



Date of Meeting: June 28, 2016

**TOWN OF LEESBURG
TOWN COUNCIL PUBLIC HEARING**

Subject: TLOA-2016-0006, Nonconforming Structures Zoning Ordinance Text Amendments

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

Council Action Requested: Approval of TLOA-2016-0006 to amend Section 7.10.2.I of the Town of Leesburg Zoning Ordinance (TLZO) to establish a single standard for treatment of nonconforming structures.

Staff Recommendation: Approval of TLOA-2016-0006 to amend the Zoning Ordinance to establish a single standard for treatment of nonconforming structures (see Attachment 1 for the draft ordinance).

Staff 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. 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.

Commission Recommendation: The Planning Commission held a public hearing on May 19, 2016. No members of the public spoke concerning the amendments. After discussion, the Commission made no changes to the proposed language, and voted 6-0-1 to adopt the following motion:

I move that Zoning Ordinance Test Amendment TLOA-2016-0006, amending TLZO Sec.7.10.2.1 to provide consistency for regulations pertaining to the destruction of nonconforming structures be forwarded to the Town Council with a recommendation of approval as proposed in the staff report dated May 19, 2016 on the basis that the amendments will serve the public necessity, convenience, general welfare and good zoning practice.

Fiscal Impact: There is no fiscal impact to the Town associated with this Zoning Ordinance Amendment.

Work Plan Impact: None. Processing amendments is part of the core function of the Department of Planning and Zoning.

Executive Summary: A nonconforming structure is a structure or building whose size, dimension or location was lawful when built, but that 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, TLZO Sec. 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.

Further detailed information regarding this ordinance amendment can be found in the attached Planning Commission staff report dated May 19, 2016 (Attachment 2).

Attachments: 1. Draft Ordinance
2. Planning Commission Public Hearing Staff Report



Date of Commission Meeting: May 19, 2016

**TOWN OF LEESBURG
PLANNING COMMISSION
PUBLIC HEARING**

Subject: TLOA-2016-0006, Nonconforming Structures *Zoning Ordinance* Text Amendments

Staff Contact: Brian Boucher, Deputy Director

Proposal: Amendments to Section 7.10.2.I of the *Town of Leesburg Zoning Ordinance* (TLZO) to provide a single standard for treatment of nonconforming structures.

Recommendation: Staff recommends approval of the amendments to the *Zoning Ordinance* as presented in this report.

Planning Commission Critical Action Date: August 27, 2016

Background: On April 26, 2016, the Town Council unanimously approved Resolution No. 2016-065 (Attachment 1) to initiate *Zoning Ordinance* text amendments to establish consistent nonconforming structure regulations within the Town of Leesburg. A “nonconforming structure” is a structure or building whose size, dimension or location was lawful when built but that now does not meet at least one current zoning regulation. 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. In order to be consistent with how such buildings are treated and to provide equal rights to similarly situated parties, a single approach is necessary. 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 language in TLZO Sec. 16.3.6 Nonconforming Structures.

Existing Regulations and Effect: TLZO Sec. 16.3 Nonconforming Structures – Loss, Damage or Destruction applies to nonconforming structures everywhere in Town, *except* for 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 Nonconformities – Destruction 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:

TLZO Sec. 16.3.6: *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: Destruction. *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 District. A structure damaged by accidental fire or act of God to an extent less than fifty percent (50%) may be rebuilt to its original nonconforming condition, provided such condition conforms to the requirements of Article 13 Flood Protection and is rebuilt within two years of the date of the accidental fire or act of God. 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 zoning ordinance shall provide for an additional two years for the structure to be rebuilt.*

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.

Impact of Proposed Amendment: This amendment proposes 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 50 years with no known negative impacts to either property owners or the Town.

Analysis: The Town desires development that complies with the latest zoning standards, including building setbacks. However, in the case of nonconforming structures the ordinance has been careful to give property owners the right to rebuild a structure that existed prior to current zoning regulations, even if the building does not meet all current zoning rules. The reason is the owner of such a “legally nonconforming” building has accrued certain rights in the location of the building based on its prior existence. That is, the right to that building in the original location is considered “vested”, or a right that cannot be changed or altered by changes in regulation. 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.

Since zoning districts were established in the Town an owner has always had the right to rebuild a nonconforming structure so long as the extent of the nonconformity is not increased and the structure is rebuilt within two years. In 2014 the Crescent District established a separate standard for nonconforming structures within its boundaries. The intent was to gain quicker

redevelopment in compliance with the new Crescent Design District standards and it was not realized that two separate standards would thereby be created that deal with owner's rights in nonconforming structures. Given the fact that the TLZO Sec. 16.3.6 standard has existed for over 50 years and has not led to any negative impacts on the Town, staff recommends that standard be reestablished in all zoning districts. Note that the reference to the Article 13 Flood Protection is not necessary because Federal Emergency Management Agency regulations will apply to any structure an owner seeks to rebuild in a floodplain area, regardless of Town ordinances. Also, reference to a Federal disaster declaration is not necessary because if such an event occurs, Federal rules will speak to timing of reconstruction or the Council may adopt specific legislation based on the circumstances of the disaster.

