

## City of Annapolis - Zoning Code Update

### Summary of Changes for Nonconforming Uses and Structures Chapter 21.68

This summary highlights changes proposed in the Draft Chapter (21.68) and compares the proposed provisions with the existing provisions related to nonconformities set forth in Zoning Code Chapter 21.70.

**Definitions:** Minor changes intended to clarify terms that are used but are not specifically defined within the existing Chapter 21.70.

**Purpose:** Wording simplified.

**Authority to Continue and Maintain:** The proposed provisions, like the existing nonconforming provisions, generally authorize the continuation of nonconforming uses and structures. However, the proposed provisions provide clarification that nonconforming accessory uses and structures are regulated like principal uses and structures. The proposed provisions also make it clear that routine maintenance and repair of nonconforming structures or conforming structures containing nonconforming uses is allowed. Finally, this section makes it clear that structures or uses that are rendered nonconforming by government taking or purchase may continue to be used and maintained as nonconforming structures.

**Deemed Conforming Structures and Uses:** This section refers the reader to several chapters of the Zoning Code in Division III that currently provide that certain types of uses and structures in some zoning districts are treated like conforming uses or structures and that such uses and structures may be used, altered or expanded. These types of “deemed conforming uses” would not otherwise be allowed in a zoning district but for these specific provisions.

**Nonconforming Structures:** Similar to the provisions of the existing Sections 21.70.040 and 21.70.050, this proposed section authorizes the repair, maintenance, alteration or expansion of nonconforming structures, so long as the activity does not create a new nonconformity or increase the degree of the existing nonconformity of the structure. The one significant change from the existing provisions of Section 21.70.040 and 21.70.050 is that the proposed provisions are not limited to repair, alteration or expansion of only those nonconforming structures that are “designed or intended for a permitted use.”

In general, the Draft Chapter does not propose to require a determination as to whether a nonconforming structure is “designed or intended for a permitted use.” Based on input we received from the City staff, this requirement has been problematic to administer. In practice, it may be difficult in many cases to determine whether a structure has been “designed or intended” for a particular use. Such an approach also tends to result in confusion regarding whether it is a nonconforming structure or a nonconforming use or both that is intended to be altered or enlarged. As discussed below, separate provisions are proposed in the Draft Chapter to address the issue of expansion or change of nonconforming uses.

This section of the Draft Chapter also provides for the rebuilding of damaged nonconforming structures, pursuant to O-32-01 adopted May 12, 2003.

**Determination of Nonconforming Use Status:** The provisions of this section of the Draft Chapter are similar to the existing provisions of Section 21.70.035. These provisions establish a procedure for requests for a determination by the Planning and Zoning Director regarding nonconforming use status.

**Abandonment of Nonconforming Use:** These provisions are similar to the existing provisions of Section 21.70.080 regarding discontinuance of nonconforming uses.

**Expansion of Nonconforming Use:** The expansion of nonconforming uses is currently governed by Section 21.70.090. We received comments from City staff that the existing provisions were difficult to administer and are not clearly drafted. The existing restrictions require a determination as to whether a nonconforming use occupies a building that is designed or intended for a use not permitted in the zoning district. The existing restrictions generally authorize the expansion of a nonconforming use throughout a building only if the building is designed or intended for a use not permitted in the zoning district and only if the changes or alterations to the structure conform to the regulations of the district. However, this provision is also subject to an exception which provides that the use and building:

may be expanded into that area that is under any overhanging portion of the roof of the structure existing as of April 10, 2000 subject to the following restrictions:

1. The floor area shall not increase by more than fifteen percent;
2. The expansion shall be subject to special exception approval . . . .

The Draft Chapter proposes to simplify the provisions governing the expansion of nonconforming uses of structures by eliminating the distinction regarding whether a building in which a nonconforming use is located was designed or constructed for a use permitted in the district. The proposed provisions would allow for a single expansion, subject to approval by the Board of Appeals following the same procedures as for special exceptions, but with findings specific to nonconforming uses:

A nonconforming use of a structure throughout the same structure to occupy a part of a structure that it did not occupy on the effective date of this Zoning Code.

**Changes of Nonconforming Use:** Similar to the provisions above regarding expansion of nonconforming uses, the existing provisions allow for changes of nonconforming uses only if the use is located in a building designed or intended for a use not permitted in the district. Under the existing Section 21.70.100.A, such a nonconforming use may be changed to a “use permitted in the same district in which the nonconforming use which presently occupies the building or structure is allowed, or to a use permitted in a more restrictive district under the hierarchy established by Section 21.08.020.”

Instead of the existing approach described above, the Draft Chapter proposes a classification system that would replace the existing hierarchy with a hierarchy of uses that consists of three classes of uses. Class III uses would include the uses that are most intense or have the greatest potential impacts, such as industrial types of uses. Class II uses would include those uses that the Planning and Zoning Director found would not be

more detrimental to surrounding properties. Class I uses would allow any residential use that is permitted in any residential zoning district.

The proposed provisions establish a process by which the Planning and Zoning Director may approve changes of nonconforming uses to allow for a change in use to a less intense or lower impact class of uses. For example, the Zoning Code currently would not allow a change in a nonconforming car repair use of an existing building, if that building was originally constructed as a garage for a residential dwelling and was located in a general residence district. This existing provision would not allow such a change in use even if the proposed use was a less intense, lower impact use because the building was designed or intended for an accessory residential use permitted in the district. However, the proposed provisions offer the flexibility for an applicant to apply for a determination by the Planning and Zoning Director for approval to change such a nonconforming use, which would likely be classified as a Class III use, to a less intense use that meets the criteria of a Class II use.

