



## THE COMMON COUNCIL

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*I, Kerri A. Mellott, Deputy Clerk of the Common Council, hereby certify on this 26 day of May 2021 that the following Ordinance is a true and exact copy of one and the same adopted by the Common Council of the City of Winchester, assembled in regular session on the 25 day of May 2021.*

### **TA-20-725 AN ORDINANCE REPEALING AND REPLACING ARTICLE 17 OF THE ZONING ORDINANCE OF CITY OF WINCHESTER, VIRGINIA**

**WHEREAS**, as provided in §15.2-2283 of the Code of Virginia, it is in the interest to the City to promote health, safety and welfare and furthermore protect and promote a convenient, attractive and harmonious community; and,

**WHEREAS**, the City's Zoning Ordinance has provisions that regulate nonconforming uses, structures, and lots; and,

**WHEREAS**, the public has identified a need to update the nonconforming regulations to comply with Virginia State Code 15.2-2307 and to more adequately address the City of Winchester's preservation efforts;

**WHEREAS**, pursuant to Section 22-1-1 of the Zoning Ordinance, an Ordinance amendment may be initiated by resolution of Planning Commission;

**NOW, THEREFORE BE IT RESOLVED**, the Planning Commission of Winchester, Virginia hereby initiates a Zoning Ordinance text amendment to repeal, replace, and restate in its entirety Article 17 of the Zoning Ordinance, to amend Section 18-9-2.4, and to delete and reserve Section 18-9-2.5 as follows:

#### **ARTICLE 17 – NONCONFORMITIES**

##### **STATEMENT OF INTENT**

The purpose of this section is to regulate uses, structures, and lots that do not conform to their current and respective zoning districts. While this nonconforming section provides avenues for nonconformities to be brought into conformance, it also acknowledges that the City of Winchester is a historic city with many structures worth preserving. These regulations are balanced to provide accommodations for property owners to reasonably improve their properties while still encouraging conformance over time.

##### **Sec. 17-1. - Definitions.**

Three categories of nonconformities are established within this Article and defined as follows:

17-1-1 Nonconforming *use*: A use that was lawfully established and has not been discontinued for more than two years, but no longer complies with this Ordinance.

17-1-2 Nonconforming *structure*: A structure that was lawfully erected but no longer complies with this Ordinance.

17-1-3 Nonconforming *lot*: A lot, parcel, or development site that was lawfully created but no longer complies with this Ordinance.

The following additional terms are hereby defined as follows:

17-1-4 Discontinued: The intentional or unintentional absence of any activities that are a nonconforming use.

**Sec. 17-2. – General regulations and continuation of nonconformities.**

- (a) Any nonconforming structure, nonconforming use, or nonconforming lot may be continued, repaired, or maintained. It may not be altered, enlarged, or extended except in accordance with this Article.
- (b) Except as otherwise expressly provided herein, when a nonconforming use has been changed to an illegal use, such illegal use shall cease, and any subsequent use of the property shall conform to the regulations applicable in the district in which it is located or, if the nonconforming use has been discontinued for a period of less than two years, the illegal use may be changed to the last nonconforming use or to a use that is more restricted than such use.
- (c) The burden of establishing that a use, structure, or lot is nonconforming shall be that of the owner of the property.

**Sec. 17-3. - Nonconforming uses.**

17-3-1 A nonconforming use shall not (i) be expanded, enlarged, or extended beyond the size as it existed at the time that such use became nonconforming, or (ii) materially changed in character or intensity. Notwithstanding the foregoing, a nonconforming use may decrease in intensity, subject to the provisions of Section 17-3-2 above. When any use is regulated by this chapter in a quantifiable manner, including but not limited to limitations on the number of unrelated occupants permitted in a dwelling unit, limitations on the density of dwelling units, or measurement of the square footage of a use to determine parking requirements, any quantifiable increase shall constitute a prohibited material change in character or intensity.

17-3-2 If a nonconforming use is changed to a more restricted nonconforming use for a period of more than two (2) years, the original nonconforming use shall be deemed to be discontinued and the use shall not thereafter be changed back to the original nonconforming use.

