

ORDINANCE NO. BL2010-783

An ordinance to amend Title 17 of the Metropolitan Code of Laws, the Zoning Regulations, relative to Nonconforming Uses and Structures, all of which is more particularly described herein (Proposal No. 2010Z-019TX-001).

WHEREAS, Tennessee Code Annotated Section 13-7-208 affords certain protections to nonconforming uses.

WHEREAS, The Metropolitan Government of Nashville and Davidson County recognizes the importance of complying with Tennessee Code Annotated Section 13-7-208; and

WHEREAS, The Metropolitan Government of Nashville and Davidson County also wishes to offer certain protections to nonconforming residential uses and nonconforming structure.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: Section 17.04.060 (Definitions of General Terms) is hereby amended by inserting the following definitions in alphabetical order:

“Nonconforming residential use” means a residential use originally legally established, but which now does not currently conform to the applicable use regulations of the zoning district in which it is located.

“Nonconforming residential structure” means a residential structure that was originally legally constructed but which now does not meet one or more of the standards or requirements (other than use) of the zoning district in which it is located.

Section 2: Section 17.04.060 (Definitions of General Terms) is hereby amended by deleting the definition for “Nonconforming structure” and replacing with the following new definition:

"Nonconforming structure" means a structure, other than a residential structure, that was originally legally constructed but which now does not meet one or more of the standards or requirements (other than use) of the zoning district in which it is located.

Section 3: Section 17.04.060 (Definitions of General Terms) is hereby amended by deleting the definition for “Nonconforming use” and replacing with the following new definition:

"Nonconforming use" means an industrial, commercial or business establishment originally legally established, but which now does not currently conform to the applicable use regulations of the zoning district in which it is located, and is protected by Tennessee Code Annotated Section 13-7-208.

Section 4: Section 17.40.180 (Powers) is hereby amended by deleting Subsection D in its entirety and replacing with the following Subsection D:

D. Changes to Nonconforming Uses. The board shall determine the appropriateness of proposed changes to nonconforming uses.

Section 5: The title of Article XIV (Nonconforming Uses, Structures, Lots and Signs) is hereby amended by deleting the title in its entirety and replacing with the following title:

Article XIV. Nonconforming Uses, Nonconforming Residential Uses, Nonconforming Residential Structures, Nonconforming Structures, Nonconforming Lots and Nonconforming Signs

Section 6: Section 17.40.640 (General) is hereby amended by deleting the first paragraph and replacing with the following paragraph:

In order to protect the health, safety and general welfare of the community, nonconforming uses and/or structures which existed legally upon the effective date of the ordinance codified in this title, but which are not in conformance with all the applicable provision of this title, shall be subject to the provisions of this article to the fullest extent permitted by the Tennessee Code Annotated.

Section 7: Section 17.40.640 (General) is hereby amended by deleting the last paragraph and replacing with the following paragraph:

The following provisions apply to legally nonconforming uses of land, nonconforming improvements to the land, pre-existing lots or parcels of substandard size, uses nonconforming with respect to operational performance standards, and nonconforming signs. These provisions must be applied uniformly in all zoning districts. These provisions shall be applied in a manner consistent with Tennessee Code Annotated Section 13-7-208.

Section 8: Section 17.40.650 (Nonconforming uses) is hereby amended by deleting Subsection B in its entirety and replacing with the following Subsection B:

B. Inactivity of a Nonconforming Use. When a nonconforming use has been inactive for a period of thirty months or more, the land and its associated improvements shall thereafter be used only in accordance with the provisions of this title. An intent to resume activity shall not qualify the property for a continuation of the nonconforming use.

Section 9: Section 17.40.650 (Nonconforming uses) is hereby amended by deleting Subsection C.1 in its entirety and replacing with the following Subsection C.1:

1. When a nonconforming use is changed to a conforming use, all nonconforming protections offered by this code are forfeited.

Section 10: Section 17.40.650 (Nonconforming uses) is hereby amended by deleting Subsection D in its entirety and replacing with the following Subsection D:

D. Alteration or Expansion of a Structure Containing a Nonconforming Use. Alterations and expansions shall be permitted, but the floor area ratio (FAR) of the expanded use together with all other uses on the lot shall not exceed the maximum FAR currently permitted in the base zoning district or the standards in effect prior to the zoning change that made the use nonconforming.

Section 11: Section 17.40.650 (Nonconforming uses) is hereby amended by deleting Subsection E in its entirety and replacing with the following Subsection E:

E. Damage or Destruction of a Structure Containing a Nonconforming Use. Damage or destruction of a building or other form of structure (except a sign) occupied or used by a nonconforming use may be restored pursuant to the following provisions:

1. On land with minor improvements, the nonconforming use shall cease upon damage or destruction in the amount of twenty-five percent or more of the assessed valuation of all buildings, structures and other improvements on the property.

