

## Ordinance ORD2012-12

**AN ORDINANCE** to amend The Code of the Town of Ashland, Chapter 21, "Zoning", Article XVIII, "Nonconforming Uses and Features."

The purpose of this ordinance is to amend the nonconforming use standards by amending the regulations with regard to the requirements of permits for nonconforming uses, the repair and maintenance of nonconformities, the expansion or enlargement of nonconforming activities or structures, the restoration or replacement of nonconforming activities or structures, the extension of nonconforming uses, the use and alteration of buildings with nonconforming features, and the restoration of damaged nonconforming buildings and uses.

**WHEREAS**, the Town Council has held a public hearing on the 15th day of January 2013, advertised as required by Virginia Code Section 15.2 – 2204.

**NOW THEREFORE BE IT ORDAINED** by the Council of the Town of Ashland, Virginia that Article XVIII, "Signs" shall be amended to read, as follows:

### ARTICLE XVIII.

#### NONCONFORMING USES AND FEATURES

##### Sec. 21-191. Continuation.

(a) If at the time of enactment of this chapter, 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, it shall be deemed abandoned and any subsequent use shall conform to the requirements of this chapter.

(d) Whenever a nonconforming structure, lot or activity has been changed to a more limited nonconforming use, such existing use may be changed to an even more limited use.

(e) Temporary, seasonal, nonconforming uses that have been in continual operation for a period of two (2) years or more prior to the effective date of this chapter are excluded from the terms in this section.

##### Sec. 21-192. Permits.

~~(a) — All nonconforming uses shall obtain a zoning permit and a certificate of occupancy after the adoption of this chapter. Such permits shall be issued promptly upon the written request of the owner or operator of a nonconforming use.~~

~~(b)~~(a) The construction or use of a nonconforming building or land area for which a permit was issued legally prior to the adoption of this chapter may proceed, provided such building is completed within one year, or such use of land established within thirty (30) days after the effective date of this chapter.

##### Sec. 21-193. 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 nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding ten (10) percent of the current replacement~~

~~value of the structure, provided that the cubic content of the structure as it existed at the time of passage or amendment of this chapter shall not be increased. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety upon order of such official. Normal repairs and routine maintenance of nonconformities shall be permitted unless such repairs increase the extent of nonconformity or are otherwise expressly prohibited by this Zoning Ordinance. Nothing in this article shall be construed to prevent structures from being structurally strengthened or restored to a safe condition.~~

#### **Sec. 21-194. Changes in district boundaries.**

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

#### **Sec. 21-195. Expansion or enlargement.**

(a) A nonconforming structure shall not be extended or enlarged unless its use is changed to conform with the provisions of this chapter for the uses allowed in the district.

~~(b) A nonconforming activity may be extended throughout any part of a structure which was arranged or designed for such activity at the time of enactment of this chapter. No nonconforming use shall be extended, enlarged or moved so as to occupy a different or greater area of land or buildings than was occupied by and actively devoted to such use at the time it became nonconforming, provided that a nonconforming use may be extended throughout such portion of land or such part of a building which was lawfully arranged, designed, equipped and intended for such use at the time it became nonconforming.~~

(c) A single-family residential structure that is located in an RR-1, R-1, R-2, R-3 residential zone or in the HE Zoning District and is classified as nonconforming by reason of not complying with all the requirements of this chapter, may be enlarged if the enlargement itself meets all setback, side yard or rear yard requirements.

(d) A nonconforming residential structure may be replaced by a new residential structure, on the same lot, provided however, that ~~such replacement is done by the property owner of record or by a member of his immediate family, at the time the property (structure) becomes nonconforming~~ the replacement structure shall meet all set back, side yard and rear yard requirements. In such a case, a performance bond shall be provided to the town to ensure the original structure is demolished and the original site landscaped within two (2) months after a certificate of occupancy is issued for the replacement structure. No existing lot area, lot width or yard shall be reduced to less than required for single-family dwelling use in the Residential District R-3.

(8-13-85, § 2)

#### **Sec. 21-196. Nonconforming lots.**

Any lot of record at the time of the adoption of this chapter which is less in area or width than the minimum required by this chapter may be used when the requirements of this chapter regarding setbacks, side and rear yards, are met.

