

Council Agenda Report

Date: February 11, 2019

Submitted by: Odie Wheeler, Director of Public Works

Prepared by: Pat Escher, Division Manager, City Planner

Subject: Ordinance 1140 -- An Ordinance of the Commissioners of Cambridge, Maryland amending § 2.4.2(e) of the City's Unified Development Code ("UDC") to provide for the replacement of existing nonconforming multifamily structures within the residential district that are damaged or destroyed by accidental or natural causes or other causes beyond the property owner's control, under certain conditions; amending § 2.4.2(f) of the UDC regarding the timeframes for abandonment and discontinuance of nonconforming uses of structures and situations; amending certain provisions of § 2.4 of the UDC for clarity and consistency and to better state the City's intent with respect to nonconformities; providing that the title of this Ordinance shall be deemed a fair summary and generally relating to nonconformities in the City of Cambridge.

Recommendation: That Council

- A. Introduce Ordinance No. 1140 by reading of title only; and
- B. Schedule February 28, 2019 for second reading, public hearing and adoption of Ordinance No. 1140.

DISCUSSION: This amendment was brought to the Council's attention at their October 9th for introduction. The primary reason for the revised language was to clarify that multifamily structures within the Residential Zoning District could be replaced in kind if the lost was due to conditions beyond the control of the property owner. The Commissioners of Cambridge wanted staff to look at the other sub-sections within this Section of the UDC for errors and omissions. Staff met with the Commissioners and revised this Section and brought it back to the Planning Commission for consideration at their January meeting. The Planning Commission approved the revised language and recommended that the language be forwarded on the City Council with a positive recommendation.

Fiscal Impact: NA

Enforcement Authority: Pat Escher, A.I.C.P., Division Manager – Division of Planning, Housing and Economic Development, Department of Public works

Approved by: Patrick Comiskey, City Manager

ORDINANCE NO. 1140

AN ORDINANCE OF THE COMMISSIONERS OF CAMBRIDGE, MARYLAND AMENDING § 2.4.2(E) OF THE CITY'S UNIFIED DEVELOPMENT CODE ("UDC") TO PROVIDE FOR THE REPLACEMENT OF EXISTING NONCONFORMING MULTI-FAMILY STRUCTURES WITHIN THE RESIDENTIAL DISTRICT THAT ARE DAMAGED OR DESTROYED BY ACCIDENTAL OR NATURAL CAUSES OR OTHER CAUSES BEYOND THE PROPERTY OWNER'S CONTROL, UNDER CERTAIN CONDITIONS; AMENDING § 2.4.2(F) OF THE UDC REGARDING THE TIMEFRAMES FOR ABANDONMENT AND DISCONTINUANCE OF NONCONFORMING USES OF STRUCTURES AND SITUATIONS; AMENDING CERTAIN PROVISIONS OF § 2.4 OF THE UDC FOR CLARITY AND CONSISTENCY AND TO BETTER STATE THE CITY'S INTENT WITH RESPECT TO NONCONFORMITIES; PROVIDING THAT THE TITLE OF THIS ORDINANCE SHALL BE DEEMED A FAIR SUMMARY AND GENERALLY RELATING TO NONCONFORMITIES IN THE CITY OF CAMBRIDGE.

WHEREAS, pursuant to Md. Code Ann., Land Use § 4-204 and § 2.2.3 of the Unified Development Code (the "UDC"), the Commissioners of Cambridge are authorized and empowered to amend, supplement, change, modify, and repeal the City of Cambridge's (the "City") zoning regulations and boundaries and change the City's zoning classifications; and

WHEREAS, pursuant to § 3-27(1) of the Charter of the City of Cambridge (the "Charter") and Md. Code Ann., Local Gov't § 5-202(5), the Commissioners of Cambridge are authorized and empowered to pass ordinances for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of the town and visitors thereto and sojourners therein; and

WHEREAS, following a public hearing held on January 9, 2019, the City of Cambridge Planning Commission (the "Planning Commission") unanimously recommended that the Commissioners of Cambridge approve a text amendment amending § 2.4.2(E) of the UDC to provide for the replacement of existing nonconforming multi-family structures within the Residential district that are damaged or destroyed by accidental or natural causes or other causes beyond the property owner's control, under certain conditions, amending § 2.4.2(F) of the UDC regarding the timeframes for abandonment and discontinuance of nonconforming uses of structures and situations, and amending certain provisions of § 2.4 of the UDC for clarity and consistency and to better state the City's intent with respect to nonconformities; and

WHEREAS, on _____, 2019, the Commissioners of Cambridge held a public hearing regarding the foregoing text amendment recommended by the Planning Commission, notice of which was published on _____, 2019 and _____, 2019 in the Star Democrat, a newspaper of general circulation in the City, in accordance with Md. Code Ann., Land Use § 4-203(b) and § 2.2.3.C of the UDC; and

