

NONCONFORMING USES

§ 18-1-101. Definitions.

(63) “Nonconforming use” means a use that was allowed when it came into existence but that is no longer allowed under the law in effect in the zoning district in which the use is located.

§ 18-15-101. Registration of nonconforming uses.

- (a) **Application.** A person who wishes to register a nonconforming use shall file an application on a form provided by the Office of Planning and Zoning, except that a nonconforming dwelling may not be registered.
- (b) **Posting.** For a period of 14 days after filing an application to register a nonconforming use, the applicant shall post one or more signs on the property. Signs shall be furnished by the Office of Planning and Zoning and posted and maintained by the applicant.
- (c) **Rebuttable presumption.** There is a rebuttable presumption that a use in existence continuously for a period of 30 years is a nonconforming use.
- (d) **Decision.** After receipt of an application, the Office of Planning and Zoning shall determine whether the use may be registered as a nonconforming use and classify the use based on the zoning district in which the use is allowed. If the use is specified in more than one zoning district, the Office of Planning and Zoning shall classify the use based on what it considers to be the most appropriate district. The Office shall notify the applicant in writing of its determinations.

§ 18-15-102. Nonconforming uses generally.

- (a) **Change in use.** A nonconforming use may be changed to another use allowed by this article if the Planning and Zoning Officer determines the new use to be of the same or a less intensive nature or character. A new use shall be considered to be of the same or less intensive nature or character only if the following are the same or less than the existing use: the number and kind of vehicular trips; the nature of any outside storage, loading, and parking; hours of operation; and impact on natural features.
- (b) **Intensification.** An intensification of a nonconforming use is allowed so long as the nature and character of the use are unchanged and substantially the same facilities are used. Nonconforming uses within the critical area are subject to § [18-13-201](#).
- (c) **Reconstruction or relocation.** A nonconforming use or a structure in which the use is located may be reconstructed or relocated. Except to the extent permitted by subsection (d) and § [18-15-103](#), the reconstruction or relocation may not increase the nonconforming status of the property or result in a greater nonconformance than previously enjoyed. Reconstruction or relocation may not occur on a lot other than the one on which the nonconforming use was originally located.
- (d) **Nonconforming single-family dwellings.** The Office of Planning and Zoning may allow the expansion of a nonconforming single-family dwelling if the expansion is set back at least seven feet from each side lot line and 25 feet from the front and rear lot lines and if the expansion does not cause the structure to exceed a height of 35 feet. The Office of Planning and Zoning also may allow structures accessory to the nonconforming dwelling if the accessory structure is located in a side or rear yard, set back at least seven feet from side and rear lot lines, and does not exceed a height of 25 feet or the height of the principal structure, whichever is less.

§ 18-15-103. Special exceptions.

(a) **Expansion or combination of floor area.** Subject to the requirements of this section and § [18-16-304](#), the Administrative Hearing Officer may grant a special exception for expansion of a nonconforming use or a special exception for combining floor area when more than one structure on the same property is used for the nonconforming use, subject to compliance with the following:

(1) a proposed expansion of floor area, land area, or water area may not exceed 30% of the area authorized under the nonconforming status of the property, except that each type of area is to be considered separately and no area may be substituted for another area;

(2) existing and proposed facilities shall meet the lot area, screening, land-to-water ratio, height, parking, lot coverage, and, to the extent feasible, setbacks for the use specified in the zoning district in which the use is allowed;

(3) construction shall be designed to be as inoffensive as practicable in appearance and location to other properties in the area and, whenever practical, similarity in design to other buildings in the area and appropriate landscaping shall be provided; and

(4) construction shall be undertaken in accordance with the requirements of this section and of the Administrative Hearing Officer concurrently so that each change or improvement is completed at or near the same time.

(b) **Marina storage rack building.** The Administrative Hearing Officer, subject to the requirements in [Title 11](#), may grant a special exception for a multilevel watercraft storage rack building in a marina with nonconforming travel lift facilities and dry storage of watercraft.

§ 18-15-104. Termination of nonconforming uses.

(a) **Generally.** A nonconforming use terminates when the use ceases operation for 12 consecutive months or when the scope of the use is so significantly reduced during the 12-month period as to change its nature or character. In calculating the cessation of use, the Planning and Zoning Officer may not include periods of time of not more than two years in which the use ceased because of government action, fire, or natural catastrophe, provided that the cessation was not caused by the property owner.

(b) **Extension of nonconforming use.** The Planning and Zoning Officer may extend the 12-month period set forth in subsection (a) to a maximum of 18 months upon a written application for extension received before the termination date. The application shall demonstrate unusual or exceptional circumstances beyond the control of the property owner that prevented continuance of the nonconforming use. The Planning and Zoning Officer's decision on the application shall be in writing and shall specify the reason for the decision.

(c) **Yearly questionnaire.** At least once each year, the Office of Planning and Zoning shall send to each person who has registered a nonconforming use a questionnaire requesting information about the current status of the property. The person's failure to return the questionnaire within 90 days after the date of mailing creates a rebuttable presumption that the use is terminated. The Office of Planning and Zoning shall mail a notice by certified mail informing a person who has failed to return the questionnaire that the nonconforming use is presumed terminated and that future use of the property shall conform to the requirements of this article.

(d) **Conformance with article after termination.** After a nonconforming use is terminated, any further use of the site shall be in conformance with this article.