

ORDINANCE NO. 03-12

Pertaining to the Amendment of the Calvert County Zoning Ordinance
(Sections 2-6.01 & 2-6.02)

RE: CERTIFICATES OF NON-CONFORMITY

(Text Amendment Case No. 11-2)

WHEREAS, *Article 66B* of the Maryland Annotated Code, as amended, empowers the Board of County Commissioners of Calvert County, Maryland to enact a Zoning Ordinance to promote the health, safety and welfare of the citizens of Calvert County, and to provide for its administration, enforcement and amendment; and

WHEREAS, pursuant to that authority, the Board of County Commissioners of Calvert County, Maryland has heretofore adopted the Calvert County Zoning Ordinance; and

WHEREAS, after study and evaluation, the Department of Planning and Zoning of Calvert County recommended to the Planning Commission and the Board of County Commissioners amendments to Sections 2-6.01 and 2-6.02 of the Calvert County Zoning Ordinance to allow for the issuance of Certificates of Non-Conformity for Non-Conforming Uses and Structures; and

WHEREAS, after due notice was published, the Planning Commission and the Board of County Commissioners of Calvert County conducted a joint public hearing on November 1, 2011, at which time the proposed amendments were discussed, staff's recommendation was considered, and public comment was solicited; and

WHEREAS, at the conclusion of said public hearing the Planning Commission voted to recommend approval of the amendments as proposed with minor changes; and

WHEREAS, after considering the evidence which had been presented at the public hearing regarding the proposed text amendments and the recommendation of the Planning Commission, and in furtherance of the public health, safety and welfare, the Board of County Commissioners of Calvert County, Maryland determined it is in the best interest of the

citizens of the County to enact the text amendments to the Calvert County Zoning Ordinance as set forth in Exhibits A and B, attached hereto and made a part hereof.

NOW, THEREFORE, BE IT RESOLVED AND ORDAINED, by the Board of County Commissioners of Calvert County, Maryland, that Section 3-3.02.G of the Calvert County Zoning Ordinance BE, and hereby IS, amended by adopting amendments to the Calvert County Zoning Ordinance as set forth in Exhibit "A" hereto and hereby incorporated by reference such that the effect of such revisions is as reflected in Exhibit "B" hereto and hereby incorporated by reference; and

BE IT FURTHER RESOLVED AND ORDAINED, by the Board of County Commissioners of Calvert County, Maryland that, in the event any portion of this Ordinance or the Calvert County Zoning Ordinance, is found to be unconstitutional, illegal, null or void, it is the intent of the Board of County Commissioners to sever only the invalid portion or provision, and that the remainder of the Ordinance shall be enforceable and valid.

BE IT FURTHER RESOLVED AND ORDAINED, by the Board of County Commissioners of Calvert County, Maryland that the foregoing recitals are adopted as if fully rewritten herein.

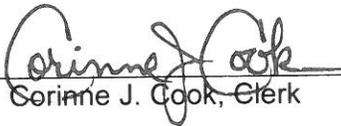
BE IT FURTHER RESOLVED AND ORDAINED, by the Board of County Commissioners of Calvert County, Maryland that this amendatory Ordinance shall be effective upon recordation.

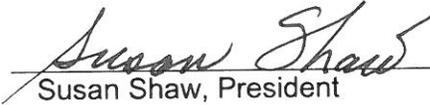
DONE, this 1st day of November, 2011 by the Board of County Commissioners of Calvert County, Maryland, sitting in regular session.

Aye: 5
Nay: 0
Absent/Abstain: 0

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF CALVERT COUNTY, MARYLAND


Corinne J. Cook, Clerk

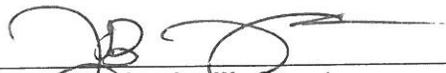

Susan Shaw, President


Pat Nutter, Vice-President

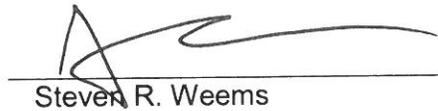
Approved for legal
sufficiency on
Nov. 1, 2011


Gerald W. Clark

by:


John B. Norris, III, County
Attorney


Evan K. Slaughenhoupt Jr.


Steven R. Weems

Received for Record..... Jan 19 2012
at 10:20 o'clock..... A M. Same day
recorded in Liber KPS No..... 38
Folio..... 305..... COUNTY COMMISSIONERS
ORDINANCES AND RESOLUTION.



