

**ARTICLE VII  
NON-CONFORMING USES**

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## **SECTION 70 GENERAL PROVISIONS**

### **Section 70.01 Purpose**

It is the general policy of Clarendon County to allow land uses, certain lots or parcels and other situations that came into existence legally, i.e., they were in conformance with the laws in effect at the time, to continue to exist. However, many aspects of these uses must come into compliance with existing regulations as soon as reasonably possible. This Article establishes the regulations governing non-conforming uses and is intended to:

- (a) Recognize the rights of property owners to continue the reasonable use of their property as defined by state and federal case law;
- (b) Promote conversion of non-conforming land uses to permitted uses;
- (c) Prohibit the expansion, enlargement, or extension of non-conforming uses; and
- (d) Eliminate non-conforming uses within a reasonable time period.

### **Section 70.02 Definition**

A nonconforming use is a use of land, structure, or building that was previously permitted in a zoning district, but due to a change in the Code is no longer permitted in the zoning district. A nonconforming use may be eligible for a vested right determination pursuant to the provisions of Section 74 of this Code.

### **Section 70.03 Continuation**

Any legal non-conforming use shall continue to operate within the limitations provided in this Article. However, the amount of area devoted to a nonconforming land use, nonconforming structure, or nonconforming lot shall not be enlarged, expanded or increased except as permitted by this code. No provisions of this Code shall be interpreted to prohibit the sale or lease of a nonconforming land use or structure.

### **Section 70.04 Repairs and maintenance**

Incidental repairs and maintenance activities necessary to keep a land use in safe condition, to restore an existing structure to a safe condition or to structurally strengthen a building shall be permitted, provided said activity does not enlarge, expand or increase the area of the nonconforming use or structure except as permitted by this Code.

### **Section 70.05 Discontinuance**

Any nonconforming use, or structure, that has been discontinued for a period of 180 consecutive days or more shall lose its nonconforming status and shall come into complete compliance with all pertinent regulations in effect at the time. Among the criteria for determination discontinuance are the following:

- (a) Discontinued utility services;
- (b) Visually obvious abandonment of use; or
- (c) Other such criteria as may be determined by the County Attorney and the Department Director.

### **Section 70.06 Nonconformities created by public action**

When lot areas or setbacks are reduced as the result of conveyance of property to a federal, state or local government for a public purpose, and the remaining area is at least 75 percent of the applicable minimum standards, the lot shall be deemed in compliance with the minimum lot size and setback standards of this Code.

## **SECTION 71 NONCONFORMING USES**

### **Section 71.01 Nonconforming use of land**

- (a) After September 12, 2011, a previously lawful use of land that is no longer permissible under the terms of this Code may continue in use, so long as it remains lawful in other respects;
- (b) Should a nonconforming use become unlawful in any respect, its nonconforming use status shall be forfeited and shall meet all applicable requirements of this Code;
- (c) A nonconforming use shall not be changed to any other use, unless said use conforms to the requirements of this Code;
- (d) A change in use shall mean a substantial change in the character involving activities that result in different external impacts. A change only in the items offered for sale, items being manufactured, or a change in the business name, shall not constitute a change in use; and
- (e) A nonconforming land use shall not be eligible for a variance.

## **SECTION 72 NONCONFORMING STRUCTURES**

### **Section 72.01 Nonconforming structure**

Enlargement or expansion of a non-conforming structure shall be permitted provided such enlargement or expansion shall meet all applicable requirements of this Code.

- (a) After September 12, 2011, a previously lawful structure that is no longer permissible under the terms of this Code may continue in use, so long as it remains lawful in other respects;
- (b) Should a nonconforming structure become unlawful in any respect, its nonconforming use status shall be forfeited and shall meet all applicable standards of this Code;
- (c) If a nonconforming structure is moved from the site on which it is located on September 12, 2011, it shall forfeit its nonconformity and shall be required to conform to the regulations in the district in which it is located;
- (d) A nonconforming structure shall not be changed to any other use unless said conforms to the requirements of this Code;
- (e) A change in use shall mean a substantial change in the character involving activities that result in different external impacts. A change only in the items offered for sale, items being manufactured, or a change in the business name, shall not constitute a change in use;
- (f) 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 district in which such structure is located, and the nonconforming use shall not thereafter be resumed; and
- (g) The provisions of Section 54.04, (concerning manufactured home replacement) shall supersede the requirements of subsections (a) through (f).

## **SECTION 73 NONCONFORMING LOTS/PARCELS**

### **Section 73.01 Lots of record**

- (a) Any lot or parcel created and recorded prior to October 29, 1990 shall be considered a legal nonconforming lot;
- (b) A structure can be constructed on a lot of record that is substandard as to area or width or both only if all the other applicable site development requirements of this Code are met. However, the owner may request and shall receive a 20% reduction in the setback requirements of this code to ensure that the lot can be used.

## **SECTION 74 VESTED RIGHTS**

### **Section 74.01 Purpose**

The purpose of this section is to establish decision points in the project development process that establish vested

rights for a specific land use or structure. Once a land use has established its vested rights, it is protected against changes in the regulations and review practices that effect the specific subject parcel, except as provided by the provisions of 6-29-1530 of the South Carolina Code of Laws, 1976, as amended.

#### **Section 74.02 Vested rights definition**

The term vested rights, commonly known as grandfathering and more completely defined in Article II, essentially means that a lot, use, building, or structure, which was lawfully created or established prior to the effective date of the passage of a law does not have to comply with the new regulations and/or practices, except as provided by the provisions of 6-29-1530 of the South Carolina Code of Laws, 1976, as amended. The only acceptable criteria for determination of a vested rights claim are found below:

- (a) Any structure for which a valid building permit or MH setup permit has been issued prior to September 12, 2011;
- (b) Any lot or structure that has a valid contract of sale executed prior to September 12, 2011;
- (c) A Planned Unit Development that has received approval of its Development Plan prior to September 12, 2011;
- (d) Any development project that has an executed Development Agreement prior to September 12, 2011 ;
- (e) Any subdivision that has received Final Plans approval prior to September 12, 2011;
- (f) Any development project that has submitted a properly completed site plan prior to September 12, 2011; or
- (g) Any other conditions that County Attorney may establish on a case-by-case basis.

#### **Section 74.03 Vested rights determination process**

A property owner that alleges a given use or activity should be granted vested rights to proceed under the regulations and/or practices in place prior to September 12, 2011 and shall have the opportunity to present a claim for vested rights.

The process to determine whether a project has vested rights is as follows:

- (a) The applicant shall submit such documents, materials and/or maps as he determines are pertinent to the specific case in the manner and form determined by the Department;
- (b) The Department Director, after consultation with the County Attorney, shall evaluate each vested rights request based on the criteria described in Section 74.02 and provide the applicant with written findings of fact within 30 working days of submission request by the applicant; and
- (c) If the application is granted vested rights, in whole or in part, the Department's findings shall define the limits or restrictions of the vested rights as may be appropriate; and
- (d) If the application for vested right is denied, in whole or in part, the Department's findings shall specify the reasons for the actions.