

ARTICLE 10

NON-CONFORMITIES

PART 1

10-100

NON-CONFORMING USES

10-101

Limitations on Non-Conforming Uses

Non-conforming uses are authorized to continue subject to the limitations listed below:

1. Except as set forth herein, a non-conforming use shall be limited to the land area and buildings existing and being utilized for the use as of the date the use became legally non-conforming.
2. Allowed Expansions of a Non-Conforming Use:
 - A. Such use shall not otherwise be enlarged or extended such that the character of the use existing on the date the use became legally non-conforming is changed. The Zoning Administrator's determination of whether the character of a non-conforming use has changed shall be based on the magnitude of the change in the size and scope of the use and the effects these changes have upon surrounding uses. In evaluating the change in the size and scope of the use, an increase in volume or intensity of the use and any alteration or variation in the use, such as the provision of additional goods or services shall be considered. A mere increase in the volume, intensity or frequency of activities that is trivial, insubstantial or reasonably customary or incidental, and that is not accompanied by an alteration or variation in the use, shall not be deemed to be an enlargement or extension of the use.
 - B. A non-conforming use which is non-conforming solely because the use now requires an Administrative Permit, Special Permit or Special Exception in the district in which it is located may only be expanded subject to an Administrative Permit, Special Permit or Special Exception obtained in accordance with the current provisions of this Ordinance. Such permit shall be approved only if the resulting use complies with the standards set forth in Article 5 for the particular use in question. Upon approval of such permit, the use shall no longer be considered non-conforming.
 - C. The Board of Supervisors may approve a Special Exception authorizing expansion of a non-conforming use. No such Special Exception shall allow an expansion that increases the land area occupied by the use by more than 25 percent or that increases the building area occupied by the use by more than 100 percent.
3. All structures housing non-conforming uses may be repaired, maintained and altered provided that:

- A. Such structures were themselves legally constructed;
 - B. A building permit is secured for the removal, repair or alteration of the portion of the building prior to its removal, repair or alteration;
 - C. The work does not increase the size or location of the footprint of the structure; and
 - D. There is no increase in the height of the structure.
4. All structures housing non-conforming uses may be rebuilt after casualty or disaster in conformance with Section 10-103.

10-102

Limitations on Non-Conforming Structures

Non-conforming structures are authorized to remain, subject to the following limitations:

- 1. Non-conforming structures may be repaired, and may be altered provided that:
 - A. At least 50 percent of the original structural elements or 50 percent of the exterior walls are retained,
 - B. A building permit is secured for the removal, repair or alteration of the portion of the building prior to its removal, repair or alteration;
 - C. The work does not increase the size or location of the footprint of the structure; and
 - D. There is no increase in the height of the structure.
- 2. Such structures may be expanded with approval of a Zoning Permit subject to the following limitations:
 - A. The addition encroaches on such yard a distance equal to or less than the distance of the encroachment on the date the structure became non-conforming;
 - B. The area of the addition which encroaches on the minimum yard does not exceed 30 percent of the existing building area encroaching on said yard on the date the structure became non-conforming.
- 3. Such structures may be rebuilt after casualty or disaster in conformance with Section 10-103.

10-103

Repairs or Reconstruction of Structure After Natural Disaster or Other Casualty

Notwithstanding the other limitations of this section, repairs or reconstruction performed on a structure which is damaged as a result of natural disaster or other casualty is allowed, provided that: the repairs or reconstruction are completed within two (2) years from the date of the damage and the structure is not enlarged or extended as a result of the repair or reconstruction. If the structure that is destroyed is within an area under a federal disaster declaration and such has been destroyed or damaged as a direct result of conditions that gave rise to the declaration, that the two (2) year period to repair, rebuild or replace the building is extended to four (4) years.

