

- Proposed text amendments are underlined.
- Text in “blue,” are changes in response to Planning Commission and public comments on July 11, 2018.

## 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.~~

**Commented [JH1]: Add: 21-149 B:**  
From 21-149 D. Describe types of prohibited expansion noted in 21-153.

#### 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.~~

**Commented [JH2]: Per PC comment on 7-11-18**  
Delete for clarity. “alteration” and “adverse effect” subject to interpretation and unclear.

#### 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.~~

**Commented [JH3]: Add: 21-149 D:**  
Move language to Section B.

#### 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, ~~even if the building or portion of the building was specifically designed or arranged to accommodate such use.~~
- (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

**Commented [JH4]: Add: 21-150 B 1-5:**

- (1) Prohibits expansion within a structure
- (2) Prohibits restaurants from expanding throughout the lot
- (3) Prohibits expansion of outdoor spaces
- (4) Prohibits increases in NCU
- (5) Prohibits any expansion or extension of the structure.

**Commented [JH5]: Add: 21-150 B (6): Per PC comment on 7-11-18**

Allows nonconforming residential uses to continue to utilize accessory recreational spaces and uses. Prohibits new commercial spaces for patron/occupants

**Commented [JH6]: Add: 21-150 C: FEMA requires that**

use/structure be elevated if work exceeds 50% of the structure's value. If this occurs, the provision prohibits expansion or extension of the structure.

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 Buildings as nonconforming use.
- (2) ~~The designation of conforming and nonconforming~~ use of the Principal Buildings shall be recorded on the Certificate of Occupancy ~~that is on file in the Town Hall, 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

Commented [JH7]: Add: 21-150 F: Change to clarify language

Commented [JH8]: Add: Per PC comment on 7-11-18

Commented [JH9]: Add: Per PC comment on 7-11-18  
-Zoning Statement must be requested  
-Must be on file in Town Hall

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.~~

~~(3)(4) No Improvements or modifications to the Principal Building in which the use is nonconforming can be made unless a Building Permit is issued.~~

**Commented [JH10]:** Delete: "modifications" is too broad. Painting could be a modification. Delete for clarity.

**Commented [JH11]:** Add: 21-150 F 1-4:  
(2) Change to clarify language and process. Staff may document existence of two Principal Buildings by Certificate of Occupancy or Zoning Statement.  
(4) Building Permits are always required.

**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%).~~ ~~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.

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**Commented [JH12]:** Add: 21-151 B (2): This section prevents large additions along a setback encroachment that may substantially impact neighboring uses.

**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.~~

**Commented [JH13]:** Add: 21-151 C: FEMA requires the structure be elevated if work exceeds 50% of the structure's value. If this occurs, the provision prohibits expansion or extension of the structure.

**D. Damage or destruction of a nonconforming structure.**

- (1) When a Nonconforming Structure is 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.

- (2) When a Nonconforming Structure is damaged by intent or by neglect, by more than fifty percent (50%) of its assessed value based on the most recent property assessment, the structure shall be restored in conformity with the Zoning Ordinance in effect at the time a building permit is issued.
- (3) When a Nonconforming Structure is damaged by less than fifty percent (50%) of its assessed value based on the most recent property assessment, the structure may be reconstructed in accordance with its pre-existing footprint, height, 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 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.

**E. Abandonment of a nonconforming structure.**

- (1) A Nonconforming Structure will be considered abandoned when any of the following occurs:
  - (a) The owner has discontinued all use of the structure for a period of 12 months or more;
  - (b) A demolition permit has been applied for; or
  - (c) A Certificate of Zoning Compliance or a Building Permit to reconstruct a damaged Nonconforming Structure has not been secured within twelve (12) months of the date of occurrence of such damage, nor has construction under said permit been diligently pursued and completed within three (3) years from the date of the occurrence of such damage.
- (2) Once a Nonconforming Structure shall be deemed abandoned, its nonconforming status shall be lost and the structure, or any replacement, shall comply with the regulations of the zoning district in which it is located.