(10/13/10) **2-6 NON-CONFORMING USES AND STRUCTURES****2-6.01 Non-Conforming Uses¹****A. General Provisions**

1. In order to effectively implement the stated goals of the Calvert County Comprehensive Plan and Town Center Master Plans, if applicable, uses that do not conform to those goals shall be strictly regulated by the provisions of this Ordinance.
2. A Non-Conforming Use is defined as a use which lawfully existed prior to the adoption or amendment of this Ordinance, but, by virtue of the adoption or amendment of this Ordinance, is no longer a permitted use in the Zoning District within which it is located. For the purposes of this Section, the "date of non-conformity" shall be the date of the adoption or amendment of this Ordinance; the adoption or amendment of which rendered a use non-conforming.
3. See Section 8-1 of this Ordinance for requirements regarding non-conforming uses in the Critical Area.

B. Certificates of Non-Conformity

1. Upon the request of a property owner, the Zoning Officer may issue a Certificate of Non-Conformity to establish the existence of a Non-Conforming Use, as defined herein. The Certificate shall include, among other information:
 - a. The date of non-conformity, which is the date of the adoption or amendment of this Ordinance; the adoption or amendment of which rendered a use non-conforming.
 - b. The Zoning Ordinance Section(s) which caused the previously legal conforming use to become a Non-Conforming Use, and the date on which the Section(s) were adopted or amended.
2. The Zoning Officer shall establish procedures and appropriate forms for processing requests for Certificates of Non-Conformity.
3. A request for a Certificate of Non-Conformity for a Non-Conforming Use shall include the following information:
 - a. Evidence, as described below, clearly demonstrating that the use has continuously existed without interruption from the date of non-conformity through the application date for the Certificate of Non-Conformity (except such lapses as permitted by Section 2-6.01.F herein). Such evidence may include, for example:
 - i. Photographs of the property (ground level, overhead or aerial photographs) that clearly depict the use and include the date on which the photographs were taken.
 - ii. A valid building, grading, or use and occupancy permit substantiating the date of non-conformity and the legal status of the use.

¹ For provisions regarding Non-Conforming Structures, see Section 2-6.02 of this Ordinance.

- iii. Other records, including tax records, receipts, etc., which establish that the use existed on the property as of the date of non-conformity.
- iv. A plat or site plan of the subject property, prepared and stamped by a Registered Surveyor, which clearly depicts the location of all buildings, structures, and the area used by the Non-Conforming Use.

B. C. Continuation of Lawfully Existing Uses

Any use lawfully existing at the time of the adoption or amendment of this Ordinance may continue to be used even though such use is no longer permitted in the Zoning District in which it is located. Non-Conforming Uses may continue even if ownership of the property changes.

C. D. Expansion of Non-Conforming Uses

(12/09/06)

1. The Board of Appeals may approve expansion of a Non-Conforming Use provided that such expansion is restricted to 50 percent of the square footage of the area occupied by the use at the time the use originally became non-conforming under this or any previous Zoning Ordinance (date of non-conformity). The intent of this Section is to limit the amount by which a Non-Conforming Use may be expanded as of the date the use was deemed non-conforming by any Ordinance, past or present.
2. For a Non-Conforming Use that does not involve a building or structure, the area of the lot utilized by such a use as of the date of non-conformity may be expanded by up to 50 percent if approved by the Board of Appeals.
3. The criteria to be applied by the Board of Appeals when reviewing a request for expansion of a Non-Conforming Use shall be the same as those contained in Section 11-1.02 for special exceptions.
4. A Certificate of Non-Conformity, as described in paragraph 'B' of this Section, shall be issued by the Zoning Officer prior to application to the Board of Appeals for expansion of a Non-Conforming Use.
4. When expansion of a Non-Conforming Use is proposed, the entire site shall be
5. brought into conformance with the requirements of this Ordinance and/or the applicable Town Center Zoning Ordinance to the maximum extent feasible, as determined by the Planning Commission or its designee.
5. The Zoning Officer may permit an existing non-conforming manufactured home
6. to be replaced, expanded or altered if it is determined to be habitable in accordance with Section 75-10 C (1) – (5), Minimum Livability Code, of the Calvert County Code.

D. E. Replacement of Non-Conforming Uses

1. A Non-Conforming Use may, with approval of the Board of Appeals, be changed to another Non-Conforming Use which the Board of Appeals finds to be of the same or a more appropriate use or classification.
2. Whenever a Non-Conforming Use has been changed to a more appropriate use, such use shall not thereafter be changed to a less appropriate use or classification.

3. The criteria to be applied by the Board of Appeals when reviewing a request for replacement of a Non-Conforming Use shall be the same as those contained in Section 11-1.02 for special exceptions.
4. A Non-Conforming Use may be replaced with a conforming use without approval from the Board of Appeals.
5. When replacement of a Non-Conforming Use is proposed, the site shall be brought into conformance with all other requirements of this Ordinance and/or the applicable Town Center Zoning Ordinance to the maximum extent feasible, as determined by the Planning Commission or its designee.