10-104

Discontinuance of a Non-Conforming Use

A non-conforming use and all uses accessory thereto shall be discontinued, and any use of the structure or lot shall thereafter comply with the regulations set forth in this chapter applicable to the district in which the use is located, if the non-conforming use is discontinued for more than two (2) years, regardless of whether the use was continuous or seasonal.

10-105

Termination of Non-Conforming Status

If any non-conforming use or structure or any portion of a non-conforming use or structure is removed or structurally altered in violation of these provisions, the non-conforming status of the portion removed or structurally altered shall terminate; provided, however, that non-conforming status lost because of removal or alteration in violation of this Ordinance can be recovered by the granting of a Special Exception by the Board of Supervisors subject to the following limitations:

1. No such Special Exception shall allow any use or structure to be restored which could not have been allowed under these non-conforming provisions had the property owner followed proper procedure under these regulations;
2. No such Special Exception may restore a non-conforming status that lapses pursuant to Section 10-104.
3. No such Special Exception shall be allowed for any non-conforming use or structure that was removed or structurally altered after October 10, 2013.

10-106

Change to a Less Impactive Non-Conforming Use

Notwithstanding any other provisions of the Ordinance, a less impactive non-conforming use may be substituted for an existing non-conforming use upon application to the Zoning Administrator for a Zoning Permit. If a non-conforming use is changed to a less impactive non-conforming use, the original non-conforming use shall be deemed to be abandoned and the use shall not thereafter be changed back to the original non-conforming use.

The Zoning Administrator shall issue such a permit in the event the standards below are satisfied by the applicant. In lieu of Zoning Permit approval, for uses approved by Special Exception pursuant to Section 3-332, the approval of any

substitution of non-conforming use pursuant to this section shall require approval of a Special Exception by the Board, subject to the standards in this section as well as the general standards for Special Exceptions set forth in Section 5-006. If the Board addresses the issue of substitution of non-conforming use in the original special exception, no new special exception is required for substitution.

1. The proposed use is such that it will definitely have a lesser adverse effect on the use or development of neighboring properties than the existing non-conforming use, and will not discourage the appropriate development and/or use of adjacent land or buildings or impair the value thereof to an extent which is definitely less than the existing non-conforming use.
2. The proposed use is such that the pedestrian and vehicular traffic generated by the same will be definitely less hazardous or in less conflict with the existing and anticipated traffic in the neighborhood and on the street serving the site than that generated by the existing non-conforming use.
3. The facilities required for utilities, drainage, parking, loading and other necessary facilities to serve the proposed more restricted non-conforming use are definitely less than those required for the existing non-conforming use, and that the parking and loading requirements necessary for such proposed more restricted non-conforming use are definitely less than those required for the existing non-conforming use.

10-107

Entire Effect Of A Boundary Line Adjustment Upon Multiple Non-Conformities

Notwithstanding any other provision of the Ordinance, where multiple non-conformities related to setbacks, drainfields and well setbacks, lot sizes, or road frontage requirements exist on a lot, the Zoning Administrator may permit one or more of the non-conformities to be expanded or enlarged where the Zoning Administrator finds that:

1. The expansion or enlargement of the non-conformity is the result of a boundary adjustment of property with an adjacent property owner; and
2. The boundary adjustment has made one or more of the existing non-conformities more conforming to the provisions of the Ordinance and has improved the overall configuration of the two lots; and
3. The expansion of the non-conformity will not have an adverse effect on the use of development of neighboring properties; and
4. The expansion of the non-conformity will not impair the value of neighboring properties.

Any such finding of the Zoning Administrator shall be appealable to the Board of Supervisors within 30 days of the date of the decision by the Zoning Administrator.

PART 2

10-200

SUBSTANDARD SUBDIVISIONS

10-201

Applications

The regulations set out in this Part shall apply to the resubdivision of any subdivision defined as a substandard subdivision in Article 15; provided, that such resubdivision of such substandard subdivision complies with all provisions of Appendix C of The Code, The Subdivision Ordinance. All other provisions applicable to the zoning district in which the property to be resubdivided hereunder lies, not specifically modified by this Part, shall continue to apply.