**Sec. 21-152. Nonconforming lots.**

**A. Definition.**

A Nonconforming Lot is a duly recorded lot of record established prior to adoption of the Town's first Zoning Ordinance that does not comply with the minimum Lot Area, lot width or lot depth requirements of this Zoning Ordinance.

**B. Use of nonconforming lots.**

- (1) A Nonconforming Lot may be developed to the extent that the development can be accomplished in accordance with the standards set out in this Zoning Ordinance.
- (2) This Article shall not protect Nonconforming Lots that have access only to a paper, unimproved street. Owners of such lots shall replat such lots in conformity with the subdivision regulations and the applicable regulations of this Zoning Ordinance before seeking a Certificate of Zoning Compliance and a Building Permit or otherwise seeking to use one or more of such lots.
- (3) No action shall be taken that further reduces the Lot Area of a Nonconforming Lot. Any such action may be prosecuted as a violation of this Zoning Ordinance and shall deprive the owner and any subsequent owner of the protection afforded by this Zoning Ordinance.

**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.**

**Sec. 21-156. Reserved.**

**Commented [JH14]:** Combined with Section 21-149 B.  
*Authority to Continue. Increase Prohibited.*

## 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.

Greenhouse: A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of plants for personal enjoyment.

Historic Preservation Overlay District: An area, designated by the Town Council pursuant to the provisions of this Article. The District may contain one or more significant historic structures and landmarks and may have within its boundaries or other property or structures that are not of such historic and/or architectural significance to be designated as landmarks, nevertheless, contribute to the overall visual characteristics of the district.

Historic Property. Any place (including an archaeological site or the location of a significant historical event), building, structure, work of art, fixture or similar object that has been individually designated by Town Council of Sullivan's Island or designated as a contributing property within a historic district.

HVAC. Heating, ventilation and air conditioning.

Impervious Coverage Area. That portion of the Lot Area covered by an impervious surface.

Impervious Surface. Any material or structure through which water cannot be absorbed or passed without limitation, including but not limited to roofed structures, compacted soil or stone, pavement consisting of asphalt, concrete, oil and stone, tar, or asphalt. Impervious surfaces also include building foundations, porches, decks, patios, sidewalks, play courts (tennis, basketball, etc.), pools, and other improvements that impede the absorption of water. Grassed or mulched areas are not considered impervious materials.

Improved Access. All driveways except natural grass or lawn areas.

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.

Loading Space, Off-Street. Space logically and conveniently located for pickups and deliveries, scaled to delivery vehicles, and accessible to such vehicles when required off-street parking spaces are filled.

Long Term Rental. The use of a Principal Building(s) that is: (1) rented, leased, assigned for tenancies; or (2) made available for one or more persons in return for valuable consideration for any period of more than twenty-eight (28) continuous days duration.

Lot or Lot of Record. A land area designated as a separate and distinct parcel, tract or property on the most recent legally recorded plat filed and/or approved by the Town of Sullivan's Island, or in the absence of a legally recorded plat, that as described on the most recent legally recorded deed executed and delivered by the Town of Sullivan's Island, both or either as filed in the Office of Register of Mesne Conveyance of Charleston County; provided, however, that for the purpose of determining whether such lot is a separate, distinct building lot, or lot suitable for independent conveyance, any and all applicable restrictions and limitations in the chain of title shall be considered. (9-18-07)

Lot Line. A legal boundary line of a lot.

Lot, Corner. A lot located at the intersection of two or more streets.

**Commented [JH15]:** Leave open-ended... many other items can be stored in garages.

**Commented [JH16R15]:**

**Commented [JH17]:** The living space for nonconforming dwellings/uses should be more specifically defined. Exterior spaces, including accessory uses and structures also constitute part of the nonconforming use and should be prohibited form expansion.

Article 21-20 C. (2), Historic structure used as accessory dwelling unit

C. **Special exceptions in the RS-District.**

(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.

**Commented [JH18]:** Suggested by member of the public. Current ZO is not consistent with Section 21-151 D. (1), which allows all other nonconforming structures to be rebuilt if destroyed by natural disaster, accident, etc.