclusively presumed and such use shall not be resumed, and only a use conforming with the provisions of the district in which the property is located shall be made of such building, structure or land. Abandonment of a seasonable nonconformity is

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE VI. NONCONFORMANCE

conclusively presumed when the building, structure or use is idle, unopened or otherwise not in actual use during any part of any two consecutive calendar years. Nonconforming uses presumed abandoned may be reestablished during the 12-month period immediately following the date of presumed abandonment as long as a completed application for the conditional use permit is submitted to the office of the director of code enforcement within this period, and the permit is subsequently granted by the board of appeals. In addition to applying the standards for conditional use permits (Article X, sections 3 and 4), the board of appeals shall grant a permit only when it finds that the following additional standards have been met:

- (a) Good cause has been shown for the discontinuance of the use; and
 - (b) The proposed use will not inhibit or discourage the creation, development or use of permitted uses in the neighborhood.
- (2) *Abandonment of use of historic structures in the Centreville district* - For those historic buildings and structures identified in Appendix A, Article XV, Sections 6 through 10 of this Code located in the Centreville district, a nonconforming use may be reestablished to its original use in an effort to retain and preserve the original purpose of said building or structure as long as a completed application for the conditional use permit is submitted to the office of the director of planning and code enforcement and the permit is subsequently granted by the board of appeals. In addition to applying the standards for conditional use permits (Article X, sections 3 and 4), the board of appeals shall grant a permit only when it finds that the following additional standards have been met:
- a. Documentation has been shown demonstrating what the original use of the building or structure was;
 - b. Good cause has been shown for the discontinuance of the use;
 - c. That the proposed use will not inhibit or discourage the creation, development or use of permitted uses in the Centreville district;
 - d. That the proposed use will not create a traffic hazard, nor increase an existing traffic hazard;
 - e. That the amount of parking required to meet the minimum code requirements for the proposed use exists on the site or will be otherwise provided in accordance with Article XII, Section 17 of the Code;
 - f. That the amount of noise, odors, vibrations, smoke, dust and air discharges of the proposed use shall be equal to or less than the present use;
 - g. That the rate of surface water runoff from the site will not be increased;
 - h. That the hours of operation of the proposed use will be compatible with the existing, surrounding land uses;
 - i. That the proposed use will not increase the adverse impact on surrounding properties.
- (d) *Expansion of Nonconforming Use Prohibited* - The expansion of a nonconforming use including a nonconforming outdoor use of land is not permitted. Additions to residential buildings and structures accessory to residential uses are permitted as long as the use is not intensified. Said residential additions and accessory structures shall meet the

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE VI. NONCONFORMANCE

applicable minimum space and bulk requirements of Article XI.

- (e) *Conversion to a New, Nonconforming Use* - The board of appeals may grant permission for the conversion of an existing nonconforming use into another nonconforming use in accordance with the procedures of Article IX if the board finds that the new use will be more conforming to the intent of this Code and more compatible with the existing development of the neighborhood than the existing use. The existing nonconforming use shall be discontinued if the conversion is approved by the board of appeals and the approved change implemented. In determining whether the new use is more conforming to the intent of the Code, the board of appeals shall find all of the following:
- (1) That the existing use was legally established, was made nonconforming by the adoption or amendment of the Code and is not a home occupation;
 - (2) That the proposed use is of the same character or less noxious than the current nonconforming use. The determination as to whether such a use is of the same character or less noxious is to be made by a reference to the most restrictive zoning district where the current nonconforming use is allowed;
 - (3) That the proposed use will not create a traffic hazard, nor increase an existing traffic hazard;
 - (4) That the amount of parking required to meet the minimum code requirements for the proposed use exists on the site or will be otherwise provided in accordance with article XI of the Code;
 - (5) That the amount of noise, odors, vibrations, smoke, dust and air discharges of the proposed use shall be equal to or less than the present use;
 - (6) That the rate of surface water runoff from the site will not be increased;
 - (7) That the hours of operation of the proposed use will be compatible with the existing, surrounding land uses;
 - (8) That the proposed use will not increase the adverse impact on surrounding properties.
- (f) *Reconstruction of any Nonconforming Use with Less than 80% Damage* - A nonconforming use which is damaged or destroyed by fire, flood, lightning, wind, structural failure or other cause to an extent less than 80 percent of the market value of the structure at the time of such damage or destruction may be reconstructed. The reconstructed use need not comply with the space and bulk regulations of the district in which it is located, Article VI, Section 2, or Article XII, Section 17(d), but shall be the same size or less than the previous structure, and the intensity of use shall not be made more nonconforming.
- (g) *Reconstruction of a Nonconforming Commercial Use with Greater than 80 % Damage*- A nonconforming use, other than a single-family detached dwelling, two-family dwelling, or three-unit multifamily dwelling, that is damaged or destroyed by fire, flood, lightning, wind, structural failure or any other cause to an extent of 80 percent or more of the market value may be reconstructed, upon the receipt of development approval and a building permit, only in full conformance with the space and bulk regulations of the district in which it is located. Any reconstruction of a nonconforming use shall be the

