

ORDINANCE No. (10-721)

(OA-10-07) -- AN ORDINANCE TO AMEND THE TEXT OF ORDINANCE NO. 99-372 KNOWN AS THE SUMTER COUNTY ZONING AND DEVELOPMENT STANDARDS ORDINANCE

WHEREAS, the request by the Planning Commission Staff to amend the text of the County Zoning and Development Standards Ordinance, has been duly considered by the Planning Commission and all requirements of Article One, Section T, and all other applicable sections of the County Zoning and Development Standards Ordinance have been complied with; and

WHEREAS, the request has been forwarded to County Council with a recommendation for approval from the Planning Commission and County Council concurs with their recommendation;

Now Therefore, Be It Ordained By The County Council Of The County Of Sumter, South Carolina, At Its Regular Meeting Duly Assembled And By The Authority There Of Amend Ordinance #99-372 as follows:

**III. ORDINANCE TEXT CHANGE:**

ARTICLE SIX - *NONCONFORMING ZONING USES AND SITES*

**SECTION A: PURPOSE OF ARTICLE AND DEFINITIONS**

6.a.1. **Purpose:** The use of or improvements to real property may become nonconforming when standards established by this Ordinance change. Specifically, legal nonconforming zoning uses and legal nonconforming sites (structures and lots) were initially lawful and existed prior to the adoption of this Ordinance or prior to an amendment hereto but, due to the enactment of this Ordinance or such amendment, no longer conform to the requirements herein. To the extent that such nonconforming uses and nonconforming sites have been in continual use, they have been allowed to remain in use despite the noncompliance with this Ordinance.

The purpose of this Article Six is to allow the continued use and operation of these nonconforming uses and nonconforming sites pursuant to the requirements of this Article Six. The goal is not to encourage the persistence of nonconformities, but to ease the burden on property owners and eventually to ensure that all zoning uses, structures, and lots comply with the requirements of this Ordinance.

6.a.2. **Definitions**

- a. **Development Standards:** At any given time, the then-current development standards applicable to a property or structure pursuant to this Ordinance.
- b. **Discontinuance:** With respect to:

- (1) Nonconforming Uses, the discontinuance or cessation of operations or business activity at a structure for a continuous period of not less than six months;
  - (2) Nonconforming Sites, the discontinuance or cessation of operations or business activity at a structure for a continuous period of not less than **thirty-six** months
- c. **Nonconforming Use:** Any use of property that is not a permitted use pursuant to the current zoning classification or otherwise is not in compliance with this Ordinance.
  - d. **Nonconforming Site:** Any structure, building, house, shed, accessory dwelling, or improvement on real property, or any parcel, lot, or unimproved real property, that does not comply with Development Standards.
  - e. **Project:** Any improvement, upfit, renovation, rehabilitation, restoration, removal, or addition to a structure or lot that occurs after a Discontinuance and within twelve months following the resumption of operations or business activity at such structure or lot.

## **SECTION B: NONCONFORMING USES**

6.b.1. **Proof of Legal Nonconformance and Continuance of Use:** A Nonconforming Use may continue to operate pursuant to this Article. The Property Owner or permit Applicant bears the full burden of proof that any non-conforming situation is a legally established one and has been in continuous operation. Evidence may include proof of business license, utility statements, business transition receipts, tax returns, or other documentation. The Zoning Administrator shall determine whether a situation is a Nonconforming Use as defined in this Article Six. A structural improvement qualifying as a Nonconforming Use may be increased in size by no more than five (5%) percent of the gross floor area, if the minimum lot areas, yard setbacks, and off-street parking requirements of this Ordinance are met.

6.b.2. **Loss of Nonconforming Use Status.** If a Nonconforming Use is subject to a Discontinuance, then any subsequent use or operation must be in full compliance with all applicable zoning requirements in this Ordinance.

6.b.3. **Accidental Destruction.** If a Nonconforming Use is discontinued due to fire or other natural causes, the Nonconforming Use may be reestablished within **one year** after the fire or other natural cause.

