

CHAPTER VI – NONCONFORMITIES AND VESTED RIGHTS

12A-601 NONCONFORMITIES

Purpose and Intent:

To define types of nonconforming uses and their ultimate disposition and handling.

1. Nonconformities include lots, structures, land, and other uses.
2. Nonconformities that were otherwise lawful on the effective date of a zoning regulation may be continued. However, these uses are hereby declared to be incompatible with permitted uses in the district involved.
3. The burden shall be on the landowner or developer to establish an entitlement to continue a nonconformity or to complete a nonconforming project.

12A-602 NONCONFORMING LOTS

Purpose and Intent:

To define undeveloped nonconforming lots and requirements and restrictions for lot development.

1. This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. For purposes of this section, a substantial structure shall include any structure in excess of 600 square feet of floor area which was constructed as a principal use permitted in the zoning district at the time of construction. A change in use of a developed nonconforming lot may be accomplished only in accordance with Section 12A-604.
2. When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum lot area applicable to that zoning district, the lot may be used as proposed just as if it were conforming.
3. Notwithstanding any other provision of these Zoning Regulations, the owner of a lot of record located in any single family residentially zoned district may construct one single family detached dwelling unit on such lot, provided that the development conforms to the appropriate dimensional standards of these Zoning Regulations.

12A-603 NONCONFORMING STRUCTURES

Purpose and Intent:

Nonconforming structures are structures or portions thereof that were lawfully erected or altered, but which do not comply with the regulations applicable to new structures in the zoning district in which they are located. This section defines the requirements for the extension, enlargement, repair, maintenance, restoration, and replacement of nonconforming structures.

1. Extension or Enlargement.

Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of an existing nonconformity. Physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

- A. An increase in the total amount of space or building area devoted to a nonconforming use.
- B. Greater nonconformity of dimensional restrictions such as setback requirements, height limitations, density requirements, or any other requirements prescribed in these Zoning Regulations.
- C. A nonconforming structure may be extended or enlarged to an extent that the costs of the extension or enlargement will not exceed fifty percent (50%) of the appraised value of the structure at the time the extension or enlargement occurs.

2. Repair, Maintenance, Restoration, and Replacement.

- A. If a nonconforming structure is damaged by fire, explosion, act of God, or the public enemy to an extent that the costs of repair or restoration will exceed fifty (50%) percent of its appraised value of the structure at the time the damage occurs, the damaged portions of the structure may be repaired or restored to their exact dimensional states (size, shape, building footprint, height, etc.) prior to the destruction, provided that it meets all applicable building code requirements.
- B. If a nonconforming structure is destroyed by fire, explosion, act of God, or the public enemy, the structure may be replaced with a structure identical in size, shape (building footprint), and height, provided it meets all applicable building code requirements.
- C. Repairs may be made to any nonconforming structure so long as the extent of any original nonconformity is not increased. Any repairs, renovation,

restoration, or replacement of a structure pursuant to this section shall require a permit pursuant to Town regulations.

3. For purposes of this chapter:
 - A. The "cost" of renovation or repair or restoration shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair or restoration;
 - B. The "cost" of renovation or repair or restoration shall mean the total cost of all such intended work, and no person may seek to avoid the intent of this chapter by doing such work incrementally or without compensation; and
 - C. The "appraised value" of a structure or improvement shall mean the fair market value of the structure or improvement.

12A-604 NONCONFORMING USES

Purpose and Intent:

Nonconforming uses are uses that were lawfully established and maintained, but do not comply with the use regulations applicable to new uses in the zoning district in which it is located. This section defines the requirements for the extension and/or enlargement, the conditions whereby a change in an existing nonconforming use may be permitted, and the loss of legal nonconforming use status.

1. Extension or Enlargement.
 - A. A nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this ordinance, was manifestly designed or arranged to accommodate such use. A nonconforming use may not be extended to additional buildings or to land outside the original building.
 - B. A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming.
 - C. Where a nonconforming use exists, new equipment and processes may be utilized in order to modernize the operation but not to change the use.
2. Change in Use of Property Where a Nonconformity Exists.
 - A. A change in the use of property where a nonconformity exists may not be made except in accordance with subsections B. through C. of this section.
 - B. If the intended change in use is to a principal use that is permissible in the

zoning district in which the property is located, and all other requirements of this title applicable to that use are satisfied, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this title is achieved, the property may not revert to its nonconforming status.

- C. The change in use shall not be permitted if compliance cannot be achieved without adding additional land to the lot where the nonconformity is found or by moving a substantial structure that is on a permanent foundation.
3. Abandonment and Discontinuance of a Nonconforming Use.
- A. When a nonconforming use is discontinued for a consecutive period of 180 days, the property involved shall thereafter be used only for conforming purposes.
 - B. For purposes of determining whether a right to continue a nonconformity is lost pursuant to this section, all buildings, activities, and operations maintained on a lot are generally to be considered as a whole. However, if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

12A-605 SECTION RESERVED FOR FUTURE USE

12A-606 VESTED RIGHTS

Purpose and Intent:

Providing for the establishment of Vested Rights to develop property pursuant to South Carolina Code of Laws, Title 6, Chapter 29, Article 11.

- 1. Scope and title.

All applicable ordinances, municipal code sections, and regulations relating to zoning, planning and land development within the municipality are subject to the Vested Rights established herein.
- 2. Definitions.
 - A. Except as hereinafter set forth, the words, terms and phrases when used in this Ordinance shall have the meaning as set forth in Section 6-29-1520 of the South Carolina Code of Laws, as enacted by Act 287 of 2004.

- B. "Site specific development plan", in addition and as a supplement to the definition set forth in Section 6-29-1520 of the South Carolina Code of Laws, as enacted by Act 287 of 2004, is further defined to mean those documents that comprise a complete application for a zoning permit, certificate of zoning compliance, variance, special exception, planned unit development, sketch plat or sketch plan, or other similar approval that authorizes the landowner to proceed with investment in grading, installation of utilities, streets, and other infrastructure, and to undertake other significant expenditures necessary to prepare for application for a building permit.
3. Establishment and conditions of vested rights.
- A. A vested right to develop property in accord with a site specific development plan is triggered upon the final approval of the site specific development plan by the final official or body of the municipality authorized to approve a site specific development plan and the payment to the municipality of all applicable established fees.
- B. Except as hereinafter set forth, a vested right established by this Ordinance is subject to the conditions and limitations as set out in Sections 6-29-1540 and 6-29-1550 of the Code of Laws of South Carolina, as enacted by Act 287 of 2004.
- C. A vested right for an approved site specific development plan expires two years after the date of final approval by the final official or body authorized to approve a site specific development plan.
- D. No vested rights are established for phased development plans, including approved or conditionally approved phased development plans and including phased development plans applicable to property proposed for annexation. An approved or conditionally approved site specific development plan is required prior to approval with respect to each phase of a phased development plan.
- E. A vested site specific development plan may be amended if the amendment conforms to, or does not cause greater nonconformity with, the then current provisions of the municipal zoning, planning, and land development ordinances, municipal code sections or regulations. Approval or conditional approval of an amendment does not re-set or re-start the expiration period of a vested right.
- F. No sooner than three (3) months, and no later than forty-five (45) days prior to the expiration of the two-year vested right period for an approved site specific development plan, the landowner of property with a vested right in a site specific development plan may apply to the authorized

official or body for an annual extension of the vested right. The authorized official or body must approve an application for an annual extension of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval. No more than five (5) annual extensions of the vested right may be approved.