



NOTICE OF PUBLIC HEARING TOWN OF SULLIVAN'S ISLAND

First Reading, by Title Only, scheduled for Tuesday, September 25, 2018 at 6:00 p.m. Second Reading and Public Comment scheduled for October 16, 2018 at 6:00 p.m. Meetings are held at 2056 Middle Street, Sullivan's Island, SC.

Proposed text amendments: Modify Zoning Ordinance related to non-conformities, specific sections being:

1. Z.O. Article 16, Section 21-149, General: Text amendments to various subsections of §21-149: General Policy (B); Intent (C); Authority to continue (D).
2. Z.O., Article 16, Section 21-150, Nonconforming Uses: Text amendments to various subsections of §21-150: Expansion (B); Moving (C); Two or more Principal Buildings on one lot (F. 1-4).
3. Z.O., Article 16, Section 21-151, Nonconforming Structures: Text amendments to various subsections of §21-151: Structural alterations (B.2); and, Moving (C).
4. Z.O., Article 16, Section 21-153, Other nonconformities: Text amendments to subsection of §21-153: Increase prohibited (B).
5. Z.O., Article 3, Section 21-20 C. (2) Historic Structure Used as Accessory Dwelling Unit. Text amendment to subsection §21-20 C. (2) (k).
6. Z.O., Article 15 Section 21-140 (A) (11), Accessory Uses and Structures: Text amendment to §21-140 (A) (11) Historic Structures as accessory dwelling units in the RS-District.
7. Z.O., Article 21, Definition of Terms: Text amendment to page 100: Garage, private.
8. Z.O., Article 21, Definition of Terms: Text amendment to page 101: Living Space.

Information regarding these meetings is available at Town Hall (843) 883-3198 or website <http://www.sullivanisland-sc.com>

ORDINANCE 2018-7

ORDINANCE TO AMEND ZONING REGULATIONS REGARDING LEGAL NONCONFORMING USES, STRUCTURES AND CHARACTERISTICS OF NONCONFORMING USES AND STRUCTURES: ARTICLE 16, SECTIONS 21-149, 21-150, 21-151, 21-152; ARTICLE 21, DEFINITIONS; AND, ARTICLES 3 AND 15, REGARDING HISTORIC ACCESSORY DWELLING UNITS.”

WHEREAS, Chapter 21 of the Town of Sullivan’s Island Ordinance which is cited as “The Zoning Ordinance” was originally enacted in 1977; and

WHEREAS, the Town of Sullivan’s Island has, from time to time, amended certain sections of the Zoning Ordinance; and

WHEREAS, the Planning Commission of Sullivan’s Island has studied, discussed and received public feedback related to legal nonconforming structures, nonconforming uses, characteristics of nonconforming uses and historic accessory dwelling units during regular Commission meetings between July 11, 2018 and August 8, 2018; and

WHEREAS, the Planning Commission held a public hearing on August 8, 2018 regarding proposed Zoning Ordinance text changes, at which time the Commission recommended to Council, approval of proposed text changes; and

WHEREAS, Town Council deliberated and discussed recommendations for this issue at the Special Meeting of Town Council on July 2, 2018 and held readings of the ordinance text amendments on September 17, 2018, October 16, 2018 and November 20, 2018; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL IN A MEETING DULY ASSEMBLED, that the following sections of the Town’s Zoning Ordinance be amended as follows:

ARTICLE 16: SECTIONS 21-149, 21-150, 21-151: NONCONFORMITIES

ARTICLE XVI. Nonconformities.**Sec. 21-149. General.****A. Scope.**

The regulations of this Article govern “nonconformities” which are uses, structures, lots, signs and other situations that came into existence legally but that do not conform to one or more requirements of this Zoning Ordinance. These are referred to in this Zoning Ordinance as “nonconformities.” ~~Nonconformities are legal situations and have legal status under this Zoning Ordinance.~~

B. General policy. Authority to Continue. Increase Prohibited.

~~In order to encourage development consistent with this Zoning Ordinance and provide landowners with reasonable use of their land, it is the general policy of the Town to allow uses, structures, signs, lots and other situations that came into existence legally, in conformance with then-applicable requirements, to continue to exist and be put to productive use, but to bring as many aspects of such situations into compliance with existing regulations as is reasonably possible.~~ Any nonconformity that came into existence lawfully and continues to be a lawful use at the time of adoption of this Ordinance or that becomes nonconforming upon the adoption of any amendment to this Zoning Ordinance may be continued in accordance with the provisions of this Article. The extent, degree, size, and frequency of any nonconformity shall not be increased in any manner.