## **SECTION C: NONCONFORMING SITES**

6.c.1 **Proof of Legal Nonconformance and Continuance:** A Nonconforming Site may continue to operate pursuant to this article. The Property Owner or permit Applicant bears the full burden of proof that any Nonconforming Site is a legally established one and has continually operated. Evidence may include proof of business license, utility statements, business transition receipts, tax returns or other documentation. The Zoning Administrator shall determine whether a situation is a legally Nonconforming Site as defined in this Article Six.

6.c.2. **Loss of Legal Nonconforming Site Status:** If a Nonconforming Site is subject to a Discontinuance then any subsequent reuse, inhabitation, operation, or activity must be in compliance with this Article Six.

6.c.3. **Loss of Legal Nonconforming Status (Mobile Home Parks):** A nonconforming mobile home park must be discontinued when 50% or more of the homes in the park become uninhabitable as determined by the Sumter Building Official or remain vacant for a period six months or longer. Resumption of the use of the property as a mobile home park may be permitted if the use is permitted in the then-current zoning district and conforms to Development Standards for mobile home parks.

a. Non-conforming mobile home parks and mobile homes shall meet the following minimum standards at the replacement of an individual mobile home:

1. All internal roadways shall be maintained by the park owner;
2. The minimum roadway width shall be 15 feet. This requirement shall become effective when the first mobile home in the park is replaced with another mobile home;
3. Each mobile home shall be located so that it is at least:
  - 15 feet away from any other mobile home at the closest point;
  - Set back 10 feet from any side or rear property line
  - Set back 25 feet from any front property line; and
  - Set back 10 feet from any external side (secondary frontage).
4. If a mobile home park owner does not own a mobile home in the park which is an UNFIT DWELLING, as that term is defined in Chapter 11, Article Five, Sections 11-71 through 11-81, as revised, Code of Ordinances, Sumter County South Carolina, (s)he must show that (s)he is taking reasonable steps in a reasonably timely fashion to acquire ownership of that mobile home. The park owner has 60 days from the date (s)he acquires the certificate of title to the mobile home to correct the problem with the mobile home or remove the mobile home. In the event Sumter County demolishes a mobile home pursuant to either:
  - a. Chapter 11, Article Five, Sections 11-71 through 11-81, as revised, of the Code of Ordinances, Sumter County, South Carolina, entitled “UNFIT DWELLINGS,” or
  - b. Ordinance #02-476, entitled “An Ordinance Providing for Repairing, Closing, or Demolishing Abandoned Mobile Homes Owned by the Sumter County Forfeited Land Commission,”

So that the owner of the real property on which the mobile home is situated becomes responsible for the demolition (which shall be collectable in the same manner as county taxes), then it shall be the responsibility of the owner of the real estate upon which that

mobile home park is situated to bring the mobile home park into compliance with the then existing requirements for mobile home parks as if the mobile park had never existed previously. In that case, the owner of the real estate upon which the park is located shall have 6 months to either close the mobile home park or bring it into compliance with the requirements for new mobile home parks. (This shall be required when this change is effective.) (See paragraph 3.d.6. of the Sumter County Zoning and Development Standards Ordinance.)

**6.c.4. Projects at Nonconforming Sites.** The Property Owner or Applicant may not undertake a Project that will create new nonconformities with Development Standards unless approved by the Zoning Administrator. In addition, any Project at a Nonconforming Site must comply with the following requirements:

