

ARTICLE 19 – NONCONFORMING USES

TABLE OF CONTENTS		Page
19.1	Purpose	19-1
19.1.1	Permitted Continuation.....	19-1
19.1.2	No Enlargement or Expansion.....	19-1
19.1.3	Incompatible with Permitted Uses	19-2
19.2	Applicability	19-2
19.2.1	Nonconforming Uses Defined.....	19-2
19.2.2	Determination of Nonconforming Uses.....	19-2
19.2.3	Determination of Nonconforming Lots, Buildings and Structures	19-2
19.2.4	Determination of Nonconforming Site Improvements	19-2
19.3	Nonconforming Lots of Record	19-2
19.3.1	Preexisting Nonconforming Lot	19-2
19.3.2	Subsequent Nonconforming Lot.....	19-2
19.3.3	Required Combination of Subsequent Nonconforming Lots	19-3
19.4	Waiver of Setback Requirement	19-3
19.4.1	Waiver for Minor Error	19-3
19.4.2	Waiver for Major Error	19-3
19.4.3	Approval Criteria	19-3
19.4.4	Notifications	19-3
19.5	Change of Nonconforming Use	19-3
19.5.1	Change to Different Nonconforming Use Prohibited	19-3
19.5.2	Expansion Prohibited	19-3
19.5.3	Reversion of Nonconforming Use Prohibited.....	19-4
19.5.4	Change in Ownership.....	19-4
19.6	Nonconforming Buildings, Structures and Site Improvements.....	19-4
19.6.1	Applicability	19-4
19.6.2	Repair and Reconstruction from Damage.....	19-4
19.6.3	Renovation and Expansion	19-4
19.7	Abandonment of Nonconforming Uses, Buildings, Structures and Site Improvements	19-5
19.7.1	Abandonment of Use or Activity	19-5
19.7.2	Abandonment of Building, Structure or Site.....	19-5
19.7.3	Definition	19-5
19.8	Nonconforming Uses Resulting from Annexation	19-5
19.9	Nonconforming Billboards.....	19-6

19.1 PURPOSE

19.1.1 Permitted Continuation

It is the purpose of this Article to permit nonconforming uses to continue, under regulations herein contained, until the same are voluntarily or involuntarily removed, but not to encourage their perpetual survival.

19.1.2 No Enlargement or Extension

It is further the intent of this Article that nonconforming uses shall not be enlarged, extended, reconstructed or be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

ARTICLE 19 – NONCONFORMING USES

19.1.3 Incompatible with Permitted Uses

Nonconforming uses are hereby declared to be incompatible with the permitted uses in the districts involved.

19.2 APPLICABILITY

19.2.1 Nonconforming Uses Defined

Within districts established by this Chapter or amendments thereto, there exist lots, structures, site improvements, activities and uses of land or structures, and characteristics of uses, which were lawful before the effective date this Chapter was enacted, amended or otherwise made applicable to such lots, structures, improvements, activities and uses of land or structures, but which now do not conform to the regulations of the district in which they are located. These lots, structures, site improvements, activities and uses of land or structures are defined as nonconforming uses, nonconforming buildings or structures or nonconforming site improvements.

19.2.2 Determination of Nonconforming Uses

Nonconforming uses and activities shall be determined pursuant to the Use Matrix, Table 3-2.

19.2.3 Determination of Nonconforming Lots, Building and Structures

Nonconforming lots, buildings and structures, except signs, which are governed by Article 13, shall be determined by the prescribed dimensional and design standards for lots, buildings and structures located in base zoning districts, special zoning districts, and overlay zoning districts provided for in this Chapter.

19.2.4 Determination of Nonconforming Site Improvements

Nonconforming site improvements shall be determined by the prescribed improvement standards related to parking, drainage, landscaping, buffers and other standards contained in this Chapter.

19.3 NONCONFORMING LOTS OF RECORD

19.3.1 Preexisting Nonconforming Lot

Where a lot of record at the time of the effective date of this Chapter has less area, width or depth than herein required in the district in which it is located, and the owner of such lot does not own any other parcel or tract adjacent thereto, said lot may nevertheless be used for any use permitted within the district in which it is located, provided that the setback requirements as provided for in Table 3-5 are reduced by no more than forty percent (40%).

