

## **CHAPTER 5: NONCONFORMING BUILDINGS AND USES**

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### **5.1. MAINTENANCE, REPAIR, AND RESTORATION.**

A noncomplying structure or a structure housing or containing a nonconforming use may be maintained and repaired.

**5.1.1** A noncomplying structure or a building or structure occupied by a nonconforming use which is damaged or is destroyed by fire, flood, wind, earthquake, or other calamity, may be restored and the occupancy or use of such building, structure, or portion thereof, which existed at the time of such damage or destruction, may be continued or resumed.

### **5.2. EXPANSION OF NONCOMPLYING STRUCTURE.**

A noncomplying structure shall not be enlarged unless:

**5.2.1.** A variance is obtained under VULU Chapter 3 regulations; or

**5.2.2.** The enlargements are made in conformance with all regulations of the zone in which the noncomplying structure is located; or

**5.2.3.** The following criteria are met:

**5.2.3.A.** The changes do not further increase the structures noncompliance,

**5.2.3.B.** The changes do not create an unmitigated hardship for adjoining properties,

**5.2.3.C.** The changes do not create a public safety hazard,

**5.2.3.D.** The changes have been approved by the Town's Zoning Administrator.

### **5.3. EXPANSION OF STRUCTURE OCCUPIED BY NONCONFORMING USE.**

A structure occupied by a nonconforming use may be enlarged if:

**5.3.1** The enlargement does not increase the nonconforming use; and

**5.3.2** The criteria of 5.2 are met.

### **5.4. ONE YEAR VACANCY.**

A vacant building or structure may be occupied by a use for which the building or structure was designed or intended if so occupied within a period of one (1) year after the use became nonconforming.

**5.4.1.** A building or structure or portion thereof occupied by a nonconforming use, which is, or hereafter becomes, vacant and remains unoccupied by a nonconforming use for a continuous period of one (1) year, except for dwellings, shall not thereafter be occupied except by a use which conforms to the use regulations of the zone in which it is located.

### **5.5. CHANGE OF USE.**

The nonconforming use of a building or structure may not be changed except to a conforming use; but once such change is made, the use shall not thereafter be changed back to a nonconforming use.

**5.6. CONTINUATION OF NONCONFORMING USE.**

A nonconforming use may be continued on the parcel of land upon which such nonconforming use has historically been made and according to the provisions of this ordinance.

**5.7. CONTINUATION OF NONCONFORMING USE**

A nonconforming use may be continued on the parcel of land upon which such nonconforming use has historically been made, provided that no structures housing or containing such use, may be enlarged or expanded except in compliance with all applicable provisions of the Virgin Uniform Land Use Ordinance.

**5.8. OCCUPATION WITHIN ONE YEAR**

A vacant building or structure may be occupied by a use for which the building or structure was designed or intended if so occupied within a period of one (1) year after the use became nonconforming.

**5.9. CHANGE OF USE**

The nonconforming use of a building or structure may not be changed except to a conforming use; but once such change is made, the use shall not thereafter be changed back to a nonconforming use.

**5.10. NONCONFORMING USE OF LAND**

The nonconforming use of land, existing at the time this ordinance became effective, may be continued provided that:

**5.10.1.** No such nonconforming use of land shall in any way be expanded or extended to adjoining property; and

**5.10.2.** No such nonconforming use shall be expanded or extended outside the structures or other delineated areas associated with the original legal use, unless an exception is approved by the Land Use Authority to ensure compliance with state or federal fair housing and discrimination laws; and

**5.10.3.** If such nonconforming use of land, or any portion thereof, including nonconforming use as a residential facility for persons with a disability, is abandoned or changed for a period of one (1) year or more, any future use of such land shall be in conformity with the provisions of this ordinance.

**5.11. EXCEPTIONS**

The following nonconforming structures and nonconforming uses shall be amortized in a period not exceeding that stated below, effective from the date of adoption of this ordinance:

**5.11.1.** Trash, junk, debris, abandoned or dismantled automobiles or similar material shall be removed for any residential zone within one (1) year.

**5.11.2. NONCONFORMING SIGNS.** See VULU Chapter 26, Sign Regulations.

Noncomplying structures or nonconforming uses not removed within the specified time effective of the date of the adoption of this ordinance may be removed by the Town of Virgin and the costs incurred by the Town in doing so shall be billed to the owner of the property or structure.

<sup>1</sup> Sections 5.1-5.6 amended pursuant to Ordinance #2018-12

**5.12 PROCESS FOR FORMAL DETERMINATION OF LEGALITY OF NONCOMPLYING STRUCTURE OR NONCONFORMING USE<sup>2</sup>.**

A property owner who wishes to avail themselves of the ability to maintain, repair and restore a Noncomplying Structure pursuant to Section 5.1, above or continue a Nonconforming Use pursuant to Sections 5.6 and 5.7, above shall do the following:

**5.12.1.** Submit to the Town a letter for determination of legal noncomplying structure or nonconforming use (“Legal Non-Conforming Use Letter” or “Letter”) and pay any administrative filing fee as may be set by the Town from time to time.

**5.12.2.** Within, or attached to, said Letter provide any information and documentation supporting your assertion that at the time your noncomplying structure was constructed or last renovated or your nonconforming use commenced it was legal (or not expressly prohibited) under the Town’s ordinances or Utah law.

**5.12.3.** Participate in an informal hearing on the issue before the Town Council wherein you are given the opportunity to have legal counsel present and the ability to present additional evidence to further validate your assertion of initial legality of structure or use.

**5.12.4.** The property owner seeking the determination of legal noncomplying structure or legal nonconforming use has the burden of proving by a preponderance of the evidence that the structure or use was legal (or not-prohibited) at the time of inception.

**5.12.5.** At the conclusion of the informal hearing the Town Council may make a formal decision to be incorporated into the minutes of the meeting or take the matter under advisement and issue a written determination.

**5.12.6.** A property owner has the right to appeal the Town Council’s decision to the Virgin Appeal Authority in compliance with VULU Chapter 3 within 15 days of: a) the Town Council’s decision is issued at the conclusion of the informal hearing, or b) the date the written determination is issued and delivered to the applicant.

<sup>2</sup> Section 5.12 added pursuant to Ordinance #2018-19