



### Legislation Details (With Text)

**File #:** 20-0209      **Version:** 1      **Name:** ZOA20-00012 Nonconformities  
**Type:** Zoning Ordinance - Text      **Status:** Passed  
**File created:** 7/17/2020      **In control:** City Council Legislative Session  
**On agenda:** 8/12/2020      **Final action:** 8/12/2020  
**Title:** Ordinance to Amend and Re-Enact Chapter 12 of the Zoning Ordinance of the City of Hampton, Virginia Entitled, "Nonconformities" to Restrict the Expansion of Legally Nonconforming Uses  
**Sponsors:**  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. Redline, 2. Presentation

Date	Ver.	Action By	Action	Result
8/12/2020	1	City Council Legislative Session	approved	Pass

Ordinance to Amend and Re-Enact Chapter 12 of the Zoning Ordinance of the City of Hampton, Virginia Entitled, "Nonconformities" to Restrict the Expansion of Legally Nonconforming Uses

**Background Statement:**

This amendment restricts the expansion of legally nonconforming uses. Legally nonconforming uses are those uses which were legally established but do not conform to the current zoning regulations prescribed to the district in which they are situated. The City’s current zoning ordinance allows for the expansion of nonconforming uses in a manner that is more permissive than is required by Section 15.2-2307 of the Code of Virginia. For example, new structures can currently be erected in conjunction with legal nonconforming uses and the land area occupied by legal nonconforming uses can be expanded by-right.

If approved, this amendment would allow legally nonconforming one family, two family and duplex residential uses to expand only within the area of the legally platted parcel occupied by the use as of August 12, 2020, assuming City Council adoption on this date. It would prevent commercial and all other legally nonconforming uses from expanding beyond the land area which was occupied by the nonconforming use as of August 12, 2020.

The amendment includes minimum setbacks to legally nonconforming one family, two family, and duplex residential uses; 15’ front yard setback, 5’ side yard setback, 20’ rear yard setback; where the existing base district has a smaller and at times, no setback requirement.

This amendment also restricts the expansion of legally nonconforming structures. Legally nonconforming structures are those structures which were legally established but do not conform to the zoning prescribed to the districted in which they are situated. If approved, this amendment would prevent a legally nonconforming structure from being altered, enlarged, or extended in a way which increases its nonconformance or creates a new nonconformity.

**Recommendations:**

Staff Recommendation:  
Approve

Planning Commission Recommendation:  
Approve

**WHEREAS**, the public necessity, convenience, general welfare and good zoning practice so require;

**BE IT ORDAINED** by the Council of the City of Hampton, Virginia that Chapter 12 of the Zoning Ordinance of the City of Hampton, Virginia, be amended and re-enacted as follows:

## **Chapter 12 - NONCONFORMITIES**

### **Sec. 12-1. - General.**

Nothing in this chapter shall be construed to impair any vested right; except that land, buildings and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as: (i) the then existing or a more restrictive use continues; (ii) such use is not discontinued for more than two (2) years; and (iii) the buildings or structures are maintained in their then structural condition. For purposes of calculating the term of discontinuance of a nonconforming use or structure pursuant to this section, two (2) years means twenty-four (24) consecutive months.

### **Sec. 12-2. - Alteration, enlargement, and extension of nonconforming uses.**

- (1) Legally nonconforming uses, with the exception of legally nonconforming one family, two family, and duplex residential uses, shall comply with the following:
  - (a) The legally nonconforming use shall not be enlarged or extended to occupy an area greater than the structure or land area which was occupied by the nonconforming use as of August 12, 2020, unless such alteration, enlargement, or extension is required to comply with local, state, or federal law.
- (2) Legally nonconforming one family, two family, and duplex residential uses shall comply with the following:
  - (a) The legally nonconforming use shall not be enlarged or extended to occupy an area greater than the area of the legally plated parcel occupied by the nonconforming use as of August 12, 2020, unless such alteration, enlargement, or extension is required to comply with local, state, or federal law.
  - (b) The structure in which a legally nonconforming one family, two family, or duplex use occupies shall not be altered, enlarged, or extended in a way which violates the standards of the base district or any provision of the City Code, including but not limited to the Uniform Statewide Building Code. All permitted alterations, enlargements, and extensions shall further comply with the following setbacks:

- (1) Front yard: The front yard setback shall be a minimum of fifteen (15) feet.
- (2) Side yard: The side yard setback shall be a minimum of five (5) feet.
- (3) Rear yard: The rear yard setback shall be a minimum of twenty (20) feet.

**Sec. 12-3. - Alteration, enlargement, and extension of nonconforming structures.**

No nonconforming structure may be altered, enlarged, or extended in any way which increases its nonconformance or creates a new nonconformity, unless the alteration, enlargement, or extension is required to comply with local, state, or federal law.

**Sec. 12-4. - Damage or destruction of nonconforming structures.**

The owner of any residential or commercial building damaged or destroyed by a natural disaster or other act of God may repair, rebuild, or replace such building to eliminate or reduce the nonconforming features to the extent possible, without the need of a variance as provided in chapter 13 of this ordinance, if such building is damaged greater than fifty (50) percent and cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. The owner shall comply with the floor area, lot, yard, setbacks, or height requirements of this ordinance as nearly as possible. The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code and any work done to repair, rebuild or replace such building shall be in compliance the floodplain regulations adopted in article 4 of chapter 9 of this ordinance as a condition of participation in the National Flood Insurance Program. Unless such building is repaired, rebuilt or replaced within two (2) years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in accordance with the provisions of the zoning ordinance. 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 owner shall have an additional two (2) years to repair, rebuild or replace such building. For the purposes of this section, "act of God" shall include any natural disaster or phenomena including a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake or fire caused by lightning or wildfire. For the purposes of this section, owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an act of God. Nothing herein shall be construed to enable the property owner to commit an arson under section 18.2-77 or 18.2-80 of the Code of Virginia and obtain vested rights under this chapter.

**Sec. 12-5. - Replacement of on-site sewage systems.**

Notwithstanding any provision of the city zoning ordinance or the city code to the contrary, an owner of real property shall be permitted to replace an existing on-site sewage system for any existing building in the same general location on the property even if a new on-site sewage system would not otherwise be permitted in that location, unless access to a public sanitary sewer is available to the property. If access to a sanitary sewer system is available, then the connection to such system shall be required. Any new on-site system shall be installed in compliance with applicable regulations of the department of health in effect at the time of installation.

**Sec. 12-6. - Nonconforming manufactured home.**

Nothing in this chapter shall be construed to prevent the land owner or home owner from removing a valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home with another comparable manufactured home that meets the current HUD

manufactured housing code. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home. The owner of a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.