WHEREAS, having considered the recommendations of the Planning Commission and the Department of Planning and Zoning Staff, as well as the comments made during the _____, 2019 public hearing, the Commissioners of Cambridge find that it is in the

best interest of the City to amend § 2.4.2(E) of the UDC to provide for the replacement of existing nonconforming multi-family structures within the Residential district that are damaged or destroyed by accidental or natural causes or other causes beyond the property owner's control, under certain conditions, amend § 2.4.2(F) of the UDC regarding the timeframes for abandonment and discontinuance of nonconforming uses of structures and situations, and amend certain provisions of § 2.4 of the UDC for clarity and consistency and to better state the City's intent with respect to nonconformities; and

WHEREAS, the Commissioners of Cambridge find that the text amendment set forth herein is necessary to promote and protect the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Commissioners of Cambridge, that the City's Unified Development Code is hereby amended as follows:

SECTION 1. Section 2.4 (Nonconforming Lots, Structures, and Uses) is amended as follows:

§ 2.4 Nonconforming Lots, Structures, and Uses Nonconformities

§ 2.4.1 Intent of the Regulations

A. Nonconformities Defined; Purpose and Intent

1. ~~It is the intent of this Ordinance not to encourage the survival of nonconformities. Such uses are incompatible with permitted uses in the zoning districts involved. As used in this Ordinance, a "nonconformity" means and refers to a lot, use, or structure lawfully existing as of the effective date of this Ordinance or any amendment thereto and, because of the passage of this Ordinance or such amendment, no longer conforms to one (1) or more of the provisions of this Ordinance applicable to such lot, use, or structure.~~
2. ~~It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zone. Nonconformities are discouraged and shall only be continued or maintained in accordance with the terms of this section, which are intended to protect the rights of legally existing nonconformities without permitting expansion, extension, or enlargement thereof or the addition of uses or structures prohibited under this Ordinance. Notwithstanding any provision of this section to the contrary, nonconformities are strongly encouraged to conform to the provisions of this Ordinance so as to preserve the integrity hereof and the City's character.~~

B. Extension of Nonconformities Prohibited

~~A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after passage of this Ordinance by~~

~~attachment on a building or premises, or by the addition of other uses of a nature which would be prohibited in the zone involved.~~

CB. Impact on Ongoing Lawful Construction

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of ~~adoption or amendment~~ of this Ordinance **or any amendment thereto** and upon which actual building construction has been diligently carried on.

§ 2.4.2 Nonconforming Lots, Structures, and Uses

A. Nonconforming Lots of Record

1. In any ~~zone~~ **zoning district** in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a single-family dwelling and customary accessory buildings may be erected on any undeveloped **nonconforming** single lot of record at **as of** the effective date of ~~adoption or amendment~~ of this Ordinance **or any amendment thereto**. ~~Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership,~~ **provided that such lot is not of continuous frontage with other lots under common ownership**. This provision shall apply even though such lot fails to meet the requirements for area or width or both that are generally applicable in the ~~zone~~ **zoning district**, provided that yard dimensions shall conform to the ~~regulations~~ **provisions of this Ordinance** for the ~~zone~~ **zoning district** in which such lot is located. Any variance of yard requirements shall be obtained only through action of the Board of Appeals.
2. ~~In~~ **On** any commercially zoned property in which commercial/mixed use buildings are permitted, notwithstanding limitations imposed by other provisions of this Ordinance, a commercial/mixed use building may be erected on any undeveloped **nonconforming** single lot of record at **as of** the effective date of ~~adoption or amendment~~ of this Ordinance **or any amendment thereto**. ~~Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership,~~ **provided that such lot is not of continuous frontage with other lots under common ownership**. This provision shall apply even though such lot fails to meet the requirements for area or width or both that are generally applicable in the ~~zone~~ **zoning district**, provided that yard dimensions shall conform to the ~~regulations~~ **provisions of this Ordinance** for the ~~zone~~ **zoning district** in which such lot is located. Any variance of yard requirements shall be obtained only through action of the Board of Appeals.
3. If two **(2)** or more **nonconforming** lots or combinations of lots and portions of lots with continuous frontage ~~in single~~ **under common** ownership are of record at ~~the time of passage or amendment of~~ **as of the effective date** this Ordinance **or any**

amendment thereto, and if all or part of the lots do not meet the requirements for lot width and area as established by this Ordinance, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance, and no portion of said parcel shall be used or sold which does not meet lot width or area requirements established by this Ordinance, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this Ordinance.

