

DIVISION 1. GENERAL APPLICABILITY

Section 18-701 Applicability

The regulations of this article govern nonconforming uses, nonconforming structures, and nonconforming lots that came into existence legally but that do not comply with one or more requirements of this Chapter.

Section 18-702 Purpose and Scope of Regulations

The regulations of this article are intended to:

1. Recognize the interests of property owners in continuing to use their property;
2. Promote reuse and rehabilitation of existing buildings; and
3. Place reasonable limits on the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the community as a whole.

Section 18-703 Authority to Continue

Any nonconformity that legally existed on the effective date listed in §18-108 or that becomes nonconforming upon the adoption of any amendment to this Chapter may be continued only in accordance with the provisions of this article. Unless otherwise expressly stated, any variation from these standards shall require review and approval as a variance in accordance with the procedures of §18-843.

Section 18-704 Determination of Nonconforming Status

The burden of establishing that any nonconformity is a legal nonconformity shall, in all cases, be upon the owner of such nonconformity. The burden of proof for establishing the existence of a lawfully nonconforming use, structure, or lot shall not be upon the Town of Vienna or the Zoning Administrator.

Section 18-705 Nonconformance Caused by Government Action or Dedication

1. Provisions of this article shall not apply to those cases where the requirements of this Chapter pertaining to yard setbacks, minimum lot dimensions, building line restrictions, lot coverage, and parking, cannot be met:
 - A. By reason of either the lawful action of a federal, state or local government in acquiring lands for roads or other public purposes; or
 - B. By the dedication of land by the owner thereof which is duly accepted by the appropriate government for public benefit and use.
2. Provided, however, that the requirements of this Chapter had been or could have been met prior to such government action or dedication.
3. Provided, further, that such dedication or acquisition for public use shall not be deemed to authorize any subsequent increased or additional departure from the strict application of all other provisions of this Chapter.
4. Provided, further, that the nonconformance with the requirements of this Chapter

pertaining to yard setbacks, minimum lot area, minimum lot dimensions, building line restrictions, lot coverage, and parking is caused by dedication for the purpose of widening existing streets and dedicated rights-of-way only and not by dedication of partial or total right-of-way requirements for proposed streets within a proposed subdivision.

Section 18-706 Conversion of Nonconforming Land or Structures to Condominium Uses

1. Proposed conversion of land or structures to condominiums that are otherwise permitted by law but that do not conform to all applicable zoning site plan and subdivision ordinances of the Town shall require, before conversion, such use permit, variance or modification as may be appropriate under the specific circumstances.
2. Upon demonstration by the applicant, to the reasonable satisfaction of the Town Council or Board of Zoning Appeals as the case may require, that the nonconformities are not likely to be adversely affected by the proposed conversion, such request shall be granted. No action on such requests shall be unreasonably delayed.

DIVISION 2. NONCONFORMING USES

Section 18-707 Continuance of Nonconforming Use of Structures

In accordance with Code of Virginia §15.2-2307, as amended, a nonconforming use of a structure may be continued only so long as the same use that existed at the time of the enactment of the ordinance from which this Chapter is derived, continues, and that such use is not discontinued for more than two (2) years.

Section 18-708 Continuance of Nonconforming Use of Land

The nonconforming use of land may be continued only so long as the same use that existed at the time of the enactment of the ordinance from which this Chapter is derived, or a more restricted use, continues, and that such use is not discontinued for more than two (2) years; provided that no such nonconforming use of land shall in any way be enlarged or extended, either on the same or adjoining property.

Section 18-709 Change of Nonconforming Use

No nonconforming use shall be changed to another use, except when the new use conforms to the requirements of this Chapter.

Section 18-710 Expansion of Nonconforming Use

The area occupied by a nonconforming use at the time of the enactment of the ordinance from which this Chapter is derived shall not be enlarged or expanded.