17-3-3 No building or structure associated with a nonconforming use shall be added to or structurally altered, as provided in the Uniform Statewide Building Code, unless:

- (a) A zoning verification letter has been received documenting the existence and

extent of the nonconforming use prior to the proposed addition or alteration; and

- (b) The proposed addition or structural alteration to the building or structure does not increase or extend the square footage dedicated to the nonconforming use. Any use of new square footage added to the building or structure must be used for a use that conforms to the Ordinance.

17-3-5 Conforming structures that contain a nonconforming use may be repaired, maintained, or renovated, provided that the scope of work does not expand the square footage dedicated to the nonconforming use or otherwise increase, expand, extend, or change the character of the nonconforming use.

17-3-6 If a building or structure occupied by a nonconforming use is damaged or destroyed by a natural disaster or an act of God, then the building or structure may be restored and nonconforming use continued so long as the use is not discontinued for more than two (2) years.

17-3-7 In the event that a primary nonconforming use is discontinued for more than two years, all accessory uses to such primary nonconforming use shall be prohibited unless such accessory uses otherwise conform to the Ordinance.

#### **Sec. 17-4. - Nonconforming structures.**

17-4-1 A nonconforming structure may continue so long as such structure is maintained in materially the same condition as when such structure became nonconforming.

17-4-2 The owner of any nonconforming structure that is damaged or destroyed by a natural disaster or other act of God may repair, rebuild, or replace such nonconforming structure to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance, provided that:

- (a) If such nonconforming structure is damaged greater than fifty (50) percent of the present assessed value of the building or structure, and cannot be repaired, rebuilt, or replaced, except to restore it to its original nonconforming condition, the owner shall have the right to do so. Any work done under this subsection to repair, rebuild, or replace such nonconforming structure shall be in compliance with the provisions of the Uniform Statewide Building Code and the provisions of applicable local floodplain regulations.

- (b) Unless such nonconforming structure is repaired, rebuilt, or replaced within two (2) years of the date of the natural disaster or other act of God, such building or structure shall only be repaired, rebuilt, or replaced in accordance with the provisions of the Ordinance, except if such nonconforming structure is in an area under a federal disaster declaration and the nonconforming structure has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, in which case the owner shall have an additional two (2) years to repair, rebuild, or replace such nonconforming structure.

17-4-3 Notwithstanding any other provision of this chapter, any nonconforming structure that has been declared by the City to be unsafe, unfit for human occupancy, derelict, or blighted may be repaired to strengthen or restore the structure or any part thereof to a safe condition, or to remedy the conditions giving rise to such blight or dereliction. These

repairs may include improvements to provide fire safety and handicapped access.

17-4-4 Notwithstanding any other provision of this chapter, nonconforming accessory structures less than 256 square feet in size, which do not otherwise require a building permit, may be replaced in whole so long as their placement does not increase, extend, expand, or compound their nonconformity.

**Sec. 17-5. – Determination of nonconforming status.**

17-5-1 The burden of establishing a nonconforming status of a use or structure shall be upon the owner of the claimed nonconformity.

17-5-2 Upon request, the Administrator shall make a written determination pertaining to the existence of a lawful nonconforming use and/or structure. In verifying the lawful status of a nonconforming use and/or structure, the Administrator shall determine whether the use and/or structure is, in fact, a lawful nonconformity as defined by this Article; and if so then:

- (a) The location and gross floor area (in square feet) of all buildings, if any, associated with the nonconforming use;
- (b) Any site improvements currently existing on the property which are also nonconforming (including accessory buildings, parking, outside storage, travel ways, green area, landscaping, etc.); and,
- (c) A description of the principal use(s) and all accessory uses that make up the lawful nonconforming use as a whole.

17-5-3 The decision of the Administrator shall be based upon information provided by the owner of the property on which the nonconforming use is located, on information provided by other persons with knowledge of the property and on any other non-confidential information legally available to the Administrator. Such information may include, but shall not be limited to, permits, licenses, tax records, receipts, business records, photographs, plats, plans, bills, utility information, assessment information, and sworn affidavits from individuals with personal knowledge of the use and/or the property on which the use is located.