C. Intent.

The regulations of this Article are intended to:

- (1) Recognize the interests of landowners in continuing to use their property;
- (2) Promote reuse and rehabilitation of existing buildings; and
- (3) ~~Place reasonable limits on Prohibit the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the Town as a whole.~~

D. ~~Authority to continue.~~ Reserved

~~Any nonconformity that came into existence lawfully and continues to be a lawful use at the time of adoption of this Ordinance or that becomes nonconforming upon the adoption of any amendment to this Zoning Ordinance may be continued in accordance with the provisions of this Article.~~

E. Determination of nonconformity status.

The burden of proving that nonconformity existed prior to the adoption of this Ordinance or subsequent amendments rests with the subject landowner.

F. Repairs and maintenance.

- (1) Incidental repairs and normal maintenance necessary to keep a Nonconforming Structure in sound condition are permitted unless such repairs are otherwise expressly prohibited by this Zoning Ordinance.
- (2) Nothing in this Article will be construed to prevent Structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of a public official.

G. Change of tenancy or ownership.

Nonconformity status runs with the land and is not affected by changes of tenancy, ownership, or management.

H. Historic buildings.

Buildings designated as historic through the process set forth in the HP Historic Preservation Overlay District, ARTICLE XI shall be considered conforming to this Ordinance as hereinafter provided. This conforming status shall only apply to height, setback, yard, area and other dimensional requirements as found by the Design Review Board to be of historic significance in the designation process. Such finding shall supersede any conflicting standard set forth in the zoning district in which the building is located and shall be applied to the building and the site in making future determinations of conformity as to the existing building or any changes consistent with an approved Certificate of Appropriateness (see Historic Preservation Overlay District, Article XI). Notwithstanding anything to the contrary herein, alteration or removal of architectural features and/or historic fabric considered instrumental in the original designation by the Design Review Board may, at the option of the Design Review Board, result in the loss of historic designation and conforming status. (1/20/09)

Sec. 21-150. Nonconforming uses.

A. Definition.

A Nonconforming Use is a land use that was legally established but that is no longer allowed by the use regulations of the Zoning District in which it is located.

B. Expansion.

A Nonconforming Use shall not be expanded. ~~except to eliminate or reduce the nonconforming aspects.~~

- (1) A Nonconforming Use may not be extended to any portion of a completed building that was not occupied by that use when it became nonconforming.
- (2) A Nonconforming Use may not be extended to additional buildings, land outside the original building, additional patron space, or additional outdoor space.
- (3) A Nonconforming Use of land or outdoor space may not be extended to cover more land or outdoor space than was occupied by that use when it became nonconforming.
- (4) The extent, degree, intensity, or frequency of a Nonconforming Use may not be increased.
- (5) Physical alteration, expansion or extension of structures, expansion or increase of outdoor space, and expansion or increase of patron space are unlawful if they result in any increase in the total amount of volume, square footage, outdoor space square footage, or patron space square footage devoted to a nonconforming use.
- (6) New and existing recreational facilities and accessory uses are allowed in the RS-Residential District in accordance with the minimum standards set forth in Article XV (Accessory Uses and Structures) and Article III (RS-District standards). New recreational facilities may not be established for nonconforming commercial uses and nonconforming vacation rentals which increase the patron or occupant space square footage devoted to a nonconforming use.

C. Moving.

A Nonconforming Use shall not be moved in whole or in part to another location on the lot unless the movement or relocation eliminates or decreases the extent of nonconformity. When moving or elevating a nonconforming use to meet FEMA compliance, said moving does not constitute an increasing in the degree of nonconformity, however, will still require conformance with Sections 21-149 and 21-150.