2. A structure containing a nonconforming use that has sustained damage by any voluntary or involuntary means to fifty percent or less of its total floor area may be reconstructed. If the damage is greater than fifty percent of the total floor area, the structure shall be reconstructed in accordance with all applicable provisions of this title, other than use.

Section 12: Article XIV (Nonconforming Uses, Structures, Lots and Signs) is hereby amended by inserting the following new Section 17.40.655:

17.40.655 Nonconforming residential uses and nonconforming residential structures.

A. Continuing a Legally Nonconforming Residential Use. A nonconforming residential use may continue subject to the following provisions:

1. In a RS district, any nonconforming residential use may be restored within two years regardless of percentage of damage or destruction.
2. In any non-residential district, any nonconforming residential use that is damaged or destroyed may be restored within one year of the date of damage, regardless of the percentage of damage or destruction.

B. Repair and Alteration of a Structure Containing a Nonconforming Residential Use or a Nonconforming Residential Structure. Repairs, incidental alterations and structural alterations may be made to a nonconforming structure provided there is no increase in the degree of nonconformity. Site improvements may be required to comply with existing zoning.

C. Enlargements of a Structure Containing a Nonconforming Residential Use or a Nonconforming Residential Structure. Enlargements may be made in a manner that complies with the existing zoning. Site improvements may be required to comply with existing zoning.

D. Damage or Destruction of a Structure Containing Nonconforming Residential Use or a Nonconforming Residential Structure. A nonconforming structure that has sustained damage by any voluntary or involuntary means to fifty percent or less of its total floor area may be reconstructed, provided that the damaged area is reconstructed in accordance with all applicable provisions of this title. If the damage is greater than fifty percent of the total floor area, the structure shall be reconstructed in accordance with all applicable provisions of this title. Site improvements may be required to comply with existing zoning, regardless of the degree of damage.

Section 13: Section 17.40.660 (Nonconforming structures) is hereby amended by deleting in its entirety and replacing with the following Section 17.40.660:

17.40.660 Nonconforming structures.

The following provisions shall apply to all nonconforming structures.

A. Continuation and Conversion of Use. The use of a nonconforming structure may be continued or converted to another permitted use except as otherwise provided in this article.

B. Repairs and Alterations. Repairs and incidental or structural alterations may be made to a nonconforming structure provided there is no increase in the degree of nonconformity. Site improvements may be required to comply with existing zoning.

C. Enlargements.

1. A nonconforming structure may be enlarged by twenty five percent or less of the total floor area existing at the time the structure became nonconforming, provided there is no increase in the degree of nonconformity. Additionally, site improvements may be required to comply with existing zoning. All building permits within five years shall be aggregated for purposes of measuring the twenty five percent standard.

2. A nonconforming structure may be enlarged by greater than twenty five percent or more of the total floor area existing at the time the structure became nonconforming, if the structure and the site are brought into compliance with the existing zoning. All building permits within five years shall be aggregated for purposes of measuring the twenty five percent standard.

D. Damage or Destruction of Nonconforming Structures. A nonconforming structure damaged by any voluntary or involuntary means to fifty percent or less of its total floor area may be reconstructed. If damage is greater than fifty percent of the total floor area, the structure shall be reconstructed in accordance with all applicable provisions of this title. For voluntary damage or destruction, site improvements may be required to comply with existing zoning, regardless of the degree of damage.

Section 14: Section 17.40.670 (Nonconforming lot area) is hereby amended by deleting the last sentence.

Section 15: Section 17.40.690 (Nonconforming signs) is hereby amended by deleting Subsection C in its entirety and replacing with the following Subsection C:

C. A sign shall be deemed destroyed and brought into compliance with the provisions of this title if greater than fifty percent of the display surface area is altered, repaired, replaced, restored or rebuilt. All permits within five years shall be aggregated for purposes of measuring the fifty percent standard. Any reconstruction or replacement of a destroyed sign must comply with the provisions of this title.

Section 15: Section 17.40.690 (Nonconforming signs) is hereby amended by deleting Subsection D in its entirety and replacing with the following Subsection D:

D. A nonconforming sign shall be brought into compliance with this title when the principal land use on the lot is changed to a different use as described by the district land use table.

Section 15: Section 17.40.690 (Nonconforming signs) is hereby amended by deleting Subsection E in its entirety and replacing with the following Subsection E:

E. A nonconforming sign shall be brought into compliance with this title when the principal land use on the lot has been inactive pursuant to Section 17.40.650.B.

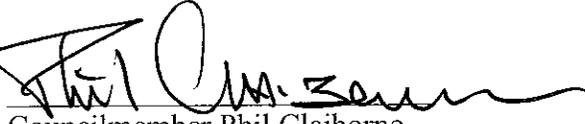
Section 16. This Ordinance shall take effect five (5) days after its passage and such change be published in a newspaper of general circulation, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

SPONSORED BY:



Councilmember Erik Cole

ALL REQUIRED FEES HAVE BEEN PAID



Councilmember Phil Claiborne



Councilmember Mike Jameson

Councilmember Jim Gotto