**Sec. 17-6. - Expansion of nonconforming structures.**

This section is designed to allow for preservation, adaptability, and a continued use of nonconforming and historic structures in the City of Winchester. Expansion of a nonconforming structure is allowed only so long as the portion of the then-existing footprint that is in conflict with setbacks is not expanded so as to increase the nonconformity. These regulations are designed to allow for expansions outside the setback and to allow for vertical expansions inside of setbacks provided that the supporting footprint is not increased. This section shall only apply to and allow for expansions of nonconforming structures that are used solely for conforming uses.

17-5-1 A structure which is nonconforming solely due to its failure to meet existing setback requirements in this Ordinance may be structurally modified or added to in such a way so as to expand horizontally the footprint of the nonconforming structure outside of the

setbacks. Such expansion shall be allowed only if it complies with all other provisions of the zoning ordinance.

- 17-5-2 Existing unfinished interior space in a nonconforming structure may be finished provided that such work does not further expand the footprint of the existing nonconforming structure.
- 17-5-3 A nonconforming structure may be expanded vertically only if the existing portion of the structure's footprint, in conflict with setbacks, is not expanded to occupy a greater area of the setbacks than was occupied at the time the structure became nonconforming. A vertical expansion over an existing footprint must conform to all other provisions of this Ordinance. The vertical expansion that takes place in conflict with the setbacks shall be confined to two stories in height and no higher than 35 feet from grade
- 17-5-4 Renovations or additions that take place inside the current setbacks must not exceed 50 percent the present assessed value of the property in any one-year period. Renovations or additions that take place outside of the setbacks are not bound by any assessed value cap. Square footage of nonconforming areas may be pro-rated to determine the value of construction materials used for any renovations or additions that occur inside the setbacks. Renovations or additions that exceed 50 percent of the present assessed value, as described in this section, shall require the approval of a conditional use permit by City Council prior to the work commencing.
- 17-5-5 An architectural overhang of 30 inches outside of the underlying building footprint shall be allowed to provide for functional drainage and aesthetics. Any existing nonconforming architectural overhang in excess of 30 inches from the underlying nonconforming building footprint may be replaced so long as the projection is not increased to an extent that is greater than the existing nonconformity. An architectural overhang, as described in this section, may project over property lines. An architectural overhang may project into the public right of way in accordance with the regulations found under section 18-18 of the zoning ordinance.
- 17-5-6 An existing carport that is nonconforming to setback regulations but devoted to a conforming use may be enclosed, provided that such addition does not compound the existing dimensional nonconformity and is used solely for the creation of garage space. If enclosing the carport creates a public safety problem or additional habitable space, such enclosure shall not be allowed. New concrete footers and floors may be poured so long as the footers are not dimensionally enlarged to occupy a greater volume than was present at the time that the carport became nonconforming.

#### **Sec. 17-6. – Nonconforming lots.**

A nonconforming lot may continue subject to the provisions, conditions, and prohibitions set forth herein.

- 17-6-1 Where an unimproved lot of record at the time of the effective date of this Ordinance has less area and or width than herein required in the district in which it is located, the lot

may nevertheless be used for a single-family detached dwelling, without the need to obtain a variance, only if:

- (a) the use is permitted in the district in which the lot is located;
- (b) side yards of not less than ten percent of the required lot width are provided; and
- (c) the setback and rear yard requirements shall be as required by the zoning district in which the lot is located.
- (d) If the lot is a corner lot, a side yard facing the side street of not less than 20 percent of the required lot width, with a minimum of ten feet, shall be provided.

17-6-2 Subdivision that includes a nonconforming lot. A nonconforming lot may be subdivided as part of a subdivision provided that all of the resulting lots comply with the requirements of the zoning district in which they are located and all other applicable requirements of the Winchester City Code.

17-6-3 Combination of a nonconforming lot with another lot. A nonconforming lot may be combined with a conforming lot or a nonconforming lot provided the size, area, or frontage of the resulting lot is increased to make it conforming or not more nonconforming.

