

**Council Agenda Report**

**Date:** June 13, 2016

**Submitted by:** Odie Wheeler, Director of Public Works *OW*

**Prepared by:** Pat Escher, City Planner, A.I.C.P.

**SUBJECT:** Ordinance No. 1081 firstly to amend the Unified Development Code to remove Section 2.4.2 D.1. that states that "No existing structure devoted to a use not permitted by this Ordinance in the zone in which it is located, shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the zone in which it is located." and to add reference language.

**Recommendation that Council:**

Introduce Ordinance No. 1081 by reading of title only and

Schedule June 20, 2016 for second reading, public hearing and adoption.

**Discussion:** The intent of this amendment is in alignment with Ordinance 1068, which was heard and recommended for approval by the Planning Commission on January 5, 2016 and was approved by City Council on March 14, 2016. The previous amendment removed the monetary limitations for the maintenance, repair and rehabilitation of non-conforming structures. During those discussions, it was agreed that while such restrictions may work in other jurisdictions, these limitations would disincentivize repairs, maintenance and rehabilitation of these structures and they would eventually fall into disrepair, adding to the City's existing problem of neglected properties.

## **§ 2.4.2 Nonconforming Lots, Structures, and Uses**

### **A. Nonconforming Lots of Record**

1. In any zone 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 single lot of record at the effective date of adoption or amendment of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same 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, provided that yard dimensions shall conform to the regulations for the zone in which such lot is located. Any variance of yard requirements shall be obtained only through action of the Board of Appeals.

2. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, 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 the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is made no longer permissible under the terms 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 the effective date of adoption or amendment of this Ordinance.
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 the effective date of adoption or amendment of this Ordinance.
3. If any such nonconforming use of land ceases for any reason for a period of more than 90 days, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the zone in which such land is located.

**C. Nonconforming Structures**

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms 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 § 2.4.2E, 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 and maintains the existing building envelope.
2. Should such structure be destroyed by any means to an extent of more than 25 percent of its appraised valuation at time of destruction as determined by the

“appraised valuation” which shall mean either the appraised valuation for property tax purposes, or the valuation determined by a professionally recognized property appraiser; it shall not be reconstructed as a nonconforming structure, except as may be authorized by the Planning Commission under § 5.1.2A(3).

3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zone in which it is located after it is moved.

#### **D. Nonconforming Uses of Structures**

If a lawful use of a structure or of 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 of this Ordinance, the lawful use may be continued subject to § 2.4.2E of this Ordinance, so long as it remains otherwise lawful, subject to the following provisions:

1. ~~No existing structure devoted to a use not permitted by this Ordinance in the zone in which it is located, shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the zone in which it is located.~~ The alteration of a structure containing a non-conforming use will be subject to the same standards subsection C and E, Nonconforming Structures.
2. Any nonconforming use may be extended throughout any parts of a building that were manifestly arranged or designed for use at the time of adoption 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, may be changed to another nonconforming use, provided that the Board of Zoning Appeals shall find that the proposed use is equally appropriate or more appropriate to the zone than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accord with the provisions of this Ordinance.
4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the zone in which such structure is located, and the nonconforming use may 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 the nonconforming status of the land.

**E. Repairs and Maintenance of Nonconforming Structures**

1. 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.
2. On any structure devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or renovations of the structure, provided that the building's density and building envelop (i.e. bedroom count and typology), as it existed at the time of passage or amendment of this Ordinance, shall not be increased.
3. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**Fiscal Impact: None**

**Approved by:**

## **ORDINANCE NO. 1081**

**AN ORDINANCE OF THE COMMISSIONERS OF CAMBRIDGE, MARYLAND, TO AMEND SECTION 2.4.2.D.1 OF THE UNIFIED DEVELOPMENT CODE BY REMOVING THE PROHIBITION AGAINST ENLARGING, EXTENDING OR STRUCTURALLY ALTERING NON-CONFORMING USES, AND TO IMPOSE STANDARDS BY REFERENCE APPLICABLE TO THE ALTERATION OF A NON-CONFORMING USE OF A STRUCTURE.**

**WHEREAS**, upon consideration of the recommendation of the Planning and Zoning Commission, and upon consideration of the staff of the Department of Planning and Zoning, the comments made at a public hearing before City Council, held on June 20, 2016 the City Council finds that the proposed amendments are needed to protect the public health, safety and welfare; and

**WHEREAS**, on June 7, 2016 the Planning Commission held a public hearing and issued recommendation regarding the proposed text amendment. The Planning Commission unanimously recommended that the Commissioners of Cambridge approve the text firstly to amend the Unified Development Code to remove Section 2.4.2 D.1. that states that “No existing structure devoted to a use not permitted by this Ordinance in the zone in which it is located, shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the zone in which it is located.” and to add reference language; and

**WHEREAS**, the Commissioners of Cambridge find that it is in the best interest of the City to amend the Unified Development Code firstly to amend the Unified Development Code to remove Section 2.4.2 D.1. that states that “No existing structure devoted to a use not permitted by this Ordinance in the zone in which it is located, shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the zone in which it is located.” and to add reference language.

**NOW, THEREFORE, BE IT ORDAINED** by the Commissioners of Cambridge, that **Section 2.4.2** of the City’s Unified Development Code is hereby amended as follows:

### **§ 2.4.2 Nonconforming Lots, Structures, and Uses**

#### **A. Nonconforming Lots of Record**

1. In any zone 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 single lot of record at the effective date of adoption or amendment of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same 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, provided that

yard dimensions shall conform to the regulations for the zone in which such lot is located. Any variance of yard requirements shall be obtained only through action of the Board of Appeals.

2. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, 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.

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1. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance.
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 the effective date of adoption or amendment of this Ordinance.
3. If any such nonconforming use of land ceases for any reason for a period of more than 90 days, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the zone in which such land is located.

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1. No such structure may be enlarged or altered in a way that increases its nonconformity and maintains the existing building envelope.
2. Should such structure be destroyed by any means to an extent of more than 25 percent of its appraised valuation at time of destruction as determined by the "appraised valuation" which shall mean either the appraised valuation for property tax purposes, or the valuation determined by a professionally recognized property appraiser; it shall not be reconstructed as a nonconforming structure, except as may be authorized by the Planning Commission under § 5.1.2A(3).

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2. On any structure devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or renovations of the structure, provided that the building's density and building envelop (i.e. bedroom count and typology), as it existed at the time of passage or amendment of this Ordinance, shall not be increased.

3. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**AND BE IT FURTHER** enacted and ordained that this Ordinance shall become effective on the tenth (10<sup>th</sup>) day following the date of adoption.

ATTEST:

THE COMMISSIONERS OF CAMBRIDGE

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By: \_\_\_\_\_  
Donald Sydnor, City Council President  
And Acting Mayor

**Introduced the 13th day of June, 2016  
Adopted the 20th day of June, 2016  
Effective the 30th day of June, 2016**