E. F. Discontinuance of Non-Conforming Uses

A Non-Conforming Use which has been discontinued or abandoned for nine consecutive months or for 18 months during a three-year period shall not again be used for a Non-Conforming Use except that non-conforming seasonal uses shall be permitted to continue unless discontinued or abandoned for a period of 24 consecutive months.

F. G. When a Non-Conforming Use Becomes a Special Exception

If a change to the Zoning Ordinance results in an existing Non-Conforming Use being permitted as a special exception use, the use shall be considered a conforming use. The owner shall automatically have a special exception and shall not be required to obtain a special exception from the Board of Appeals to continue the use. However, expansion in area of use or building area requires the approval of the Board of Appeals. The criteria to be applied by the Board of Appeals when reviewing such a request shall be the same as those contained in Section 11-1.02 for special exceptions.

2-6.02 Non-Conforming Structures (Excluding Signs)²

A. General Provisions

1. A non-conforming structure is defined as a structure which lawfully existed prior to the adoption or amendment of this Ordinance, but which, by virtue of the adoption or amendment of this Ordinance, no longer conforms to the requirements of this Ordinance in terms of such requirements as area, setback, or height requirements, etc.
2. For the purposes of this Section, the "date of non-conformity" shall be the date of adoption or amendment of this Ordinance; the adoption or amendment of which rendered the structure non-conforming.
3. See Section 8-1 of this Ordinance for requirements regarding non-conforming structures in the Critical Area.

B. Certificates of Non-Conformity

1. Upon the request of a property owner, the Zoning Officer may issue a Certificate of Non-Conformity to establish the existence of a Non-Conforming Structure, as defined herein. The Certificate shall include, among other information:
 - a. The date of non-conformity, which is the date of the adoption or amendment of this Ordinance; the adoption or amendment of which rendered a structure non-conforming.
 - b. The Zoning Ordinance Section(s) which caused the previously legal

² For provisions regarding Non-Conforming Uses, see Section 2-6.01 of this Ordinance. For provisions regarding non-conforming signs, see Article 6 of this Ordinance.

conforming structure to become a Non-Conforming Structure, and the date on which the Section(s) were adopted or amended.

2. The Zoning Officer shall establish procedures and appropriate forms for processing requests for Certificates of Non-Conformity.

3. A request for a Certificate of Non-Conformity for a Non-Conforming Structure shall include the following information:

a. A plat or site plan of the subject property prepared and stamped by a Registered Surveyor, which clearly depicts the location of the structure.

b. Evidence, as described below, clearly demonstrating that the structure has continuously existed from the date of non-conformity through the application date for the Certificate of Non-Conformity. Such evidence may include, for example:

i. Photographs of the property (ground level, overhead or aerial photographs) that clearly depict the use and include the date on which the photographs were taken.

ii. A valid building, grading, or use and occupancy permit substantiating the date of non-conformity and the legal status of the structure.

iii. Other records, including tax records, receipts, etc., which establish that the structure existed on the property as of the date of non-conformity.

B. C. Continuation of Lawfully Existing Structures

Any structure lawfully existing at the time of the adoption or amendment of this Ordinance may continue to be used even though such structure does not conform to the provisions of the Zoning District in which it is located. The use of non-conforming structures may continue even if ownership of the property changes.

C. D. Change in Use Causing a Lawfully Existing Structure or Site to No Longer Conform to the Zoning Ordinance

In order for the use of any structure or site to be changed from one use to another, the structure and site must conform to the provisions of this Ordinance and/or the applicable Town Center Zoning Ordinance. If the structure and site cannot be brought into conformance for the proposed use, a variance from the Board of Appeals, if allowed, or a waiver from the Planning Commission, if allowed, shall be required to bring the structure and site into conformance.

D. E. Expansion of Non-Conforming Structures

1. The Zoning Officer may approve the extension of a building wall or retaining wall which lawfully existed prior to the adoption, revision or amendment of the Zoning Ordinance but which fails, by reason of such adoption, revision or amendment, to conform to the current setback requirements subject to the conditions specified below. The length of a non-conforming building wall may be extended by the construction of a deck or porch if the conditions of this Section are met.

a. A Certificate of Non-Conformity, as described in paragraph 'B' of this Section, shall be issued by the Zoning Officer prior to approval of expansion of a Non-Conforming Structure.

b. The building wall or retaining wall shall not be extended closer to the property

line than the original structure. Such extensions require a variance from the Board of Appeals.

c. Such extension shall not constitute more than 50 percent of the length of the original non-conforming building wall or retaining wall. Extensions beyond 50 percent require a variance from the Board of Appeals.