17-6-4 Boundary line adjustment between a nonconforming lot and a conforming lot. One or more boundary lines between a nonconforming lot and a conforming lot may be adjusted provided that:

- (a) The boundary line adjustment does not make the conforming lot nonconforming or the nonconforming lot more nonconforming; and
- (b) The boundary line adjustment does not result in an increase in the number of lots or dwelling units that could otherwise be established on each lot.

17-6-5 Boundary line adjustment between nonconforming lots. One or more boundary lines between two or more nonconforming lots may be adjusted provided:

- (a) The boundary line adjustment does not make either nonconforming lot more nonconforming; and
- (b) The boundary line adjustment does not result in an increase in the number of lots or dwelling units that could otherwise be established on each lot.

17-6-6 A change of the ownership or occupancy of a nonconforming lot shall not affect the status of the nonconforming lot.

17-6-7 Where a lot of record at the time of the effective date of this Ordinance has less area or width than herein required in the district in which it is located, the lot may nevertheless be used for a community garden, if that use is permitted in the district in which the lot is

located, or for permissible uses which are accessory to a primary use on an adjacent conforming lot.

17-6-8 Any lot, which by reason of realignment of a federal or state highway or by reason of condemnation proceedings has been reduced in size to an area less than that required by law, shall be considered a lawful nonconforming lot of record subject to the provisions set forth in this section; and any lawful use or structure existing at the time of such highway realignment or condemnation proceedings which would thereafter no longer be permitted under the terms of this Ordinance shall be considered a lawful nonconforming use of structure as that term is used in this Ordinance.

### **Sec. 18-9. - Special regulations regarding yards.**

18-9-2.4 Handicap accessibility ramps and steps and staircases without roofs may extend into required yard provided that any access ramp built into the setbacks does not extend further than is necessary per the requirements of the Virginia Uniform Statewide Building Code. as follows: ~~Any portions with not more than nine feet of reveal between any step or point on a ramp and the closest point of grade surrounding it may extend four feet into a required front, corner side or rear yard; Any portions with not more than five feet of reveal between any step or point on a ramp and the closest point of grade surrounding it may extend eight feet into a required front, corner side or rear yard and five feet into a required non-corner side yard provided they do not extend into any required yard to a greater distance than one half the required yard depth or width. Any portions with less than two feet of reveal between any point on the steps or point on a ramp and the closest point of grade surrounding it may extend into any required yard.~~

18-9-2.5 Reserved. ~~An unenclosed carport, attached to a dwelling, may extend into any required side yard a distance of not more than five feet but not nearer to any side lot line than a distance of five feet.~~

## **ARTICLE 17 - NONCONFORMITIES[1]**

### **STATEMENT OF INTENT**

~~The purpose of this Article is to establish regulations for uses which do not presently conform to the district and general provisions established within this Ordinance in a manner consistent with sound planning and zoning principles. The general intent is that, over time, nonconforming uses will be discontinued in favor of uses conforming to this Zoning Ordinance and the zoning map. However, it is also recognized that nonconforming uses and structures need not be entirely static and that under certain circumstances nonconforming uses and structures may change according to law and the provisions of this Article. The provisions of this Article are intended to complement the requirements of Code of Virginia, § 15.2-2307, and its subsequent amendments which are hereby adopted and incorporated mutatis mutandis as if set forth fully herein. To the extent that any provision of this article is inconsistent with or more restrictive than Code of Virginia, § 15.2-2307, or other controlling legal authority, the provisions of Code of Virginia, §~~

15.2-2307, or other controlling legal authority shall supersede as to that provision and the remaining provisions of this article shall continue in full force and effect.

**Footnotes:**

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~~*Editor's note*—Article 17 was comprehensively updated 1/13/15, Case TA 14 476, Ord. No. 2014-45.~~

**Sec. 17-1. General provisions.**

~~*17-1-1 Definitions.*~~

~~A. This section applies to any nonconformity. There are three categories of nonconformities established within this Article, defined as the following:~~

- ~~1) Nonconforming *use*: A use that was lawfully established but no longer complies with the use regulations applicable to the use or the zoning district.~~
- ~~2) Nonconforming *structure*: A structure that was lawfully erected but no longer complies with development standards established in this Ordinance.~~
- ~~3) Nonconforming *lot*: A lot, parcel, or development site that was lawfully created but no longer complies with the dimensional standards established in this Ordinance.~~