#### **Sec. 21-197. Restoration or replacement.**

~~(a) If a nonconforming activity is destroyed or damaged in any manner, to the extent that the cost of restoration to its condition before the occurrence shall exceed fifty (50) percent of the cost of reconstructing the entire activity or structure, it shall be restored only if such use complies with the requirements of this chapter.~~

~~(b) If a nonconforming structure is destroyed or damaged in any manner, to the extent that the cost of restoration to its condition before the occurrence shall exceed seventy five (75) percent of the~~

~~cost of reconstructing the entire structure, it shall be restored only if it complies with the requirements of this chapter.~~

~~———— (c) ——— Where a conforming structure devoted to a nonconforming activity is damaged less than fifty (50) percent of the cost of reconstructing the entire structure, or where a nonconforming structure is damaged less than seventy-five (75) percent of the cost of reconstructing the entire structure, either may be repaired or restored, provided any such repair or restoration is started within twelve (12) months and completed within eighteen (18) months from the date of partial destruction.~~

~~———— (d) ——— The cost of land or any factors other than the cost of the structure are excluded in the determination of cost of restoration for any structure or activity devoted to a nonconforming use.~~

If an existing structure devoted to a nonconforming activity or a nonconforming structure is destroyed by any means, the owner may replace such structure provided that there is no increase in the extent of the nonconformity and provided that the repairs or reconstruction shall be completed within 2 years of the date of destruction and diligently carried on to its completion.

### **Sec. 21-197.1. Nonconforming uses and features may continue.**

Subject to the limitations set forth in this article, nonconforming uses, nonconforming features and nonconforming buildings may continue. The terms "nonconforming use", "nonconforming features", "nonconforming building" and "nonconforming lot" shall have such meaning as specified in article I of this chapter.

(6-23-98(2), § 1)

### **Sec. 21-197.2. Extension of nonconforming uses.**

~~———— No nonconforming use shall be extended, enlarged or moved so as to occupy a different or greater area of land or buildings than was occupied by and actively devoted to such use at the time it became nonconforming, provided that a nonconforming use may be extended throughout such portion of land or such part of a building which was lawfully arranged, designed, equipped and intended for such use at the time it became nonconforming.~~

(6-23-98(2), § 1)

### **Sec. 21-197.3. Alterations to buildings devoted to nonconforming uses.**

(a) Nonconforming uses in general. Except as otherwise provided in this article, no building or portion of a building devoted to a nonconforming use shall be enlarged, extended, structurally altered, reconstructed or moved, unless such building or portion of a building is thereafter devoted to a use which conforms with the use regulations of this chapter. Nothing in this article shall be construed to prohibit normal repair, maintenance or incidental alteration of a building or the alteration, strengthening or restoring of a building to safe condition as may be required by law.

(b) Nonconforming single-family dwellings. A single-family dwelling which is a nonconforming use in any district may be structurally altered and may be enlarged or extended, and a building or structure accessory thereto may be altered, enlarged or constructed, provided that in no case shall the total amount of floor area, including all enclosed and unenclosed space and garage or carport space, be increased more than five hundred (500) square feet. No existing lot area, lot width or yard shall be reduced to less than required for single-family dwelling use in the Residential District R-3.

(6-23-98(2), § 1)

### **Sec. 21-197.4. Change of nonconforming use.**

(a) Change to conforming or more restricted use. A nonconforming use of land or a nonconforming use of a building may be changed to a use which conforms with the use regulations of the district in which it is located or to a use, other than a multifamily dwelling, which is first permitted by right in a more restricted zoning district. Whenever a nonconforming use has been changed to a conforming use or to a more restricted use, such use shall not thereafter be changed back to the original nonconforming use or to any less restricted use.

(b) Meaning of terms. For purposes of this article, a more restricted zoning district shall be construed to be a district in which the permitted uses and/or intensity of use are more limited. The term "use" shall be construed to be a type of activity as listed in the use regulations of a zoning district, and a change in occupancy, ownership or management shall not in itself constitute a change in use.

(6-23-98(2), § 1)

#### **Sec. 21-197.5. Discontinuance of nonconforming uses.**

(a) Discontinuance in general. Whenever a nonconforming use of land or a nonconforming use of a building is discontinued for a continuous period of more than two (2) years, whether or not equipment or fixtures intended for such use are removed, any subsequent use shall conform with the use regulations of the district in which the property is located.

(b) Remedy in case of change to illegal use. In case of determination by the zoning administrator that a nonconforming use has been changed to an illegal use, such illegal use shall cease and any subsequent use of the premises shall be in conformity with the use regulations of this chapter, or the illegal use may be changed to the last lawful nonconforming use to occupy the premises if such change occurs within two (2) years of the date the lawful nonconforming use last occupied the premises.

(6-23-98(2), § 1)

#### **Sec. 21-197.6. Use and alteration of buildings with nonconforming features.**

(a) Change in use. A building which is nonconforming with respect to the bulk regulations or other features required by this chapter may nonetheless be converted to and occupied by a use permitted in the district in which the building is located, provided that off-street parking and other requirements applicable to the new use are satisfied.

