

## Article 32. Nonconformities

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### 32-1 GENERAL APPLICABILITY

#### A. Authority to Continue

Any use, structure, site element, or sign that legally existed as of the effective date of this Ordinance, and any use, structure, site element, or sign that has been made nonconforming as of the effective date of this Ordinance, and any subsequent amendments, may continue subject to the provisions of this Chapter so long as it remains otherwise legal. Nonconforming uses, structures, site elements, or signs may continue even if ownership of the property changes. A use, structure, site element, or sign that was illegal as of the effective date of this Ordinance, remains illegal.

#### B. Burden on Property Owner

The burden of establishing the legality of a nonconformity under the provisions of this Ordinance is the responsibility of the property owner or the operator of the nonconforming use, structure, or site element.

#### C. Safety Regulations

All regulations enacted to promote public health, safety, and welfare including, but not limited to, all building, fire and health codes apply to nonconformities.

### 32-2 NONCONFORMING USE

#### A. Established

A nonconforming use is the use of a structure or land that existed prior to zoning, or at one time lawfully conformed to applicable zoning regulations, but because of the adoption of the Zoning Ordinance or subsequent amendments to the Ordinance no longer conforms to applicable regulations. If a change to the Zoning Ordinance results in an existing nonconforming use being permitted as a special exception use, the use shall be considered a conforming use. The owner shall be deemed to have obtained special exception approval for the scope of use in effect at time of adoption of this Ordinance.

#### B. Expansion

A nonconforming use of a structure or land cannot be expanded, extended, enlarged, or increased in intensity without the approval of the Board of Appeals as described in this section.

1. The Board of Appeals may approve expansion of a nonconforming use provided that such expansion is restricted to 50% of the square footage of the area occupied by the use at the time the use originally became nonconforming. The intent of this section is to limit the amount by which an established nonconforming use may be expanded.
2. For a nonconforming use that does not involve a building or structure, the area of the lot or parcel utilized by such a use as of the date of nonconformity may be expanded by up to 50% if approved by the Board of Appeals.
3. When reviewing a request for expansion, the Board of Appeals will review the request against the criteria for a special exception (Section 30-7 of this Ordinance).
4. When expansion of a nonconforming use is proposed, the entire site shall be brought into conformance to the maximum extent feasible, as determined by the Board of Appeals.

#### C. Change of Use

A nonconforming use can only be changed to a use allowed within the zoning district where it is located. When a nonconforming use has been changed, in whole or in part, to an allowed use, the whole or part that conforms cannot be changed back to a use that is not allowed in the district. A change of use occurs when an existing nonconforming use has been terminated and another conforming use has commenced. Any change in use in violation of this Ordinance is deemed an abandonment of the previously existing nonconforming use.

#### D. Discontinuation or Abandonment

1. If a nonconforming use or seasonal nonconforming use is discontinued or abandoned for 12 consecutive months, the nonconforming use is terminated. This time period may be extended by the Zoning Officer for an additional six months. The request for an extension shall be submitted in writing to the Department of Planning & Zoning prior to the termination of the nonconforming use.
2. When a nonconforming use is offered for sale, such sale period of up to one additional year is not included in calculating the length of discontinuance or abandonment for this section; however, all equipment, building design, and similar use infrastructure shall be maintained in working condition during the sale period.

#### **E. Damage or Destruction**

1. In the event that any structure that is devoted in whole or in part to a nonconforming use is structurally damaged or destroyed through no fault of the property owner or tenant, the nonconforming use may be re-established provided that no new nonconformities are created, and the degree of the previous nonconformity is not expanded or intensified.
2. However, if a building permit is not obtained within one year of the date of damage or destruction, then the nonconforming use may not be reestablished unless it conforms to all regulations of the zoning district in which it is located, including use.
3. If the structure containing the nonconforming use is a nonconforming structure, the structure may only be rebuilt, restored, repaired, or reconstructed in accordance with Section 32-3 below.

### **32-3 NONCONFORMING STRUCTURE**

#### **A. Established**

A nonconforming structure is a principal or accessory structure that existed prior to zoning, or at one time lawfully conformed to applicable zoning regulations, but because of the adoption of the Zoning Ordinance or subsequent amendments to the Ordinance, no longer conforms to applicable regulations.

#### **B. Maintenance**

Normal maintenance and repair may be performed on any nonconforming structure. No construction or additions are permitted that would create any new nonconformity or increase the degree of the previously existing nonconformity.

#### **C. Structural Alterations**

Structural alterations are permitted only in the following situations:

1. When the alteration is required by law or is necessary to restore the structure to a safe condition upon the order of any official charged with protecting public safety.
2. When the alteration will eliminate the nonconformity.
3. When the alteration will not create any new nonconformity or increase the degree of any existing nonconformity. For example, if a structure is nonconforming in terms of the required front setback (i.e., does not meet the required minimum), the structure may add a rear addition if it meets all other dimensional regulations of the district.