~~*17-1-2 Change in District Boundaries.*~~

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

~~*17-1-3 Vested Rights.*~~

- ~~A. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner:~~
- ~~(i) Obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project.~~
  - ~~(ii) Relies in good faith on the significant affirmative governmental act, and~~
  - ~~(iii) Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.~~
- ~~B. For the purpose of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project:~~
- ~~(i) The City Council has accepted proffers or proffered conditions which specify use related to a zoning amendment;~~

- ~~(ii) The City Council has approved an application for a rezoning for a specific use or density;~~
- ~~(iii) The City Council or Board of Zoning Appeals has granted a special exception or conditional use permit;~~
- ~~(iv) The Board of Zoning Appeals has approved a variance;~~
- ~~(v) The City Council or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances;~~
- ~~(vi) The City Council or its designated agent has approved a final subdivision plat, site plan of development for the landowner's property; or~~
- ~~(vii) The Administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under Code of Virginia, § 15.2-2311(C).~~

~~17-1-4 Determination of Nonconforming Status.~~

- ~~A. The burden of establishing a nonconforming status of a use or structure shall be upon the owner of the claimed nonconformity.~~
- ~~B. Upon request, the Administrator shall make a written determination pertaining to the existence of a lawful nonconforming use and/or structure. In verifying the lawful status of a nonconforming use and/or structure, the Administrator shall determine whether the use and/or structure is, in fact, a lawful nonconformity as defined by this Article; and if so then:
  - ~~1) The location and gross floor area (in square feet) of all buildings, if any, associated with the nonconforming use;~~
  - ~~2) Any site improvements currently existing on the property which are also nonconforming (including accessory buildings, parking, outside storage, travel ways, green area, landscaping, etc.); and,~~
  - ~~3) A description of the principal use(s) and all accessory uses that make up the lawful nonconforming use as a whole.~~~~
- ~~C. The decision of the Administrator shall be based upon information provided by the owner of the property on which the nonconforming use is located, on information provided by other persons with knowledge of the property and on any other non-confidential information legally available to the Administrator. Such information may include, but shall not be limited to, permits, licenses, tax records, receipts, business records, photographs, plats, plans, bills, utility information, assessment information, and sworn affidavits from individuals with personal knowledge of the use and/or the property on which the use is located.~~

**Sec. 17-2. Nonconforming structures.**

~~17-2-1 General Requirements.~~

- ~~A. Any lawfully constructed structure which existed at the time of this Ordinance or any amendments thereto may continue in its legally nonconforming status so long as the structure does not violate other legal provisions and otherwise complies with the provisions of this Article.~~
- ~~B. No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such nonconforming use of land.~~
- ~~C. A nonconforming structure may be used for any use allowed in the underlying zoning district, subject to all applicable use standards.~~
- ~~D. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.~~

~~(9/22/15, Case TA-15-376, Ord. No. 2015-17)~~

~~*17-2-2 Enlargement.*~~

- ~~A. Notwithstanding Section 17-2-2B, no such nonconforming structure shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance unless said enlargement does not result in an increase in nonconformity.~~
- ~~B. In any district, existing nonconforming residential structures that do not meet setback, side, and/or rear yard requirements may be enlarged in line with the existing building, provided that the existing nonconforming setback, side, and rear yards are not reduced.~~

~~*17-2-3 Modification, Restoration, or Replacement.*~~

- ~~A. The Administrator may allow for a modification or alteration of a nonconforming structure, provided that the modification does not increase the nonconformity. Modifications which cause a structure to become more conforming to the requirements of this Ordinance shall be encouraged, including, but not limited to, required setbacks, height, density, bulk/area standards, or landscaping.~~
- ~~B. Nonconforming structures other than buildings and signs (such as, but not limited to, underground storage tanks, private sewage disposal systems and parking lots) may be restored or replaced when such structures become unsafe or unsound. Relocation on the same lot may be approved by the Zoning Administrator, provided the new location is less nonconforming than the original location, and further provided that the new location shall not cause a greater detrimental impact on conforming uses in the neighborhood.~~

~~*17-2-4 Destruction of Nonconforming Structure.*~~

- ~~A. Any residential or commercial building damaged or destroyed by a natural disaster or other act of God may repair, rebuild, or replace such building to eliminate or reduce~~

the nonconforming features to the extent possible. If such building is damaged greater than 50 percent and cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program.

