

ZONING TEXT AMENDMENT: NONCONFORMING STRUCTURES CHANGES  
(P24-099-ZTA)

CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

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## PROJECT SUMMARY

- Project Name & Case #:
  - Nonconforming Structures Changes
  - P24-099-ZTA
- Applicant:
  - City of Hendersonville
- Zoning Ordinance Articles Amended:
  - Sec. 6-2-2 Nonconforming structures.
- Planning Board - Legislative Committee Meeting
  - December 17<sup>th</sup>, 2024



### *Summary of Amendment Petition:*

City staff is proposing revisions to the City's zoning ordinance to support post-disaster recovery. The key changes focus on allowing nonconforming residential structures to be rebuilt, regardless of the extent of the damage.

Staff believes these changes will not only assist individuals still recovering from the aftermath of Hurricane Helene but will also provide support in the future if and when new storms impact the City.

The planning board recommended the ZTA for approval but recommended that nonconforming residential structures should only be allowed to rebuild during a mayoral declared disaster.

## AMENDMENT ANALYSIS - AMENDMENT OVERVIEW

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The aftermath of Hurricane Helene highlighted the need for the City of Hendersonville to promote resilience in post-disaster recovery. Access to safe housing in the immediate aftermath of a storm is critical. City staff identified the need for permitting repairs to nonconforming residential structures throughout the City and its extraterritorial jurisdiction (ETJ) to enable quicker recovery times for individuals.

To facilitate these solutions, staff has proposed several revisions to the zoning ordinance.

Staff has proposed a revision to the City's nonconforming structures ordinance to distinguish between residential and commercial nonconforming structures when they are destroyed by a natural disaster or Act of God. The goal is to expedite the recovery process for individuals affected by such events, enabling them to regain safe shelter as quickly as possible.

Under the proposed revision, nonconforming residential structures could be reconstructed regardless of the extent of the damage. Previously, if the renovation costs exceeded 50% of the structure's value, the building would need to comply with current zoning requirements. It is important to note that this ordinance will not affect the floodplain administrator's authority to require homes in the 100-year floodplain to comply with the City's Flood Damage Protection Ordinance.

Planning board supported the change but recommended that instead of allowing nonconforming structures destroyed by Act of God to be rebuilt, it should be limited to only destroyed structures to be rebuilt during a mayoral declared state of emergency.

### STAFF PROPOSED ZONING TEXT AMENDMENT - NONCONFORMING STRUCTURES

The following language is recommended for addition / ~~deletion~~.

(Code 1971, § 17-4)

#### **6-2-2 Nonconforming structures.**

A nonconforming structure is a building or other structure which lawfully existed prior to the effective

date of this ordinance, or an amendment thereto, and which no longer could be built under the terms of this ordinance, as amended, by reason of restrictions on area, footprint, open space, building height, setbacks, lot width, or other requirements concerning the structure.

- a) A nonconforming structure devoted to a use permitted in the zoning classification in which it is located may continue to be used only in accordance with the provisions of this section.
- b) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.
- c) Except as provided in subsections (d) and (e) below, a nonconforming structure shall not undergo a change of use, renovation or expansion.
- d) A nonconforming structure may undergo a change of use or renovation without having to bring the structure into conformity with the requirements of these regulations, provided that:
  - 1) The change in use or renovation does not increase the floor area of the structure.
  - 2) The change in use is to a permitted use within the district.
  - 3) The number of parking spaces provided for the use is in conformity with the requirements of these regulations.
- e) A nonconforming structure may be expanded, without bringing the nonconforming structure into conformity with these regulations, only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place are both brought into conformity with the requirements of this ordinance.
- f) A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning classification in which it is located.
- g) Where a nonconforming residential structure is damaged by fire, flood, wind, or other act of God, ~~and such damage does not exceed 50 percent of the current assessed taxable value of the structure,~~ it may be restored to its original dimensions and conditions as long as a building permit for the restoration is issued within 12 months of the date of the damage.
- h) Where a nonconforming commercial structure is damaged by fire, flood, wind, or other act of God, and such damage does not exceed 50 percent of the current assessed taxable value of the structure, it may be restored to its original dimensions and conditions as long as a building permit for the restoration is issued within 12 months of the date of the damage.

#### PLANNING BOARD RECOMMENDED ZONING TEXT AMENDMENT – NONCONFORMING STRUCTURES

Planning Board recommended for approval all staff changes, but recommended that nonconforming residential structures should only be allowed to rebuild if the damaged occurred during a mayoral declared state of emergency. The following language is recommended for addition / ~~deletion~~.

#### **6-2-2 Nonconforming structures.**

A nonconforming structure is a building or other structure which lawfully existed prior to the effective date of this ordinance, or an amendment thereto, and which no longer could be built under the terms of this ordinance, as amended, by reason of restrictions on area, footprint, open space, building height, setbacks, lot width, or other requirements concerning the structure.

- a) A nonconforming structure devoted to a use permitted in the zoning classification in which it is located may continue to be used only in accordance with the provisions of this section.
- b) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures.
- c) Except as provided in subsections (d) and (e) below, a nonconforming structure shall not undergo a change of use, renovation or expansion.
- d) A nonconforming structure may undergo a change of use or renovation without having to bring the structure into conformity with the requirements of these regulations, provided that:
  - 1) The change in use or renovation does not increase the floor area of the structure.
  - 2) The change in use is to a permitted use within the district.