#### **D. Expansion**

1. The Zoning Officer may approve the extension of a building wall of a structure or retaining wall which has become nonconforming. The length of a nonconforming building wall may be extended by the construction of a deck or porch if the conditions of this section are met.
  - a. The building wall or retaining wall cannot be extended closer to the property line than the original structure. Extensions closer to the property line than the original structure require a variance from the Board of Appeals.
  - b. Such extension cannot constitute more than 50% of the length of the original nonconforming building wall or retaining wall. Extensions beyond 50% require a variance from the Board of Appeals.

2. When expansion of a nonconforming structure is proposed, the entire site shall be brought into conformance to the maximum extent practicable.

#### **E. Damage or Destruction**

If a nonconforming structure is destroyed or damaged through no fault of the property owner or tenant, regardless of the percent of damage, it may be rebuilt to its original condition before such casualty or loss if a building permit is obtained within one year of the date of damage or destruction. In the event that the building permit is not obtained within one year, then the structure cannot be restored unless it conforms to all regulations of the district in which it is located. This time period to obtain a building permit may be extended by the Zoning Officer for an additional six months. The request for an extension shall be submitted in writing to the Department of Planning & Zoning within one year of the date of damage or destruction. An exception to this provision is for structures in the floodplain that are substantially damaged, which shall comply with the applicable requirements of Article 24 (Floodplain).

#### **F. Nonconforming Manufactured Home**

The Zoning Officer may permit an existing nonconforming manufactured home 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.

#### **G. Impact of Negotiated Settlement or Condemnation Proceedings**

A nonconforming structure which is taken in a negotiated settlement or condemnation proceedings is 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.

#### **H. Critical Area**

Article 22 contains requirements regarding nonconforming structures in the Critical Area.

### **32-4 NONCONFORMING SITE ELEMENTS**

#### **A. Established**

A nonconforming site element is a site development element, such as landscape or lighting, that at one time conformed to the requirements of this Ordinance, but because of subsequent amendments, has been made nonconforming.

#### **B. Maintenance**

Normal maintenance and incidental repair to a nonconforming site element may be performed. No repairs or reconstruction are permitted that would create any new nonconformity or increase the degree of the previously existing nonconformity.

#### **C. Required Conformance**

##### **1. General**

All nonconforming site elements shall be brought into conformance when the following occurs:

- a. A new principal building is constructed on a site.
- b. An existing principal building is increased in building footprint square footage.

##### **2. Nonconforming Parking Lot Landscape**

When a parking lot does not conform to required parking lot landscape requirements, it shall be brought into conformance when such a parking lot is reconstructed or expanded.

- a. Resealing, re-striping, repaving, or resurfacing of an existing parking lot is not considered reconstruction.
- b. If such action would result in creating a parking area that no longer conforms to the parking regulations of this Ordinance, such existing parking lots are not required to install all or a portion of the required landscape. The applicant is required to show that landscape cannot be accommodated on the site.

c. If only certain requirements are able to be accommodated on the site, those elements are required. The Zoning Officer will make the determination that all or a portion of required landscape does not have to be installed.

### 3. Nonconforming Lighting

For exterior illumination, when exterior luminaires are replaced, all exterior illumination on the site shall be brought into conformance.

## 32-5 NONCONFORMING SIGNS

A. Nonconforming signs may continue to be used, regardless of change in content, until the sign structure is sought to be replaced, expanded, or relocated. At that time, the nonconforming aspects of the sign shall be brought into conformance with the requirements of this Ordinance.

B. Nonconforming signs shall be maintained in good condition. Maintenance required by this section includes replacing or repairing of worn or damaged parts of a sign or sign structure in order to maintain the sign or sign structure in good repair and condition at all times and is not a change or modification prohibited by item A above.

C. Removal of a nonconforming sign or replacement of a nonconforming sign with a conforming sign is required when one or more of the following occur:

1. A nonconforming sign, or more than 50% of the size of a nonconforming sign, nonconforming sign structure, or the building to which a nonconforming sign is attached, is destroyed or damaged by a fire, flood, windstorm, or similar abnormal event, or for any reason or by any means taken down, altered or removed
2. The condition of the nonconforming sign or nonconforming sign structure has deteriorated, and the deterioration exceeds 50% of the size of the sign structure prior to its deterioration
3. The use of the nonconforming sign, or the property on which it is located, has ceased, become vacant or been unoccupied for a period of 120 consecutive days, or more.

D. Intent to abandon is not required as a basis for removal under this section. Removal is the responsibility of the owner of the property on which the sign is located.

E. Billboards established prior to February 27, 1992, are subject to the following:

1. Any billboard shall be maintained in good repair and condition, in accordance with all applicable codes, at all times, provided neither the sign area nor sign height are increased.
2. No portion of any billboard may be converted into an electronic message center.
3. Billboards that have an illumination system in the same manner as in place on January 31, 2019 may continue to be illuminated. The type of external illumination may be replaced with a more energy efficient type external illumination.
4. Billboards that do not have an illumination system as of on January 31, 2019 may not be illuminated.
5. Billboards are also subject to these nonconforming sign provisions.