~~B. Unless such building is repaired, rebuilt or replaced within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt, or replaced in accordance with the provisions of this Ordinance. However, if the nonconforming building is in an area under a federal disaster declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, then the property owner shall have an additional two years for the building to be repaired, rebuilt or replaced as otherwise provided.~~

~~C. For purposes of this section, "act of God" shall include any natural disaster or phenomena including a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake or fire caused by lightning or wildfire. For purposes of this section, owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an act of God. Nothing herein shall be construed to enable the property owner to commit an arson under Code of Virginia, § 18.2-77 or § 18.2-80, and obtain vested rights under this section.~~

#### *17-2-5 Repairs and Maintenance.*

~~A. Nothing in this Section shall be deemed to prevent minor repair and keeping in good repair a nonconforming building or a building in which a nonconforming use is conducted, provided that such repair constitutes only routine maintenance necessary to keep the structure in the same general condition as it was when it originally became nonconforming. In no case shall any building that is declared by any authorized City official to be unsafe or unlawful by reason of physical condition be restored, repaired or rebuilt.~~

~~B. Any repair, maintenance, or renovation during a one year period that exceeds 35 percent of the replacement value of the structure being repaired is deemed to be a major repair and shall require approval of a conditional use permit by City Council prior to the repair.~~

~~C. For the purposes of this Section, the cost of land or any factors other than the cost of the structure are excluded in the determination of the cost of repair.~~

#### *17-2-6 Expiration of Nonconforming Status.*

~~A. If any nonconforming structure shall cease to be used for a period of at least two years, the nonconforming status of the structure shall no longer be valid. Prior to any subsequent use, the structure must be modified to conform to the regulations specified in this Ordinance for the district for which such land is located.~~

~~B. If any change in title of possession, or renewal of a lease of any such structure occurs, the existing nonconforming structure may continue.~~

**Sec. 17-3. – Nonconforming uses.**

*17-3-1 General Provisions.*

~~A. No nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance unless said move results in decreasing the degree of nonconformity or results in conformity with the requirements for the district.~~

~~B. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance, but no such use shall be extended to occupy any land, outside such building.~~

~~C. A nonconforming use that was recognized prior to the adoption of this Article shall continue to operate under the provision of law under which the nonconforming use was recognized so long as the nonconforming use is not in violation of such provision of law, the adoption of the Article notwithstanding.~~

*17-3-2 Expiration of Nonconforming Use.*

~~A. If any nonconforming use shall cease to be operated for a period of at least two years, the nonconforming use shall no longer be valid. Any subsequent use of land shall conform to the regulations specified in this Ordinance for the district for which such land is located.~~

~~B. Operation of only an accessory or incidental use to the principal nonconforming use during the two year period shall not operate to continue the principal nonconforming use.~~

~~C. No use accessory to a principal nonconforming use shall be continued after nonconforming status is lost for the principle use.~~

~~D. If any change in title of possession, or renewal of a lease of any such lot or structure occurs, the existing nonconforming use may continue.~~

~~E. When any nonconforming use is superseded by a permitted use, the use shall thereafter conform to the regulations for the district, and no nonconforming use shall thereafter be resumed.~~

*17-3-3 Change of Nonconforming Use.*

~~A. In any district in which a lawful nonconforming use exists, upon formal application submitted by the owner, the use may be changed to a less intensive and more restricted use upon approval from City Council of a conditional use permit per Section 18-2. Prior to the application of a conditional use permit to change a lawful nonconforming use, the current nonconforming use shall be verified by the Zoning Administrator per Section 17-4.~~

~~B. In determining whether a proposed use is a "less intensive and more restricted use" the following factors, among others, shall be considered:~~