### **Uses deemed conforming**

The following is a list of uses deemed conforming. The list is derived from the current zoning ordinance as of 2003. Action notes after each section indicate how these provisions have been addressed in the proposed zoning code.

#### **A. C1A district**

Multi-family dwellings lawfully existing on June 20, 1994 shall be deemed to be conforming for the purposes of condominium conversion.

Action: incorporated into new Division III

#### **B. R2-Neighborhood Conservation [CG1]**

Single-family attached and detached dwellings and other nonresidential uses lawfully existing on November 19, 1990 shall be deemed to be conforming. However, under no circumstances shall unlawful uses as of November 19, 1990 be deemed conforming.

Action: incorporated into new Division III

#### **C. R3-Neighborhood Conservation [CG2]**

In addition to the permitted and special exceptions allowed by the underlying zoning district, the following uses shall be permitted in principal structures existing on October 10, 1988[CG3]. A structure may be enlarged by a maximum of fifty percent of the overall floor area existing at the time of adoption of the map amendment to maintain classification as an existing structure. Enlargements in excess of fifty percent shall be considered new construction.

Action: incorporated into new Division V under the two uses that were applicable through this provision



**D. R3- Neighborhood Conservation 2 district [CG4]**

Single-family attached and detached dwellings and multi-family dwellings of four or fewer units lawfully existing on November 26, 2001 shall be deemed to be conforming. However, under no circumstances shall unlawful uses as of November 26, 2001 be deemed conforming.

Action: incorporated into new Division III

**E. R4-Revitalization district[CG5]**

1. Residential dwelling units lawfully existing on September 9, 1996 shall be deemed to be conforming and may be expanded for residential use provided that no additional dwelling units are created and if they otherwise meet the requirements of this district. However, under no circumstances shall unlawful uses occupying such residences on September 9, 1996 from which this section derives as of November 19, 1990 be deemed conforming.
2. Non-residential uses lawfully existing as of September 9, 1996, except that any increase in the building bulk of these uses requires special exception approval.

Action: incorporated into new Division III

**F. BCE district**

Uses existing on October 11, 1993 shall be considered conforming for the purposes of expansion.

Action: incorporated into new Division III

**G. WMC district**

Buildings or structures, located within required setbacks, lawfully existing on August 24, 1987, designed, maintained and continuously used for enumerated maritime uses may be continued, repaired and altered, provided that such alterations do not increase beyond existing structural supports and the alteration is designed, intended and used for one of the enumerated maritime uses.

Action: incorporated into new Division III

**H. WME district**

1. Multifamily dwellings in structures of five units or less lawfully existing on August 24, 1987 shall be deemed to be conforming if duly licensed in accordance with city codes and with an occupancy permit[CG6].
2. Single-family residential attached and detached dwellings, lawfully existing on August 24, 1987 shall be deemed to be conforming and may be expanded for residential use if the expansion otherwise meets the requirements of the R2-Neighborhood Conservation district.

Action: incorporated into new Division III



## **I. WMI district**

1. Single-family residential attached and detached dwellings, lawfully existing on August 24, 1987 shall be deemed to be conforming and may be expanded for residential use if the expansion otherwise meet the requirements of the R2 district. However, under no circumstances shall unlawful uses occupying such residences on August 24, 1987 be deemed to be conforming.
2. Buildings or structures located within the one-hundred-foot maritime use setback, lawfully existing on August 24, 1987, which were designed and intended for seafood industrial, boat repair and maintenance or marine fabrication use, including principal buildings or structures, may be continued, repaired and altered, provided that such alterations do not increase the bulk of the building or structure through further encroachment on the maritime use setback area contiguous to the waterfront or through increased height, and the alteration is designed, intended and used for one or more of the enumerated maritime uses[CG7].

Action: incorporated into new Division III

## **J. WMM district**

1. Single-family residential attached and detached dwellings, lawfully existing on August 24, 1987 shall be deemed to be conforming and may be expanded for residential use if the expansion otherwise meet the requirements of the R2 district. However, under no circumstances shall unlawful uses occupying such residences on August 24, 1987 be deemed to be conforming. 
2. Buildings or structures designed and intended for seafood industrial, in-water boat storage, on-land boat storage, boat repair and maintenance or marine fabrication uses existing as of August 24, 1987 are exempt from the requirement to provide a waterway yard. Expansion of such a building or structure is permitted only for uses allowed within the 100-foot maritime use setback.
3. Buildings or structures located within the 100-foot maritime use setback, lawfully existing on August 24, 1987, designed, maintained and continuously used for seafood industrial, boat repair, storage, and maintenance or marine fabrication uses, including principal buildings or structures, may be continued, repaired and altered, provided that such alterations do not increase the exterior bulk of the building or structure through further encroachment on the maritime use setback area contiguous to the waterfront or through increased height[CG8].
4. Restaurants existing prior to August 24, 1987 are permitted provided that they comply with all of the use standards for standard restaurants in the WMM district, or provided that seafood industrial, on-land boat storage, boat repair and maintenance or marine fabrication uses are maintained such that the square footage of the existing restaurant use does not exceed the square footage of the other enumerated maritime uses[CG9].

Action: incorporated into new Division III



Page: 3  
[CG1] Former RC overlay district

Page: 3  
[CG2] Former NC district

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[CG3] Date of adoption of Ordinance 43-88 (NC District).

Page: 4  
[CG4] Former Residential Conservation Overlay district 2 (Adopted November 26, 2001)

Page: 4  
[CG5] Former RR overlay district

Page: 4  
[CG6] Ordinance 49-87

Page: 5  
[CG7] Former 21.56.060.C.2.c

Page: 5  
[CG8] From 21.55.060.C.3.b

Page: 5  
[CG9] From 21.55.040. Last sentence of section deleted: meaning unclear.