Draft Amendment Language: The amendment language is provided below for the Planning Commission's review and consideration. Note that:

- Text in ~~red and with strikethrough~~ is existing text proposed to be eliminated.

TLZO Section 7.10.2 Applicability

- I. **Nonconformities.** Existing uses, structures (other than signs, walls and fences) and lots that do not conform to the requirements of the CD District shall be subject to the regulations of Article 16 Nonconformities, except that the following provisions shall apply instead of Sec. 16.3 Nonconforming Structures:
 1. **Expansion.** Any expansion of a nonconforming structure greater than ten percent (10%) of the gross area of the existing building shall require the entire structure to meet the requirements of the CD District. . . .
 2. ~~**Destruction.** 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 District. A structure damaged by accidental fire or act of God to an extent less than fifty percent (50%) may be rebuilt to its original nonconforming condition, provided such condition conforms to the requirements of Article 13 Flood Protection and is rebuilt within two years of the date of the accidental fire or act of God. 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 zoning ordinance shall provide for an additional two years for the structure to be rebuilt.~~

RECOMMENDATION AND DRAFT MOTIONS:

Staff recommends the Planning Commission forward TLZO-2016-0006 to Town Council with a recommendation of approval.

Motion for Approval

I move that *Zoning Ordinance* Text Amendment TLOA-2016-0006, amending TLZO Sec. 7.10.2.I to provide consistency for regulations pertaining to the destruction of nonconforming structures be forwarded to the Town Council with a recommendation of approval as proposed in

the staff report dated May 19, 2016 on the basis that the amendments will serve the public necessity, convenience, general welfare and good zoning practice.

-Or-

Motion for Approval with Changes

I move that *Zoning Ordinance* Text Amendment TLOA-2016-0006 amending TLZO Sec. 7.10.2.I to provide consistency for regulations pertaining to the destruction of nonconforming structures be forwarded to the Town Council with a recommendation of approval on the basis that the amendments will serve the public necessity, convenience, general welfare and good zoning practice. The proposed language shown in the staff report dated May 19, 2016 is revised as follows to incorporate the following changes recommended by the Planning Commission: [list changes]

-Or-

Alternate Motion

I move that _____ [list reasons].

Attachment(s):

1. Town Council Resolution No. 2016-065.

PRESENTED: June 28, 2016

ORDINANCE NO. _____

ADOPTED: _____

AN ORDINANCE: AMENDING ZONING ORDINANCE SECTION 7.10.2.I TO
ESTABLISH A CONSISTENT STANDARD FOR THE TREATMENT
OF NONCONFORMING STRUCTURES

WHEREAS, the Town Council initiated zoning text amendment TLOA-2016-0006 on April 26, 2016 to consider providing a single standard for the treatment of nonconforming structures that are destroyed or removed in the Town of Leesburg; and

WHEREAS, a duly advertised Planning Commission public hearing was held on May 19, 2016; and

WHEREAS, at the May 19, 2016 meeting, the Planning Commission recommended approval of this application to the Town Council; and

WHEREAS, the Town Council held a duly advertised public hearing on this application on June 28, 2016; and

WHEREAS, the Council has concluded that the approval of the application would be in the public interest and in accordance with sound zoning and planning principles.

The Council of the Town of Leesburg, Virginia hereby ORDAINS:

SECTION I. The zoning text amendment application TLOA 2016-0006 Nonconforming Structures is hereby approved; and

SECTION II. That the following sections of the Zoning Ordinance of the Town of Leesburg, Virginia, 2003, as amended, be and the same are hereby amended to read as follows:

AN ORDINANCE: AMENDING ZONING ORDINANCE SECTION 7.10.2.I TO ESTABLISH A CONSISTENT STANDARD FOR THE TREATMENT OF NONCONFORMING STRUCTURES

7.10.2 Applicability

I. Nonconformities. Existing uses, structures (other than signs, walls and fences) and lots that do not conform to the requirements of the CD District shall be subject to the regulations of Article 16 Nonconformities, except that the following provisions shall apply instead of Sec. 16.3 Nonconforming Structures:

1. Expansion. Any expansion of a nonconforming structure greater than ten percent (10%) of the gross area of the existing building shall require the entire structure to meet the requirements of the CD District. For the purposes of this section:

~~**2. Destruction.** 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 District. A structure damaged by accidental fire or act of God to an extent less than fifty percent (50%) may be rebuilt to its original nonconforming condition, provided such condition conforms to the requirements of Article 13 Flood Protection and is rebuilt within two years of the date of the accidental fire or act of God. 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 zoning ordinance shall provide for an additional two years for the structure to be rebuilt.~~

SECTION III. All prior ordinances in conflict herewith are hereby repealed.

SECTION IV. Severability. If a court of competent jurisdiction declares any provision of this ordinance invalid, the decision shall not affect the validity of the ordinance as a whole or any remaining provisions of this ordinance.

SECTION V. This ordinance shall be in effect upon its adoption.

PASSED this 28th day of June, 2016.

David S. Butler, Mayor
Town of Leesburg

ATTEST:

Clerk of Council