- a. Any Project with a total cost of 25% (twenty-five percent) or less of the most current fair market value of the structure, dwelling, or improvement, as determined by the Sumter County Tax Assessor, shall not be required to increase their compliance with Development Standards, but must establish compliance with all Fire and Building Codes.
- b. Any Project with a total cost of between 25% (twenty-five percent) and 75% (seventy-five percent) of the most current fair market value of the structure, dwelling, or improvement, as determined by the Sumter County Tax Assessor, must achieve a comparable percentage compliance with Development Standards as determined by the Zoning Administrator, and must establish compliance with all Fire and Building Codes. *In determining comparable percentage compliance, the Zoning Administrator will utilize locally available industry estimates by development standard unit. These estimates will be available for public review in the Planning Office.*
- c. Any Project with a total cost of greater than 75% (seventy percent) of the most current fair market value of the structure, dwelling, or improvement, as determined by the Sumter County Tax Assessor, must achieve full compliance with Development Standards, and must establish compliance with all Fire and Building Codes.
- d. A private fair market assessment prepared by a qualified fee appraiser and acceptable to the zoning administrator may be utilized in lieu of the Tax Assessor determination.

**6.c.5 Nonconforming Sites Incapable of Compliance.** Sites, lots, or parcels that are physically constrained from complying with Development Standards shall comply to the maximum extent practicable, as determined by the Zoning Administrator.

**6.c.6. Accidental Destruction.** A Nonconforming Site may be altered, extended, or replaced if razed by fire or other natural causes, provided such alteration, extension, or replacement does not increase the degree of nonconformity by size, lot area, floor space, or otherwise result in a greater degree of nonconformity with Development Standards in any respect.

**SECTION D: NONCONFORMING LOTS OF RECORD**

6.d.1. If the Property Owner does not own sufficient land to enable him to conform to the dimensional requirements, such as minimum lot area or minimum lot width, such lot may be used as a building site provided the minimum yard and building setback requirements can be met. If, however, the owner of two (2) or more adjoining lots with insufficient land dimensions, after adoption of this Ordinance, decides to build on or sell off these lots, he must first combine said lots to comply with the dimensional requirements of this Ordinance.

**SECTION E: CHANGE OF NONCONFORMING USES**

6.e.1. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same general standard industrial code (SIC) classification. Wherever a nonconforming use of land or buildings has changed to a more restricted use or to a conforming use, such use shall not thereafter be changed back to a less restricted or nonconforming use. End Of Changes

All other sections of the Zoning And Development Standards Ordinance of the County of Sumter, South Carolina, and subsequent amendments, shall remain as previously adopted.

Adopted By County Council This 9<sup>th</sup> Day Of November, 2010, To Take Effect Immediately.

SUMTER COUNTY, SOUTH CAROLINA

(Seal)



**Vivian Fleming McGhaney**

Vivian Fleming McGhaney  
Chairwoman, Sumter County Council

ATTEST:

*Mary W. Blanding*

Mary W. Blanding, Clerk to County Council

First Reading: October 12, 2010  
Second Reading: October 26, 2010  
Public Hearing: October 26, 2010  
Third Reading and Adoption: November 9, 2010  
Attachment: Staff Report

cc: Council, Planning Director, County Assessor, Clerk of Court, County Attorney, and County Administrator

# Sumter City-County Planning Commission

September 22, 2010

## OA-10-07, Non-Conforming Situations—Planning Commission (County)

### ***I. THE REQUEST***

**Applicant:** Sumter City-County Planning Commission

**Request:** Amend relevant sections of Article 6, Nonconforming Uses, to specifically address nonconforming site development standards, discontinuance provisions, and retrofitting requirements.

### ***II. BACKGROUND***

The issue of nonconforming site standards has been perhaps the most challenging issue for the Planning Commission, Planning Staff, and the Board of Zoning Appeals over the last few years. Planning Commission considers this a primary zoning action item in need of a different approach. The crux of the issue can be described this way:

#### **Policy**

First and foremost both the City and County expressly declare that nonconforming situations are incompatible with new development. As such, the zoning ordinance is written to remove, replace, or improve these nonconformities.