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE VI. NONCONFORMANCE

same size or less than the previous structure, and the intensity of use shall not be increased.

- (h) *Reconstruction of a Nonconforming Residential Use with Greater than 80% Damage* - A nonconforming use of a single-family detached dwelling, two-family dwelling or three-unit multifamily dwelling damaged or destroyed by fire, flood, lightning, wind, structural failure or other cause to an extent of 80 percent or more of the market value of the structure at the time of such damage or destruction may be reconstructed. The reconstructed use need not comply with the space and bulk regulations of the district in which it is located, Article VI, Section 2, or Article XII, Section 17(d), but shall be the same size or less than the previous use, and the intensity of use shall not be made more nonconforming.
- (i) *Reconstruction Timeframe* - Any reconstruction permitted by this subsection shall be begun within one (1) year and completed within two (2) years of the date of such damage or destruction. The board of appeals may extend the period for reconstruction, upon a showing that work could not begin or be completed for reasons outside the control of the owner. The request to the board must be filed before the expiration of the applicable time and not more than a one (1) year extension shall be granted.

(Ord. No. 89-3, 4-7-89; Ord. No. 91-5, 5-16-91; Ord. No. 94-16, 11-3-94; Ord. No. 97-6, 6-17-97; Ord. No. 98-6, 7-2-98; Ord. No. 10-09, 10-7-10; Ord. No. 13-07, 8-15-13; Ord. No. 15-07, 8-13-15; Ord. No. 20-10d, 11-05-20)

Sec. 5. Nonconforming signs.

A nonconforming sign which has been removed for more than 30 days shall not be reinstalled. A nonconforming sign, to be replaced or altered shall be brought into conformance with the provisions of this Code. (Ord. No. 89-3, 4-7-89)

Sec. 6. Nonconforming adult business establishments and drinking places.

Notwithstanding article VI, section 4, any nonconforming adult business establishment or drinking place shall be entitled to operate and continue operation if it was lawfully open for business on the effective date of this section and was lawfully engaged in business activity, as an adult business establishment or drinking place, for at least 150 days during the 12-month period prior to the effective date of this section and said adult business establishment or drinking place shall be entitled to continue to operate on an annual basis provided it was lawfully open for business and was lawfully engaging in business activity, as an adult business establishment or drinking place, on at least 150 days during the preceding 12-month period.

(Ord. No. 89-3, 4-7-89; Ord. No. 05-07, 3-17-05)

Sec. 7. Off-street parking and loading spaces.

- (a) *Nonconforming Structure and Parking* - A building or structure which is nonconforming as to the requirements for off-street parking space shall not be enlarged or altered to create additional dwelling units, seats, accommodations, or floor space unless off-street parking is provided sufficient to satisfy the requirements of this Code for the enlargement or alteration.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE VI. NONCONFORMANCE

- (b) *Nonconforming Use and Parking* - A use which is nonconforming as to the requirements for off-street parking space may not be changed or intensified unless off-street parking is provided for an additional number of spaces representing the difference between what this Code would require for the existing use were it not nonconforming and what this Code requires for the proposed use.
- (c) *Nonconforming Structure and Loading Area* - A building which is nonconforming as to the requirements for off-street loading space shall not be enlarged or added to unless off-street loading space is provided sufficient to satisfy the requirements of this Code for the addition or enlargement.

(Ord. No. 89-3, 4-7-89; Ord. No. 20-10d, 11-05-20)

Sec. 8. Transfer of ownership.

Ownership of nonconforming lots, structures and uses may be transferred and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this Code.