B. Nonconforming Uses of Land

Where, at as of the effective date of adoption or amendment of this Ordinance or any amendment thereto, a lawful use of land exists that is ~~made no longer permissible~~ rendered a nonconforming use of land under the ~~terms~~ provisions of this Ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

1. No such ~~nonconforming~~ use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at as of the effective date of adoption or amendment of this Ordinance or any amendment thereto.
2. No such ~~nonconforming~~ use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at as of the effective date of adoption or amendment of this Ordinance or any amendment thereto.
3. If any such ~~nonconforming~~ use of land ceases for any reason for a period of more than ninety (90) days, any subsequent use of such land shall conform to the ~~regulations specified by~~ provisions of this Ordinance for the zone zoning district in which such land is located.

C. Nonconforming Structures

Where, as of the effective date of this Ordinance or any amendment thereto, a lawful structure exists at ~~the effective date of adoption or amendment of this Ordinance~~ that could not be built under the terms hereof of this Ordinance by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued subject to § 2.4.2(E), so long as it remains otherwise lawful, subject to the following provisions:

1. No such structure may be enlarged or altered in a way that increases its nonconformity. For purposes of this ~~ordinance~~ Ordinance, a renovation of a structure which ~~renovation~~ maintains the existing building envelope and does not extend the structure beyond the existing building envelope does not constitute an increase in nonconformity of the structure.

2. Should such structure be ~~destroyed~~ **damaged** by any means to an extent of more than **twenty-five (25)** percent of its appraised valuation at **the** time of destruction as determined by the ~~“appraised valuation”~~ which shall mean either the appraised valuation for property tax purposes, as determined by the Maryland Department of Assessments and Taxation, or the valuation determined by a professionally recognized property appraiser; ~~§ 2.4.2(E)4e~~ **that such damage occurred**, it shall not be reconstructed as a nonconforming structure, except as may be authorized by the Planning Commission under §§ 5.1.2(A)(3) **and/or 2.4.2(E)(4)**. **For purposes of this subsection, “appraised valuation” shall mean either the appraised valuation for property tax purposes as determined by the Maryland Department of Assessments and Taxation or the valuation determined by a professionally recognized real property appraiser.**
3. Should such structure be moved, **regardless of the reason or distance** ~~for any reason for any distance whatever~~, it shall thereafter conform to the regulations for the zone **zoning district** in which it is located ~~after it is moved~~.

D. Nonconforming Uses of Structures

If Where, as of the effective date of this Ordinance or any amendment thereto, a lawful use of a structure, or of **a** structure and premises in combination, exists ~~at the effective date of adoption or amendment of this Ordinance~~, that would not be allowed in the zoning district under the terms **hereof as enacted or amended this Ordinance**, the lawful **such** use may be continued subject to § 2.4.2(E) of this Ordinance, so long as it remains otherwise lawful, subject to the following provisions:

1. The alteration of a structure containing a non-conforming **nonconforming** use will **shall** be subject to the same standards ~~subsection C and E herein~~, **set forth in §§ 2.4.2(C) and (E)** applicable to Nonconforming **nonconforming s**Structures.
2. ~~Any~~ nonconforming use may be extended throughout any parts of a building that were manifestly arranged or designed for **such** use **as at of the time effective date of adoption passage** or amendment of this Ordinance, but no such use shall be extended to occupy any land outside such building.
3. If no structural alterations are made, ~~any~~ nonconforming use of a structure, or structure and premises **in combination**, may be changed to another nonconforming use, provided that the Board of Zoning Appeals shall find that the proposed use **nonconformity** is equally appropriate or more appropriate ~~into~~ **the zoning district** than the existing ~~nonconforming use~~ **nonconformity**. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accordance **ance** with the provisions of this Ordinance.

4. Any structure, or structure and land **premises** in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the ~~regulations~~ **provisions of this Ordinance** for the zone **zoning district** in which such structure is located, and the nonconforming use may **shall** not thereafter be resumed.
5. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structures shall eliminate **such** the nonconforming status of the land, **except as otherwise provided in § 2.4.2(E)**.

E. Repairs, Improvements, and Routine Maintenance of Nonconforming Structures

1. ~~Minor r~~**Repairs to, improvements that do not increase nonconformity, and routine maintenance of property where nonconforming situations exist nonconforming structures and premises upon which a nonconforming structure is located are permitted as qualified below for those structures which may be devoted to nonconforming uses set forth in this subsection.**
2. ~~Repairs to, improvements that do not increase nonconformity, and routine maintenance of property where nonconforming situations exist are permitted as qualified below for those structures which may be devoted to nonconforming uses.~~
3. ~~On any structure devoted in whole or in part to any nonconforming use, work~~ **ordinary repairs or renovations may be done in any period of twelve (12) consecutive months ~~on ordinary repairs, or renovations of the structure,~~ provided that the ~~building's~~ **structure's** density and building envelope (i.e. bedroom count and typology), as it existed ~~at~~ **of the time date** of passage or amendment of this Ordinance, shall not be increased.**
34. ~~Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building~~ **structure** or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
4. **Notwithstanding any provision in this section to the contrary, a nonconforming multi-family structure in the Residential district that is damaged or destroyed by accidental or natural causes or other causes beyond the property owner's control may be replaced in kind provided that the construction commences within one (1) year of the structure being damaged or destroyed and is completed within a timely manner as deemed appropriate by the Building Official. The Zoning Official may extend the one (1) year deadline for commencement of construction upon demonstration that, due to circumstances beyond the property owner's control, construction could not commence within one (1) year of the structure being damaged or destroyed and the property owner providing a date certain acceptable to the Zoning Official upon which construction shall commence.**