19.3.2 Subsequent Nonconforming Lot

Where the owner of a lot that was subdivided subsequent to the effective date of this Chapter does not own sufficient land to enable him to conform to the dimensional requirements of Table 3-5, such lot may be used as a building site provided the proposed structure conforms to the minimum setback requirements only after a variance has been granted by the Board of Zoning Appeals pursuant to §18.4.5.4.2.

ARTICLE 19 – NONCONFORMING USES

19.3.3 Required Combination of Subsequent Nonconforming Lots

If the owner of two (2) or more adjoining undeveloped lots with substandard dimensions, any one (1) of which was subdivided subsequent to the effective date of this Chapter, wishes to build upon any of the nonconforming lots, the lots must be combined and if the resulting lot or lots conform to the dimensional requirements of Table 3-5, Maximum Number of Flag Lots, they may be used as a building site or sites. If the resulting lot or lots does not conform to the dimensional requirements of Table 3-5, the owner may appeal for a variance pursuant to §19.3.2.

19.4 WAIVER OF SETBACK REQUIREMENT

19.4.1 Waiver for Minor Error

An unintentional error in the location of a structure, as it relates to any applicable setback requirement, which was overlooked during the review of a building permit application, or was discovered during or after construction, and provided that the mislocation of the structure results in a reduction of the required setback of no more than ten percent (10%) of the specific applicable setback requirement, is classified as a "minor error." Waivers for minor errors may be approved by the Director.

19.4.2 Waiver for Major Error

An unintentional error in the location of a structure, as it relates to any applicable setback requirement, which was overlooked during the review of a building permit application, or was discovered during or after construction, provided that the mislocation of the structure results in a reduction of the required setback of more than ten percent (10%) of the specific applicable setback requirement, is classified as a "major error." Waivers for major errors may be approved by the Board of Zoning Appeals upon application of the property owner or the Director.

19.4.3 Approval Criteria

In granting a waiver of setback requirement, the Director or the Board of Zoning Appeals, as applicable, must find that:

- a. the error was unintentional; and
- b. the granting of the waiver will not be of substantial detriment to adjacent property or the public good and the character of the district will not be harmed by the granting of the waiver.

19.4.4 Notifications

All waivers for minor errors issued by the Director shall be furnished to the Board of Zoning Appeals and recorded in the minutes thereof.

19.5 CHANGE OF NONCONFORMING USE

19.5.1 Change to Different Nonconforming Use Prohibited

A nonconforming use of land, building or structure may not be changed to another nonconforming use.

19.5.2 Expansion Prohibited

A nonconforming use of land, building or structure may not be enlarged or expanded.

ARTICLE 19 – NONCONFORMING USES

19.5.3 Reversion of Nonconforming Use Prohibited

Whenever a nonconforming use of land, building or structure has been changed to a conforming use of land, building or structure, it shall not be allowed to revert to any nonconforming use.

19.5.4 Change in Ownership

A change in ownership does not affect a nonconforming use.

19.6 NONCONFORMING BUILDINGS, STRUCTURES AND SITE IMPROVEMENTS

19.6.1 Applicability

Nonconforming buildings, structures and site improvements are buildings or structures that are nonconforming in height, area, setback, bulk or other dimensional requirements and sites that are nonconforming as to site improvement requirements including the amount of parking, parking lot design, drainage, landscaping, buffers and any other site improvement provisions of this Chapter.

19.6.2 Repair and Reconstruction from Damage

19.6.2.1 If a nonconforming building or structure is damaged by any cause whatsoever to an extent less than fifty percent (50%) of the fair market value based upon the most recent market value as determined by the Aiken or Edgefield County Assessor's Office, as applicable, prior to the damage, it may be repaired or reconstructed and used as before the time of damage, provided that such repair or reconstruction is substantially completed within twelve (12) months of the date of such damage and provided the degree of nonconformity is not increased in any respect.

19.6.2.2 If a nonconforming building or structure is damaged by any cause whatsoever to an extent equal to or exceeding fifty percent (50%) of the fair market value based upon the most recent market value as determined by the Aiken or Edgefield County Assessor's Office prior to the damage, it may not be repaired or reconstructed, except in conformity with this Chapter.

