

Bill No. 21-01

Concerning: Amending Chapter 1-19 of the County Code (Zoning Ordinance) to allow variances for nonconforming structures if certain conditions are met

Introduced: January 19, 2021

Revised: February 16, 2021 Draft No. _____

Enacted: March 2, 2021

Effective: May 1, 2021

Expires: April 19, 2021

Frederick County Code, Chapter 1-19

Section(s) 4.220

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council President MC Keegan-Ayer (on behalf of the County Executive)

AN ACT to: Amend Chapter 1-19 of the Frederick County Code (Zoning Ordinance) to allow variances for expanding nonconforming portions of structures if certain conditions are met

Executive: Jan Hadden Date Received: March 9, 2021

Approved: ✓ Date: 3/9/2021

Vetoed: _____ Date: _____

By amending:

Frederick County Code, Chapter, 1-19 Section(s) 4.220

Other: _____

Boldface

Underlining

[Single boldface brackets]

Heading or defined term.

Added to existing law.

Deleted from existing law.

Existing law unaffected by bill.

9 NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF
10 FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby,
11 amended as shown on the attached Exhibit 1.

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M.C. Keegan-Ayer
M.C. Keegan-Ayer, President
County Council of Frederick County,
Maryland

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3 **§ 1-19-3.220. VARIANCES.**

4 (A) The Board of Appeals may authorize a variance in height, lot area and yard regulations.

5 (B) An application for a variance shall be filed with the Board of Appeals only after refusal of
6 zoning approval or an adverse determination has been issued by the Zoning Administrator.

7 (C) The Board of Appeals shall not grant a variance unless and until a public hearing is held
8 and all of the following criteria are met:

9 (1) First, the Board of Appeals shall find that special conditions and circumstances exist
10 which are unique to the land or structure involved and which are not applicable to other lands or
11 structures in the same district.

12 (2) Upon making this finding the Board of Appeals shall also find that the following criteria
13 are met:

14 (a) That the special conditions and circumstances do not result from the actions of the
15 applicant; and

16 (b) The literal interpretation of the provisions of this chapter would result in unreasonable
17 hardship and deprive the applicant of rights commonly enjoyed by other properties in the same
18 district under terms of this chapter; and

19 (c) That granting the variance will not confer on the applicant any special privilege that is
20 denied by this chapter to other lands or structures in the same district; and

21 (d) That the granting of the variance will be in harmony with the general purpose and
22 intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to
23 the public welfare.

24 (D) In granting the variance, the Board of Appeals may prescribe appropriate conditions and
25 safeguards in conformity with this chapter. Violation of such conditions and safeguards, when
26 made a part of the terms under which the variance is granted, is a violation of this chapter.

27 (E) Under no circumstances shall the Board of Appeals grant a variance to allow a use not
28 permissible under the terms of this chapter in the zone involved, or any use expressly or by
29 implication prohibited by the terms of this chapter in said zone.

30 (F) [Under no circumstances shall] Except as specified in § 1-19-4.220(C), the Board of
31 Appeals shall not grant a variance to a nonconforming structure for the portion of structure
32 determined by the Zoning Administrator to be nonconforming.

33 (G) A decision of the Board of Appeals granting a variance will be void 2 years from date of
34 approval by the Board of Appeals unless the use is established, a building permit is issued,
35 construction has begun, or final site development plan approval has been received in accordance
36 with the terms of the decision. Upon written request submitted to the Zoning Administrator no

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1 later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1
2 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

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5 **§ 1-19-4.220. NONCONFORMING STRUCTURES.**

6 (A) A nonconforming structure is a structure lawfully existing January 24, 1977 or on the
7 effective date of an amendment of this chapter that could not be built under the terms of this chapter
8 by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure
9 or its location on the lot. A nonconforming structure may be continued so long as it remains
10 otherwise lawful, subject to the following provisions:

11 (1) The conforming portion of a nonconforming structure may be expanded or modified
12 provided that the expansion or modification does not increase the portion of the structure
13 determined by the Zoning Administrator to be nonconforming.