10-202

Lot Area Requirement

No structure shall be erected or placed on a lot or building site in the development of a resubdivision of a substandard subdivision unless such lot or building site complies with the following:

1. The average area of the lots in such a resubdivision shall not be less than the average area of the lots in the subdivision heretofore lawfully dedicated and recorded, plus one-half (1/2) the difference between that average and the average area required for a lot in the zoning district in which the subdivision lies.
2. The minimum lot area in such subdivision shall be not less than ten (10) percent smaller than the above described average lot area except that no lot proposed for a single family detached dwelling shall in any case contain an area of less than 6,500 square feet or such greater minimum area as may be required by the Health Department.

10-203

Lot Width Requirement

The minimum width of any lot shall be not less than the lot width required in the next less restrictive zoning district in which such subdivision lies. In no case shall any interior lot proposed for a single family detached dwelling have a width of less than fifty (50) feet, nor shall any corner lot proposed for a single family detached dwelling have either a width or a depth of less than seventy (70) feet. All such widths or depths shall be measured at the required front yard line.

10-204

Yard Requirements

1. The front yard requirement in resubdivisions of subdivisions developed as a substandard subdivision shall be the same as the front yard requirement in the zoning district in which the property lies.
2. There shall be on each side of every building a side yard not less than that required in the next less restrictive zoning district in which the property lies. In no case, however, shall any side yard be less than ten (10) feet in width.

3. No part of a building shall be erected within twenty (20) feet of the rear lot lines.

10-205

Notwithstanding the provisions of 201 through 204 above, in the RA and RC zoning districts lots of a substandard subdivision that are contiguous, conventional and which contain less than 50 acres each may be resubdivided as a cluster subdivision provided that:

1. The number of lots after resubdivision is not greater than the number of substandard lots to be resubdivided;
2. The open space qualifies and is platted as non-common open space in accordance with the provisions of Article 2-700 and constitutes one lot of not less than 75 percent of the gross site area;
3. If private streets are to serve twenty (20) or more lots the private street shall have a two (2) inch bituminous surface course; for private streets to serve more than ten (10) but less than twenty (20) lots, the private street shall meet the Typical Private Street Section requirements in Section 7-305 of this Ordinance; when the street will serve less than ten (10) non-common open space lots the applicant can request a reduced design and construction standard.

10-206

Village Substandard Subdivisions

Notwithstanding the provisions of 201 through 205 above, in the Village Zoning Districts, lots of a substandard subdivision or subdivisions which were of record prior to May 9, 1968 that are contiguous, and conventional may be resubdivided as a cluster subdivision provided that:

1. The number of lots after resubdivision is not greater than (i) the number of existing substandard lots to be resubdivided or (ii) the number of existing residential dwelling units located on such lots, whichever is greater;
2. The resubdivision contains a minimum of 50 percent of total area in open space, which may be satisfied with common open space, non-common open space or a combination of common and non-common open space platted and dedicated as one or more lots. Notwithstanding the provisions of Section 3-408, the Board of Supervisors may modify the open space requirement to allow a reduction to 25 percent open space in conjunction with the resubdivision plat approval, provided the applicant can show that the lot layout and street connections improve the overall development design, drainage, site access, preservation of historic structures or features, or integration with the historic character of the village.
3. If private streets are to serve the resubdivision, the applicant can request a reduced design and construction standard to be approved by the Director.

4. Public or private streets shall have a minimum right-of-way forty (40) feet in width.
5. The lots shall be served by sewer service provided by the Fauquier County Water and Sanitation Authority, Town of Warrenton, Town of Remington or the Vint Hill Economic Development Authority, unless a special exception is obtained in accordance with the requirements of Section 5-3000 of this Ordinance;
6. The resubdivision shall be in accordance with Subdivision Ordinance Section 4-12.