2. When expansion of a non-conforming structure is proposed, the entire site shall be brought into conformance with the requirements of this Ordinance and/or the applicable Town Center Zoning Ordinance to the maximum extent feasible, as determined by the Planning Commission or its designee.

E. F. Replacement of Non-Conforming Structures

1. Nothing in these regulations shall prevent the restoration of a non-conforming structure destroyed by fire, wind storm, flood, explosion or act of public enemy or accident, or prevent the continuance of the use thereof as it existed at the time of such destruction, provided that a building permit application is properly submitted within one year after the occurrence. This provision does not apply if an owner of a property intentionally destroys a non-conforming structure.
2. A non-conforming structure which is taken in a negotiated settlement or condemnation proceedings shall be permitted to relocate only on the same lot or parcel, or on a contiguous lot or parcel which was in the same ownership at the inception of the condemnation proceedings, and provided the applicable lot area, setback and height requirements of the District in which such use is a principal permitted use can be met. Such relocation or construction as existed prior to its taking may be permitted provided a building permit application is properly submitted within six months of the settlement date of the condemnation proceedings.

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 - ii. A valid building, grading, or use and occupancy permit substantiating the date of non-conformity and the legal status of the use.
 - iii. Other records, including tax records, receipts, etc., which establish that the use existed on the property as of the date of non-conformity.

¹ For provisions regarding Non-Conforming *Structures*, see Section 2-6.02 of this Ordinance.

- iv. A plat or site plan of the subject property, prepared and stamped by a Registered Surveyor, which clearly depicts the location of all buildings, structures, and the area used by the Non-Conforming Use.

C. Continuation of Lawfully Existing Uses

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1. A Non-Conforming Use may, with approval of the Board of Appeals, be changed to another Non-Conforming Use which the Board of Appeals finds to be of the same or a more appropriate use or classification.
2. Whenever a Non-Conforming Use has been changed to a more appropriate use, such use shall not thereafter be changed to a less appropriate use or classification.
3. The criteria to be applied by the Board of Appeals when reviewing a request for replacement of a Non-Conforming Use shall be the same as those contained in Section 11-1.02 for special exceptions.
4. A Non-Conforming Use may be replaced with a conforming use without approval from the Board of Appeals.

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 - a. A plat or site plan of the subject property prepared and stamped by a Registered Surveyor, which clearly depicts the location of the structure.
 - b. Evidence, as described below, clearly demonstrating that the structure has continuously existed from the date of non-conformity through the application date for the Certificate of Non-Conformity. Such evidence may include, for example:
 - i. Photographs of the property (ground level, overhead or aerial photographs) that clearly depict the use and include the date on which the photographs were taken.
 - ii. A valid building, grading, or use and occupancy permit substantiating the date of non-conformity and the legal status of the structure.
 - iii. Other records, including tax records, receipts, etc., which establish that the structure existed on the property as of the date of non-conformity.

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1. The Zoning Officer may approve the extension of a building wall or retaining wall which lawfully existed prior to the adoption, revision or amendment of the Zoning Ordinance but which fails, by reason of such adoption, revision or amendment, to conform to the current setback requirements subject to the conditions specified below. The length of a non-conforming building wall may be extended by the construction of a deck or porch if the conditions of this Section are met.
 - a. A Certificate of Non-Conformity, as described in paragraph 'B' of this Section, shall be issued by the Zoning Officer prior to approval of expansion of a Non-Conforming Structure.
 - b. The building wall or retaining wall shall not be extended closer to the property line than the original structure. Such extensions require a variance from the Board of Appeals.
 - c. Such extension shall not constitute more than 50 percent of the length of the original non-conforming building wall or retaining wall. Extensions beyond 50 percent require a variance from the Board of Appeals.

2. When expansion of a non-conforming structure is proposed, the entire site shall be brought into conformance with the requirements of this Ordinance and/or the applicable Town Center Zoning Ordinance to the maximum extent feasible, as determined by the Planning Commission or its designee.

F. Replacement of Non-Conforming Structures

1. Nothing in these regulations shall prevent the restoration of a non-conforming structure destroyed by fire, wind storm, flood, explosion or act of public enemy or accident, or prevent the continuance of the use thereof as it existed at the time of such destruction, provided that a building permit application is properly submitted within one year after the occurrence. This provision does not apply if an owner of a property intentionally destroys a non-conforming structure.
2. A non-conforming structure which is taken in a negotiated settlement or condemnation proceedings shall be permitted to relocate only on the same lot or parcel, or on a contiguous lot or parcel which was in the same ownership at the inception of the condemnation proceedings, and provided the applicable lot area, setback and height requirements of the District in which such use is a principal permitted use can be met. Such relocation or construction as existed prior to its taking may be permitted provided a building permit application is properly submitted within six months of the settlement date of the condemnation proceedings.