(b) Enlargement or alteration of building. A building which is devoted to a conforming use and is nonconforming with respect to the bulk regulations or other features required by this chapter may be enlarged, extended or structurally altered, provided that the degree or extent of any nonconforming feature is not increased. However, a building which is nonconforming due to encroachment into a required yard may be enlarged, extended, or structurally altered within or coextensive with the plane of the structure, so long as the required yard is not further encroached into and no new nonconformity is thereby created.

(c) Increase in building height. An increase in the height of any portion of a building which is nonconforming with respect to a yard or open space requirement shall be deemed to be an increase in the extent of the nonconforming feature of the building.

(6-23-98(2), § 1)

#### **Sec. 21-197.7. Damage to nonconforming buildings and uses; restoration.**

~~(a) Damage not exceeding fifty (50) percent of value. A building having a nonconforming feature or a building devoted to a nonconforming use which is damaged by fire, explosion, act of God or the public enemy to an extent not exceeding fifty (50) percent of its most recent assessed taxable value may be restored, repaired, reconstructed and used as before the damage, provided that the degree or~~

~~extent of any nonconforming feature that existed prior to the damage shall not be increased, and the area devoted to any nonconforming use prior to the damage shall not be increased. Such restoration, repair, reconstruction or reuse shall be completed within two (2) years of the date of damage.~~

~~(b) Damage greater than fifty (50) percent of value. Whenever a building having a nonconforming feature or a building devoted to a nonconforming use is damaged by any cause whatsoever to an extent greater than fifty (50) percent of its most recent assessed taxable value, such building shall not be restored, repaired, reconstructed or used except in conformance with all of the applicable provisions of this chapter, except as may be authorized by the board of zoning appeals pursuant to this article.~~

~~(c) Special exception for nonconforming buildings and uses. The board of zoning appeals shall have the authority to grant a special exception as provided in article XXI of this chapter for restoration, repair, reconstruction or reuse of a building having a nonconforming feature or a building devoted to a nonconforming use which is damaged by fire, explosion, act of God or the public enemy to an extent greater than fifty (50) percent of its most recent assessed taxable value, provided that:~~

~~(1) Before granting any such special exception, the board shall be satisfied from the evidence presented that the proposed restoration, repair, reconstruction or reuse would result in the minimum deviation from the provisions of this chapter necessary to enable reasonable use of the property with consideration for its use prior to the damage. Whenever possible, the board shall require reduction in the degree or extent of nonconforming features and uses;~~

~~(2) In no case shall the board authorize restoration, repair, reconstruction or reuse to any extent that constitutes a greater deviation from the provisions of this chapter than existed prior to the damage; and~~

~~(3) Before granting any special exception, the board shall receive testimony and make a finding that restoration, repair or reconstruction of the building will not unreasonably impair light and air to adjoining property, will not impair established property values in the immediate area and will not otherwise be detrimental to the health, safety and general welfare of the public. Before granting any special exception to re-establish a nonconforming use, the board shall also receive testimony and find that the continued operation of the nonconforming use is in the public interest and contributes to public convenience or general welfare.~~

~~(6-23-98(2), § 1)~~

#### **Sec. 21-197.8. Intermittent, temporary or illegal use.**

Intermittent, temporary or illegal use of land or buildings shall not be construed to establish the existence of a nonconforming use for the purposes of this article, provided that a lawful seasonal use that was in operation for at least two (2) consecutive seasons immediately prior to the adoption of this chapter or subsequent amendment thereto shall be considered a nonconforming use for seasonal purposes only, with no increase in the extent or length of period of operation of the use. Such use shall be subject to all other provisions of this article.

(6-23-98(2), § 1)

#### **Sec. 21-197.9. Nonconforming lots.**

(a) Subject to the limitations set forth in this article, nonconforming uses, nonconforming features and nonconforming buildings may continue. The terms "nonconforming use", "nonconforming features", "nonconforming building" and "nonconforming lot" shall have such meaning as specified in article I of this chapter.

(b) A lot which contains a nonconforming building, where such nonconformity relates to building setback, height or yard regulations, shall not be construed to be a nonconforming lot, and may be

subdivided or reconfigured as long as the intensity of the nonconforming feature is not increased, and all other applicable provisions of this chapter are met.

(6-23-98(2), § 1; 3-20-07)

**BE IT FURTHER ORDAINED** by the Town Council that the amendments herein of the Code of the Town of Ashland shall be effective immediately upon adoption.

Introduced: November 1, 2012

Advertised: Planning Commission:  
Herald Progress: November 22, 2012 & November 29, 2012  
Town Council: December 27, 2012 & January 3, 2013  
Herald Progress:

Public Hearing: Planning Commission: December 12, 2012  
Town Council: January 15, 2013

Adopted: January 15, 2013

Effective: January 15, 2013