From a policy perspective, this issue of nonconforming uses and sites was recognized in the 2030 Comprehensive Plan:

*The City and County will examine opportunities to encourage, incentivize or require design improvements to non-conforming structures, sites, and parking lots (page LU 14).*

*Sumter's Highway Corridor design review district in an effort to strengthen implementation tools and ensure quality design related to architecture, signage and landscaping (page LU 15).*

## **Zoning**

The zoning ordinance requires that when a business or property is vacant for a period of six (6) months, the next occupant or business must meet all of the current site developed standards. Plainly, development standards are landscaping, irrigation, parking, buffering, curb and gutter, paving etc... In Sumter, our commercial corridors are filled with lots that were development during a different era, without landscaping, trees, paving, buffer yards, or irrigation. So, when a new business wants to occupy a property vacant or absent of activity for more than 6 months, in many cases significant site upgrades are required. These improvements — paving the site, irrigation, landscaping — come at some cost and can influence the viability of the project. Some in the development community cite the costs of upgrading the site as a reason for such pervasive vacancies in our corridors. This may or may not be the case. However, evidence suggests that a 100% upgrade of a non-conforming site is burdensome.

Today, the only solution to this ‘burden’ is to apply to the Board of Appeals for a variance from the strict application of the ordinance. This is often problematic as the variance process criteria do not permit project costs or financial burdens as a valid reason for relief. Notwithstanding, since January 2008, Staff has processed 25 separate Board of Appeals applications for relief from these site requirements.

## **Approach**

The facts suggest a new approach to the issue is in order. The economic conditions of the time, the priority to remove unnecessary barriers for new business, the burden on staff and property owners (time mostly) and the outcome of the BZA requests (virtually all of them were approved in some form), require an alternative approach.

Staff recommends, in the attached draft revisions to Article Six, a more reasonable and proportionate approach to non-conforming situations. The approach focuses on two areas: time and proportion.

First, staff recommends an expanded time frame for onsite activity. Six months is too brief a window. Staff recommends a longer period for a site to remain vacant without triggering the need for site improvements. We suggest 12 to 18 months.

Second, staff recommends a sliding scale approach to determining the level of improvements necessary – directly tied to the degree of investment and based on the fair market value of the structure. Basically this amounts to: small investment/improvements to the structure = minimal site upgrades; large investment/improvements to structure = full upgrades to site. In fact, this approach would require no site improvements for small projects -- projects investing less than 25% of fair market value in the structure. For mid-range projects, the new ordinance would require a proportionate percentage of site improvements. For instance a project that equals 50% of fair market value would have to put in 50% of the required site improvements — 50% of the required landscaping etc... This process would rely on staff and the applicant to work together to come up with the reasonable site solution in a negotiated setting.

The benefits to this new approach are quantifiable. Site improvements would be based on fair and equal standards. A sliding scale would deal with projects in a reasonable and proportionate manner. Applicants would save time and money by not having to proceed to the Board of Appeals.

### ***III. ORDINANCE AMENDMENT***

Attached to this report in both clean and strike through versions

### ***IV. STAFF RECOMMENDATION***

Planning Staff recommends approval of the requested revisions.

### **V. DRAFT MOTIONS**

I move that the Planning Commission approve OA-10-07.

### **VI. PLANNING COMMISSION – SEPTEMBER 22, 2010**

The Sumter City – County Planning Commission, at its meeting on Wednesday, September 22, 2010, voted to recommend approval for the above referenced request with the following conditions:

1. Provide the option for a private fair market values assessment; and
2. Include the provision to appeal the Zoning Administrator’s decision through the Zoning Board of Appeals

### **VII. COUNTY COUNCIL – OCTOBER 12, 2010 – FIRST READING**

The Sumter County Council at its meeting on Tuesday, October 12, 2010, voted to give First Reading approval for this request. Council will hold a workshop on Thursday, October 21, 2010, to discuss and review this request further.

### **VII. COUNTY COUNCIL – OCTOBER 26, 2010 – SECOND READING/PUBLIC HEARING**

The Sumter County Council at its meeting Tuesday, October 26, 2010, gave Second Reading / Public Hearing approval for this request..

### **VIII. COUNTY COUNCIL – NOVEMBER 9, 2010 – THIRD / FINAL READING**