- 3) The number of parking spaces provided for the use is in conformity with the requirements of these regulations.
- e) A nonconforming structure may be expanded, without bringing the nonconforming structure into conformity with these regulations, only if the part of the structure to be expanded and the area of the lot into which the expansion is taking place are both brought into conformity with the requirements of this ordinance.
  - f) A nonconforming structure shall not be moved unless it thereafter conforms to the standards of the zoning classification in which it is located.
  - g) Where a nonconforming structure is damaged by fire, flood, wind, or other act of God, and such damage does not exceed 50 percent of the current assessed taxable value of the structure, it may be restored to its original dimensions and conditions as long as a building permit for the restoration is issued within 12 months of the date of the damage.
  - h) Where a nonconforming residential structure is damaged or destroyed during a mayoral declared state of emergency in the City of Hendersonville, ~~and such damage does not exceed 50 percent of the current assessed taxable value of the structure~~, it may be restored to its original dimensions and conditions as long as a building permit for the restoration is issued within 12 months of the date of the damage.

Legislative Committee of the Planning Board – December 17<sup>th</sup>, 2024

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Planning Board Members Present: Donna Waters, Peter Hanley, Bob Johnson, and Jim Robertson

The Legislative Committee reviewed the zoning text amendment, expressing support for the portions of the ordinance related to recreational vehicles. However, there were concerns regarding the version of the ordinance addressing nonconforming structures. The original proposal aimed to eliminate the 50% threshold based on the current assessed value for all structures (both residential and commercial). This approach was not well-received by most committee members, who expressed concerns that it could undermine the purpose of nonconforming structures — to phase out those that do not comply with updated zoning requirements.

**GENERAL ZONING TEXT AMENDMENT STANDARDS**

<p>1) COMPATIBILITY</p>	<p><b><u>EXISTING CONDITIONS</u></b>                  The revision of the zoning text amendment will make it easier for homeowners to rebuild their homes regardless of whether they are no longer deemed to conform with the current zoning standards.</p>
	<p><b><u>GEN H COMPREHENSIVE PLAN GOALS</u></b> (Chapter IV)  <b>Vibrant Neighborhoods:</b> Consistent  <b>Abundant Housing Choices:</b> Consistent  <b>Healthy and Accessible Natural Environment:</b> N/A  <b>Authentic Community Character:</b> Consistent  <b>Safe Streets and Trails:</b> N/A  <b>Reliable &amp; Accessible Utility Services:</b> Consistent  <b>Satisfying Work Opportunities:</b> N/A  <b>Welcoming &amp; Inclusive Community:</b> N/A  <b>Accessible &amp; Available Community Uses and Services:</b> N/A  <b>Resilient Community:</b> Consistent</p>
	<p><b><u>GEN H COMPREHENSIVE PLAN GUIDING PRINCIPLES</u></b> (Chapter IV)  <b>Mix of Uses:</b> N/A  <b>Compact Development:</b> N/A  <b>Sense of Place:</b> N/A  <b>Conserved &amp; Integrated Open Spaces:</b> N/A  <b>Desirable &amp; Affordable Housing:</b> N/A  <b>Connectivity:</b> N/A  <b>Efficient &amp; Accessible Infrastructure:</b> Consistent</p>
<p>2) Changed Conditions</p>	<p><b>Whether and the extent to which there are changed conditions, trends or facts that require an amendment -</b></p>
	<p>The City staff believe that it is important to ensure that people can regain access to housing as quickly as possible after a storm. In light of Hurricane Helene which has shown that the City of Hendersonville is not immune from damage and destruction from natural hazards, it is important to update our ordinance to ensure that people can recover as quickly as possible.</p>
<p>3) Public Interest</p>	<p><b>Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare -</b></p>
	<p>Staff has attempted to craft this ordinance so that there will be minimal impact to neighbors.                  Staff has also placed heavy value on keeping residents in their existing homes and existing communities. These ordinance revisions attempt to help allow people to remain in their neighborhoods.</p>
<p>4) Public Facilities</p>	<p><b>Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment</b></p>

	This amendment will have minimal to no impact on public facilities.
<b>5) Effect on Natural Environment</b>	<b>Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife -</b>
	There is minimal impacts on the natural environment.



DRAFT ADOPTED PLAN CONSISTENCY AND TEXT AMENDMENT REASONABLENESS STATEMENT

The petition is found to be [consistent] with the City of Hendersonville Gen H 2045 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

*The petition aligns with the City's adopted plan's policy guidance to establish more resilient communities through recovery from adverse events such as extreme weather or natural hazards.*

We [find/do not find] this proposed subdivision text amendment petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

*DRAFT [Rationale for Approval]*

- *Hurricane Helene has shown that there is a pressing need for the City to create flexibility in its zoning code to support post-disaster recovery.*
- *The proposed text amendment will allow for the rebuilding of nonconforming structures only after a natural disaster or other act of God, thereby aiding in quick recovery for city residents.*

*DRAFT [Rational for Denial]*

- *Nonconforming structures are intended to be phased out of the City over time; therefore, this ordinance could potentially extend the duration for which these structures remain in the City.*