19.6.3 Renovation and Expansion

19.6.3.1 A nonconforming building or structure may be renovated provided the estimated cost of the renovation does not exceed fifty percent (50%) of the fair market value of the nonconforming building or structure based upon the most recent market value as determined by the Aiken or Edgefield County Assessor's Office, as applicable, and the renovations serve to reduce the nonconformities associated with site improvements.

19.6.3.2 A nonconforming building or structure may be expanded provided the estimated cost of the expansion does not exceed fifty percent (50%) of the fair market value of the nonconforming building or structure based upon the most recent market value as determined by the Aiken or Edgefield County Assessor's Office, as applicable and the Director finds that the expansion does not increase any nonconformity to more than fifty percent (50%) of the dimensional standard established in this Chapter and the expansion serves to reduce the nonconformities associated with site improvements.

ARTICLE 19 – NONCONFORMING USES

19.6.3.3 A site that is nonconforming as to site improvements may be improved provided the estimated cost of the improvements does not exceed seventy-five percent (75%) of the estimated replacement cost of the existing nonconforming site improvements as determined by the City Engineer, and the proposed site improvements serve to reduce the nonconformities associated with existing site improvements.

19.6.3.4 A renovation, expansion or improvement of a nonconforming building, structure or site that is disapproved by the Director may be appealed to the Board of Zoning Appeals.

19.7 ABANDONMENT OF NONCONFORMING USES, BUILDINGS, STRUCTURES AND SITE IMPROVEMENTS

19.7.1 Abandonment of Use or Activity

No nonconforming use or activity of land, building or structure shall be resumed if it has been abandoned for a continuous period of six (6) months. This condition shall apply whether or not the equipment or fixtures have been removed. After the specified time period referenced herein, the property shall not again be used except in conformity with the use regulations of the district in which such lot, building or structure is located.

19.7.2 Abandonment of Building, Structure or Site

No use or occupancy of a nonconforming building, structure or improved site shall be resumed if it has been abandoned for a continuous period of six (6) months. After the specified time period referenced herein, the lot, building, structure or improved site shall not again be used except in conformity with the dimensional and site improvement regulations of the district in which such lot, building or structure is located or is renovated in accordance with §19.6.3.

19.7.3 Definition

For purposes of this section, “abandon” or “abandonment” means discontinuance of the nonconforming use or any use of the nonconforming building or structure regardless of the property owner’s intent to relinquish the right to so use the property. A building, land, structure or activity is considered abandoned when:

- a. It has been intentionally discontinued, remains idle or unused;
- b. Necessary utilities, such as water, sewer or electricity have been discontinued for any reason including a failure to pay fees, rates or other required charges lawfully established by the service provider; or
- c. The principal buildings or structures are no longer actively occupied.

19.8 NONCONFORMING USES RESULTING FROM ANNEXATION

On occasion it will be the intent of the City Council to annex lands upon which there exist buildings, structures, uses or activities which are lawful under county regulations but upon annexation would become nonconforming pursuant to the provisions of this Chapter. When an annexation is approved, notwithstanding any other requirement or regulations contained herein, any nonconforming buildings, structures, uses or activities on the property annexed shall be considered legally nonconforming and shall be permitted to continue. If property is approved for annexation and has previously been approved or permitted for development by Aiken County or Edgefield County and such

ARTICLE 19 – NONCONFORMING USES

approved or permitted development is vested pursuant to S.C Code §6-29-1530 on the date of annexation, then such vested development may be completed in accordance with the original approval or permit and, if nonconforming under this Chapter, shall be treated as if it had been completed prior to annexation. At the time of annexation any nonconforming uses, buildings or structures on the annexed property shall be identified and listed in the annexation ordinance. Any change in use, alteration, renovation or expansion of any annexed nonconforming use, activity, building or structure subsequent to annexation shall be subject to the provisions of this Article.

19.9 NONCONFORMING BILLBOARDS

Billboards are prohibited signs pursuant to §13.9.12. Nonconforming billboards are permitted to remain and be relocated only under the provisions of the judgment rendered in the final consent order in *The Lamar Company, LLC v. City of North Augusta*, April 26, 2002.