14 (2) The nonconforming portion of a nonconforming structure may be modified in accordance
15 with the requirements of this chapter provided that the modification reduces the portion of the
16 structure determined by the Zoning Administrator to be nonconforming, or if the modification
17 meets the conditions set forth in subsection (C) below.

18 (3) Such structure once destroyed by any means will not be reconstructed unless:

19 (a) It is in conformity with this chapter; or

20 (b) The Board of Appeals grants a variance;

21 (4) Such structure once moved, will thereafter conform to the regulations for the district to
22 which it is moved.

23 (5) This movement does not include minor shifting or settling of the structure from natural or
24 accidental causes.

25 (B) [Under no circumstances shall] Except as specified below in subsection (C), the Board of
26 Appeals shall not grant a variance to a nonconforming structure for the portion of structure
27 determined by the Zoning Administrator to be nonconforming.

28 (C) The Board of Appeals may grant a variance to expand a nonconforming portion of an existing
29 nonconforming structure only if the proposed expansion does not:

30 (1) increase the original footprint of the nonconforming portion of the structure; or

31 (2) extend farther into the required setback(s) than the existing nonconforming portion(s) of
32 the nonconforming structure; or

33 (3) include the construction of a nonconforming porch, enclosure of an existing
34 nonconforming porch, or the addition of stories on top of a nonconforming porch.

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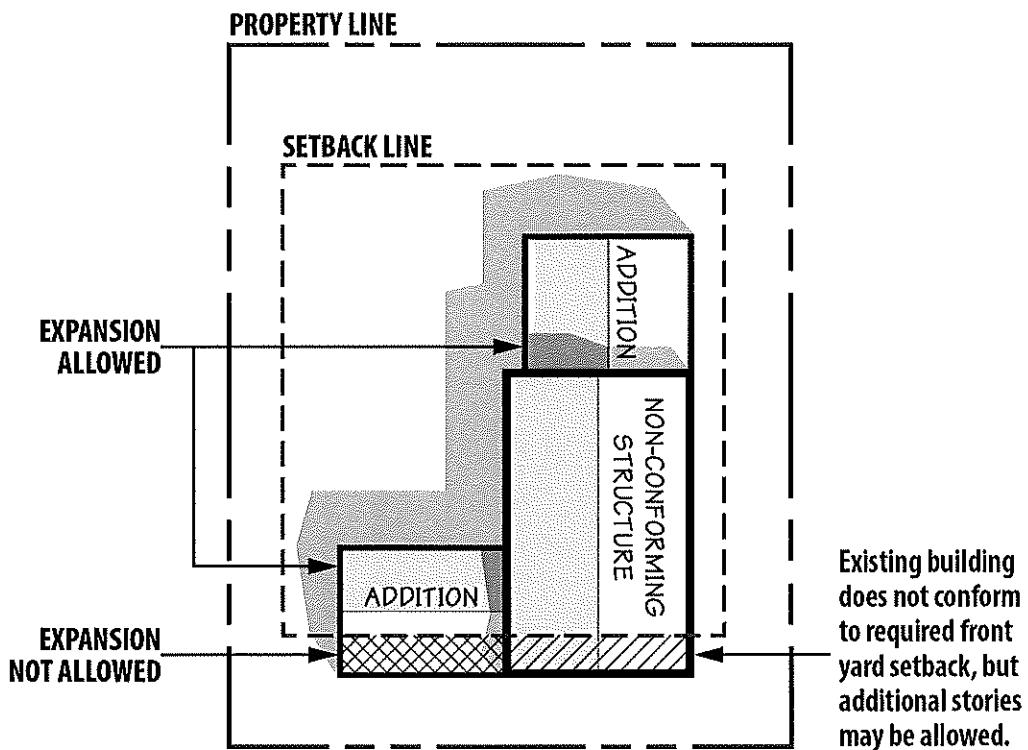
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