



Date of Council Meeting: April 26, 2016

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: Zoning Ordinance Nonconforming Structures Regulations

Staff Contact: Brian Boucher, Deputy Director, Planning and Zoning

Council Action Requested: Approve a resolution to initiate amendments to the Zoning Ordinance to provide consistency for regulations pertaining to nonconforming structures.

Staff Recommendation: Staff recommends that Town Council initiate amendments to the Zoning Ordinance to provide a single standard for treatment of nonconforming structures. Staff also recommends that the more generous standard of Section 16.3.6 be applied in all districts including the Crescent Design District. This is the standard that has been applied for over 30 years with no negative impacts to either property owners or the Town.

Commission Recommendation: None at this time. If initiated, the Planning Commission will review the amendments and make a recommendation to Town Council.

Fiscal Impact: None.

Work Plan Impact: Staff notes there are 10 Zoning Ordinance amendments currently initiated, but believes the work impact of this amendment will be minor because staff understands the exact change that needs to be made to the Zoning Ordinance. In addition, the language does not need to be referred out to any agencies or additional parties.

Executive Summary: A nonconforming structure is a structure or building whose size, dimension or location was lawful when built, but now does not meet current zoning regulations. Section 16.6 applies to nonconforming structures everywhere in Town including the provision regarding what happens when a building is damaged or destroyed.

Basically, if a nonconforming structure is destroyed for any reason, it may be rebuilt in its old location so long as the new structure does not increase the nonconformity and its reconstruction is undertaken within two years. There is one exception to this: Section 7.10.I.2 of the Crescent Design District specifies that a nonconforming structure may be rebuilt in its old location only if the cause of destruction was “accidental fire or act of God”. The Zoning Ordinance therefore has two standards regarding when a nonconforming structure can be rebuilt. This amendment would establish consistent treatment of such structures by means of a single standard applicable in all zoning districts throughout the Town using the Section 16.6 standard.

Background: During discussion of possible reuse of properties in Town, it was discovered that the Zoning Ordinance specifies two different standards regarding the treatment of nonconforming structures, one applicable to the Crescent Design District and one applicable to all other districts in Town. A nonconforming structure is a structure or building that met size, location and dimension requirements when built but which fails to meet one or more regulations in the current Zoning Ordinance. Specifically, Section 16.3.6 states:

If a nonconforming principal 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 the repairs or reconstruction shall be undertaken within 2 years of the date of destruction and diligently carried on to its completion.

In effect, this means an owner can *choose* to tear down the structure and rebuild it in its previous location even with the nonconformity so long as it is undertaken within two years. This rule applies everywhere in Town except the Crescent Design District. There a more restrictive rule applies:

Section 7.10.I.2: A structure destroyed by any means other than accidental fire or act of God shall be replaced by only a structure that conforms to requirements of the CD [Crescent Design] District

This means that if an owner chooses to tear down the building, he cannot rebuild it in its old location with the nonconformity; he *must* meet all Crescent Design location criteria. Thus, his rights in his existing property development are much more limited than elsewhere in Town. An owner's rights in developed land, and how they are vested against new regulation is a matter that should be consistently applied through the Town. In this case, the Town Attorney advises that a consistent standard be applied in order to avoid confusion, clarify individual property owner's rights, and to make certain that similarly situated parties are equally protected against changes to zoning regulations.

Attachment:

1. Initiating Resolution

PRESENTED APRIL 26, 2016

RESOLUTION NO.: _____

ADOPTED _____

A RESOLUTION: INITIATING AMENDMENTS TO THE LEESBURG ZONING ORDINANCE FOR THE PURPOSE OF PROVIDING CONSISTENCY REGARDING TREATMENT OF NONCONFORMING STRUCTURES.

WHEREAS, the Town of Leesburg Zoning Ordinance was adopted with public input and for the purpose of protecting the health, safety, and welfare of Town residents and businesses by providing regulation of land uses; and

WHEREAS, the Zoning Ordinance contains regulations concerning nonconforming structures, which are structures that were lawful when built but which do not meet current zoning regulations; and

WHEREAS, the Zoning Ordinance specifies two different regulations regarding the treatment of nonconforming structures that are destroyed, one applicable to the Crescent Design District and one applicable to all other districts in the Town: and

WHEREAS, in order to provide clarity and consistency in all cases where a nonconforming structure is concerned, amendments to Article 7 are necessary; and

WHEREAS, the public necessity, convenience, general welfare and good zoning practice require the proposed amendments.

THEREFORE, RESOLVED by the Council of the Town of Leesburg in Virginia as follows:

SECTION I. Amendments to Zoning Ordinance Article 7 are hereby initiated and referred to the Planning Commission to establish consistent nonconforming structure regulations within the Town of Leesburg.

RESOLUTION: INITIATING AMENDMENTS TO THE LEESBURG ZONING
ORDINANCE FOR THE PURPOSE OF PROVIDING CONSISTENCY
REGARDING TREATMENT OF NONCONFORMING STRUCTURES.

SECTION II. The Planning Commission shall hold a public hearing to consider these amendments to the Zoning Ordinance and report its recommendation to the Town Council pursuant the Chapter 22, Title 15.2-2204 of the 1950 Code of Virginia, as amended

PASSED this 26th day of April, 2016.

David S. Butler, Mayor
Town of Leesburg

ATTEST:

Clerk of Council