- ~~1) The number and size of parking spaces serving the new use;~~
  - ~~2) The design, mass and/or scale of the building(s) and site on which the new use is located; 3)  
The use, type, area, and appearance of new signs;~~
  - ~~4) The intensity of the new nonconforming use, including the days and hours of operation,  
traffic, noise, odor, and similar impacts;~~
  - ~~5) The lighting provisions on the site for the new use;—6)  
The landscaping provisions on the site for the new use; 7)  
The amount of vehicular traffic in the neighborhood;~~
  - ~~8) The potential effect on the fair market value of neighboring properties from the new use; and,  
9) The considerations of the City's Comprehensive Plan.~~
- ~~C. Once a nonconforming use has been changed to a less intensive and more restricted use, the legal nonconforming status shall not be subsequently reinstated.~~

~~D. Upon evaluation of a less intensive and more restricted use request, City Council may include reasonable requirements as a condition of the approval in order to mitigate potential impacts on the surrounding properties and the neighborhood, including but not limited to: parking requirements, landscaping, lighting, hours of operation, density and signage.~~

~~*17-3-4 Expansion of Nonconforming Use.*~~

- ~~A. No nonconforming use may be expanded on a lot which is not properly zoned to permit such nonconforming use, unless the zoning is amended to permit such use or a conditional use permit is approved by City Council, as may be applicable.~~
- ~~B. For the purposes of this section an expansion of use shall consist of one or more of the following:~~
- ~~1) The square footage of the use is increased, regardless of whether inside or outside of a structure.~~
  - ~~2) The intensity or operation of a use is changed in a manner which causes a higher parking requirement, in accordance with Section 18-6.~~
  - ~~3) The number of dwelling units is increased.~~

~~**Sec. 17-4. Nonconforming lots.**~~

~~*17-4-1 Development on a Nonconforming Lot.*~~

- ~~A. Where a lot of record at the time of the effective date of this Ordinance has less area or width than herein required in the district in which it is located, said lot may nevertheless be used for a single family detached dwelling if that use is permitted in the district in which it is located provided that side yards of not less than ten percent of the required lot width, with a minimum~~

~~width of five feet, are provided; and that the setback and rear yard requirements shall be as required by the zoning district in which the lot is located. If the lot is a corner lot, a side yard facing the side street of not less than 20 percent of the required lot width, with a minimum of ten feet shall be provided.~~

- ~~B. In any district, existing single family detached dwellings may be enlarged on any nonconforming lot of record, provided, however, that side yards of not less than ten percent of the lot width, with a minimum width of five feet, are provided, and that the setback and rear yard requirements shall be as required by the zoning district in which the lot is located. If the lot is a corner lot, a side yard facing on the side street of not less than 20 percent of the required lot width, with a minimum of ten feet shall be provided.~~
- ~~C. Additions to residences permitted under Section 17-4-1A and 17-4-1B, such as decks, porches, and terraces, must fully meet the requirements of Section 18-10 of this Ordinance.~~
- ~~D. In any district, permitted structures, other than single family detached dwellings, may be erected or enlarged on a nonconforming lot of record, provided that a variance of lot width, setback, and/or yard requirements is obtained through action of the Board of Zoning Appeals and that parking, green area and landscaping requirements are met.~~
- ~~E. Where a lot of record at the time of the effective date of this Ordinance has less area or width than herein required in the district in which it is located, said lot may nevertheless be used for a community garden, if that use is permitted in the district in which said lot is located.~~

~~17-4-2 Highway Realignment or Condemnation:~~

~~A. Any lot, which by reason of realignment of a federal or state highway or by reason of condemnation proceedings, has been reduced in size to an area less than that required by law, shall be considered a lawful nonconforming lot of record subject to the provisions set forth in this section; and any lawful use or structure existing at the time of such highway realignment or condemnation proceedings which would thereafter no longer be permitted under the terms of this Ordinance shall be considered a lawful nonconforming use of structure as that term is used in this Ordinance.~~

**Ordinance No. O-2021-6**

**ADOPTED by the Common Council of the City of Winchester on this 25 day of May 2021.**

***Witness my hand and the seal of the City of Winchester, Virginia.***



A handwritten signature in black ink that reads "Kerri A. Mellott".

**Kerri A. Mellott**  
**Deputy Clerk of the Common Council**