D. Damage or destruction of a nonconforming use.

- (1) When a building or structure containing a Nonconforming Use is damaged by intent or by neglect, not caused by natural disaster, civil strife or uncontrollable accident, to the extent of more than fifty percent (50%) of its assessed value based on the most recent property assessment, the use shall not be restored except in conformity with the regulations this Zoning Ordinance.
- (2) When a building or structure containing a Nonconforming Use is damaged by natural disaster, civil strife or uncontrollable accident to the extent of more than fifty percent (50%) of its assessed value

based on the most recent property assessment, the use may be restored in as close conformity with the regulations of this Zoning Ordinance as possible. A Certificate of Zoning Compliance and a Building Permit shall be obtained within twelve (12) months of the date of occurrence of such damage, and once issued, construction shall be diligently pursued and completed within two (2) years from the date of the occurrence of such damage.

- (3) When a building or structure containing a Nonconforming Use is damaged by less than fifty percent (50%) of its assessed value, a Certificate of Zoning Compliance and a Building Permit shall be obtained within twelve (12) months of the date of occurrence of such damage, and once issued, construction shall be diligently pursued and completed within two (2) years from the date of the occurrence of such damage.

E. Abandonment of a nonconforming use.

- (1) A Nonconforming Use shall be considered abandoned when any of the following occurs:
- (a) The intent of the owner to discontinue the use is apparent;
 - (b) The use has been discontinued for a period of twelve (12) months or more;
 - (c) A demolition permit has been applied for;
 - (d) The characteristic equipment and furnishings associated with the Nonconforming Use have been removed from the premises and have not been replaced by similar equipment within 90 days, unless other facts show intention to resume the Nonconforming Use;
 - (e) The Nonconforming Use has been replaced by a conforming use;
or
 - (f) A Certificate of Zoning Compliance nor a Building Permit to reconstruct a damaged nonconforming use has been secured within twelve (12) months of the date of occurrence of such damage nor has construction been diligently pursued and completed within three (3) years from the date of the occurrence of such damage.
- (2) Once a Nonconforming Use is abandoned, the use's nonconforming status shall be lost and any subsequent use of the property shall comply with the regulations of the zoning district in which it is located.

F. Two or more Principal Buildings on one lot

In the event that two or more Principal Buildings occupy a single lot, said occupancy shall constitute a nonconforming use. ~~One structure~~ The use

of one of the Principal Buildings shall be ~~designated~~ conforming and the other(s) shall be nonconforming. ~~under the following procedure:~~

- (1) If a request to improve the property is received, or a request for a zoning statement is received, the following procedure will be used. The use of the ~~the Zoning Administrator shall designate the~~ Principal Building with the greatest livable square footage, including porches, shall be a as a conforming use and the other Principal Building as nonconforming use.
- (2) The designation of conforming and nonconforming use of the Principal Buildings shall be recorded on the Certificate of Occupancy, or a zoning statement issued by the Zoning Administrator which is to be maintained on file in the Town Hall.
- (3) A Building Permit for improvements to the designated conforming Principal Building may be considered favorably, provided all other requirements of the Town Ordinances are met. The Principal Building in which the use is nonconforming ~~non-conforming structure(s)~~ shall be regulated in accordance with ~~Subsections A-E~~ Sections 21-149 through 21-151.
- (4) No Improvements or modifications to the Principal Building in which the use is nonconforming can be made unless a Building Permit is issued.

G. **Vacation rental.**

Nothing contained herein shall be construed to allow the continued use of a Vacation Rental after damage or destruction of greater than fifty percent (50%) of its assessed value, regardless of reason for such damage or destruction.

H. **Accessory uses.**

A use accessory to a principal Nonconforming Use may not be continued after the principal use has been abandoned, unless the use is a permitted Accessory Use in the base zoning district and any applicable overlay district.

Sec. 21-151. Nonconforming structures.

A. **Definition.**

A Nonconforming Structure is any building or structure that was legally established but no longer complies with the density, lot coverage, floor area, height and dimensional standards of this Zoning Ordinance. Nonconforming Structures may remain, subject to the regulations of this Article.

B. **Structural alterations.**

- (1) Structural alterations, including enlargements, are permitted if the structural alteration does not increase the extent of nonconformity.

- (2) When a structure is nonconforming because it encroaches into a required Side or Rear Yard Setback, this provision shall be interpreted as allowing other portions of the structure to be expanded out to the extent of the existing encroachment provided the expansion does not exceed the height of the existing structure and does not extend the linear distance of the encroachment by more than fifty percent (50%) of the existing nonconforming structure. ~~as long as there is no~~ No greater encroachment into a required setback shall be permitted.
- (3) When a structure is nonconforming because it encroaches into a required Front Yard Setback, this provision shall be interpreted as prohibiting other portions of the structure from being expanded out to the extent of the existing encroachment.

c. Moving.