F. **Abandonment and Discontinuance of ~~Noneconforming Use of a Structure and~~ Noneconforming Situations Nonconformities**

1. When a nonconforming use of a structure, or structure and premises in combination, is discontinued for a consecutive period of ~~120~~ **ninety (90) days, it shall be considered abandoned, except as otherwise provided in § 2.4.2(E).**
2. If ~~a such~~ nonconforming use is maintained in conjunction with a conforming use, discontinuance of the nonconforming use for ~~the required~~ **a consecutive period of ninety (90) days** shall terminate the right to maintain it thereafter, **except as otherwise provided in § 2.4.2(E).**
3. For any nonconforming residential apartment ~~or apartment building~~ uses, the following shall be sufficient, but not necessarily the only criteria, for determining if ~~standard (b) in paragraph 1 above is satisfied~~ **whether such use has been abandoned or discontinued:**
 - a. ~~A documented lapse in the payment of any required rental registration fee to the City of Cambridge~~ **To the extent required by the City, failure to maintain with the City a current record of the rental status of each nonconforming apartment or to timely pay when due any fee imposed by the City associated therewith; or**
 - b. ~~A failure to record and maintain an updated record with the City of Cambridge, as may be required by the City, of the rental and vacancy status of each apartment that is nonconforming with respect to this Ordinance.~~
 - e. ~~The removal without same day replacement, or the City's decommissioning, of the electric or water meters on the property that are necessary to serve apartment units in the building on the~~ **such** property.
4. For ~~noneconforming situations~~ **nonconformities**, other than ~~noneconforming uses~~ **the foregoing**, if the ~~principal activity on property~~ **nonconformity** is: (a) discontinued for a consecutive period of ~~one year~~ **twelve (12) months;** ; or (b) discontinued for any period of time ~~without a present intention of resuming that activity,~~ **and accompanied by the property owner's express written intention to discontinue the same,** the property may thereafter be used only in conformity with all of the regulations applicable to the ~~preexisting use~~ **the provisions of this Ordinance** unless the Planning Commission approves ~~the~~ **the** issuance of a zoning permit to allow the ~~property to be used for this purpose without correcting the noneconforming situation(s)~~ **nonconformity's continuance.** This permit may be issued if the Planning Commission finds that eliminating ~~a particular~~ **the** nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the ~~noneconforming situation~~ **nonconformity** is maintained or moving a substantial structure that is on a permanent foundation).

The zoning permit shall specify which nonconformities need not be ~~corrected~~ **brought into compliance with this Ordinance.**

5. For purposes of determining whether ~~a right to continue~~ **approve** a ~~nonconforming situation, including a nonconforming use~~ **nonconformity's continuance**, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, with respect to a nonconforming use, the failure to rent one **(1)** apartment unit in a multiple unit nonconforming apartment building for **a consecutive period of ninety (90)** ~~120~~ days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment **use of the** building as a whole is continuously maintained ~~in its use~~ and not discontinued or abandoned **as set forth herein.**

§ 2.4.3 PWCD and PWRD Developments, Approved

UNCHANGED

SECTION 2. The recitals to this Ordinance are incorporated herein and deemed a substantive part of this Ordinance.

SECTION 3. In this Ordinance, unless a section of the UDC is expressly repealed in its entirety and reenacted, new or added language is underlined and in boldface type, and deleted text is crossed out with a single strikethrough. With respect to the substantive provisions of this Ordinance set forth in Section 1, language added after the date of introduction is in bold, italicized font and language deleted after the date of introduction is crossed out with a double strikethrough.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance, it being the intent of the Commissioners of Cambridge that this Ordinance shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or portion hereof.

SECTION 5. All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 6. The title of this Ordinance, or a condensed version thereof, shall be deemed to be, and is, a fair summary of this Ordinance for publication and all other purposes.

AND BE IT FURTHER enacted and ordained that this Ordinance shall become effective on the tenth (10th) day following the date of passage.

ATTEST:

THE COMMISSIONERS OF CAMBRIDGE

Patrick C. Comiskey, City Manager

By: _____
Victoria Jackson-Stanley, Mayor

Introduced the ___ day of _____, 2019

Passed the ___ day of _____, 2019

Effective the ___ day of _____, 2019