A Nonconforming Structure may be moved in whole or in part to another location only if the movement or relocation decreases or eliminates the nonconformity. When moving or elevating a nonconforming structure to meet FEMA compliance, said moving does not constitute an increasing in the degree of the nonconformity, however, said moving will still require conformance with Sections 21-149 through 21-151.

Sec. 21-153. Other nonconformities.

A. Examples.

The types of other nonconformities include but are not necessarily limited to: landscaping, screening, parking - and other nonconformities not involving structural aspects of a building, location of a building on a lot, lot dimensions or land or building use.

~~**B. Increase prohibited.**~~

~~As buildings, lots or parking areas are redeveloped, it is the intent of this Zoning Ordinance to encourage the reduction of nonconformities to the maximum extent feasible. When redevelopment occurs, the extent of the nonconformity shall not be increased or modified in any manner that would increase the degree of nonconformance.~~

Sec. 21-154. Reserved.

Sec. 21-155. Reserved.

Article 21, Definition of Terms

Garage, private. An accessory building or portion of a Principal Building used ~~only~~ primarily for the private storage of motor vehicles, campers, boats, boat trailers, ~~and~~ lawn mowers, or other items as an accessory use.

Living Space. Any interior or exterior portion of a Dwelling used for residential or home occupation purposes including closets and hallways but excluding basements or attics used only for storage.

Article 21-20 C. Special Exceptions in the RS-District

(2) (k) Historic structure used as accessory dwelling unit.

(2) Historic structure used as accessory dwelling unit.

(k) If the historic structure used as an accessory dwelling is ~~destroyed, it may not be replaced.~~ damaged or destroyed, by natural disaster, civil strife or uncontrollable accident, by more than fifty percent (50%) of its assessed value based on the most recent property assessment, the structure may be repaired in accordance with its pre-existing footprint, square footage, setbacks, and lot coverage. The Zoning Administrator shall rely on all credible information provided by the owner and/or available from the Town, to establish the damaged or destroyed structure's pre-existing condition and lot location. A Certificate of Zoning Compliance and a Building Permit shall be obtained within twelve (12) months of the date of occurrence of such damage, and once issued, construction shall be diligently pursued and completed within two (2) years from the date of the occurrence of such damage. If FEMA regulations require the structure's foundation to be elevated over fifty percent (50%) above its original elevation, the Design Review Board shall determine whether or not the reconstruction shall be required to meet the current Zoning Ordinance's Setback requirements.

Article 21-140 (A) (11), Accessory Uses and Structures

A. Historic Structures as accessory dwelling units in the RS-District.

11. If the historic structure used as an accessory dwelling is ~~destroyed, it may not be replaced.~~ damaged or destroyed, by natural disaster, civil strife or uncontrollable accident, by more than fifty percent (50%) of its assessed value based on the most recent property assessment, the structure may be repaired in accordance with its pre-existing footprint, square footage, setbacks, and lot coverage. The Zoning Administrator shall rely on all credible information provided by the owner and/or available from the Town, to establish the damaged or destroyed

structure’s pre-existing condition and lot location. A Certificate of Zoning Compliance and a Building Permit shall be obtained within twelve (12) months of the date of occurrence of such damage, and once issued, construction shall be diligently pursued and completed within two (2)) years from the date of the occurrence of such damage. If FEMA regulations require the structure’s foundation to be elevated over fifty percent (50%) above its original elevation, the Design Review Board shall determine whether or not the reconstruction shall be required to meet the current Zoning Ordinance’s Setback requirements.

That should any part of this Ordinance be held invalid by a court of competent jurisdiction; the remaining parts shall be severable and shall continue to be in full force and effect.

That this Ordinance takes effect and be in full force immediately.

Approved by the Town of Sullivan’s Island Council on the ____ day of _____, 2018

Patrick M. O’Neil, Mayor

Attest:

Courtney Liles, Town Clerk

First reading: _____

Second reading: _____

Ratification: _____

Attest to Form:

Lawrence Dodds, Esq., Town Attorney