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BOARD OF SUPERVISORS,
JAMES CITY COUNTY,
VIRGINIA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 20, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, ARTICLE V, NONCONFORMITIES.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 20, Zoning, is hereby amended and reordained by repealing and replacing Section 20-399. Continuation, Section 20-400. Changes in zoning district boundaries, Section 20-401. Expansion or enlargement, Section 20-402. Nonconforming lots, and Section 20-403. Restoration or replacement; and by adding Section 20-399. Nonconforming uses, Section 20-400. Continuation of nonconforming uses, Section 20-401. Permitted changes of nonconforming uses, Section 20-402. Restoration of a nonconforming use damaged by casualty, Section 20-403. Expansion of nonconforming uses, Section 20-404. Use of nonconforming lots, and Section 20-405, Verification of nonconforming uses.

Chapter 20. Zoning

Article V. Nonconformities

Section 20-399. Nonconforming uses.

(a) The purpose of this article is to regulate nonconforming uses in a manner consistent with sound planning and zoning principles. The general intent is that, over time, nonconforming uses will be discontinued in favor of uses conforming to this chapter and the zoning map. However, it is also recognized that nonconforming uses need not be entirely static, and that under certain circumstances, nonconforming uses may change, according to law and the provisions of this chapter.

(b) The term "nonconforming use" shall mean any use, lot or structure that was lawful on the date of enactment of this chapter, or amendment thereto, which has been continued although otherwise unlawful by such enactment or amendment. Any use, lot or structure that was unlawful on the date of enactment of this chapter, or amendment thereto, shall remain unlawful and shall not be a "nonconforming use."

(c) The nonconforming status of any nonconforming use shall adhere solely to the use of the land, and not to the owner, tenant, or other holder of any legal title to the property or the right to make use thereof.

(d) A use that is accessory or incidental to a permitted principal use cannot be made the basis for a nonconforming principal use.

(e) No use accessory to a principal nonconforming use shall be continued after nonconforming status is lost for the principal use. (Ord. No. 31A-88, Section 20-103, 4-8-85)

Section 20-400. Continuation of nonconforming uses.

(a) A nonconforming use may continue as it existed when it became nonconforming. A nonconforming use shall not be changed, altered, repaired, restored, replaced, relocated or expanded in any manner, including the addition of new accessory or incidental uses, except as provided for in section 20-401 et seq. of this chapter.

(b) If any nonconforming use is discontinued for a period of two (2) years, it shall lose its nonconforming status, and any further use shall conform to the provisions of this chapter.

(c) For the purposes of this section, cessation of a nonconforming use for the aforesaid period shall be conclusively presumed to establish discontinuance.

(d) Operation of only an accessory or incidental use to the principal nonconforming use during the two-year period shall not operate to continue the principal nonconforming use. (Ord. No. 31A-88, Section 20-106, 4-8-85)

Section 20-401. Permitted changes of nonconforming uses.

(a) A nonconforming use may be changed, altered, repaired, restored, replaced, relocated or expanded only in accordance with the provisions of this article, and subject to the appropriate approvals (including, among others, verification of the nonconforming use, site plan approval, building permit approval and zoning approval under this chapter) otherwise required by law.

(1) A nonconforming use may change to a conforming use.

(2) A nonconforming use may change to a more restricted nonconforming use, as set forth in section 20-401(b) of this chapter.

- (3) A nonconforming use may be repaired, provided such repair constitutes only routine maintenance necessary to keep the structure in the same general condition it was in when it originally became nonconforming.
- (4) A nonconforming use damaged by casualty may be restored in accordance with the provisions of section 20-402 of this chapter. By casualty shall mean as a result of a fire or other cause beyond the control of the owner or by an act of God. By casualty shall not include damage caused by age or ordinary wear and tear or damage intentionally caused by the owner or an agent thereof.
- (5) Minor alterations, cosmetic modifications, interior renovations and similar changes for nonconforming uses may be permitted, subject to the following standards:
 - (i) Such changes shall not increase the land area occupied by any aspect of the nonconforming use, and shall not increase the gross floor area of any nonconforming structure; and,
 - (ii) Such construction shall meet all current zoning ordinance requirements for the zoning district in which the nonconforming use is located, or the zoning district assigned by the zoning administrator as a part of the nonconforming use verification process, whichever requirements are more strict; and
 - (iii) All signs associated with the nonconforming use shall be brought into full compliance with the current zoning ordinance requirements for the zoning district assigned by the zoning administrator as a part of the nonconforming use verification process.
- (6) Except for signs, nonconforming uses other than buildings (such as, but not limited to, underground storage tanks, private sewage disposal systems, and parking lots) may be restored or replaced when such structures become unsafe or unsound. A relocation on the same lot may be approved by the zoning administrator, provided the new location is less nonconforming than the original location, and further provided that the new location shall not cause a greater detrimental impact on conforming uses in the neighborhood.
- (7) A nonconforming use may expand in accordance with the provisions of section 20-403 of this chapter.
- (8) A nonconforming use may be extended throughout any part of a structure originally arranged or designed for such activity, provided that current parking requirements shall be adhered to upon such extension.

- (9) No structure used as a part of a nonconforming use shall be moved to any other lot unless such lot is properly zoned to permit the use, nor shall such a structure be moved within the lot on which it exists, unless a relocation is specifically provided for in section 20-399 et seq. of this chapter.

(b) A nonconforming use may change as a matter of right to a more restricted nonconforming use, upon issuance by the zoning administrator of an approval for such a change. The zoning administrator's approval, which shall not be given until the nonconforming status of the use has been verified in accordance with section 20-405 of this chapter, shall include a determination in writing that the proposed use is "more restricted" than the existing nonconforming use. If the zoning administrator determines the proposed use is not "more restricted" than the existing nonconforming use, the application for a change to a more restricted nonconforming use shall be denied. An appeal from such a determination shall be to the board of zoning appeals as provided by section 20-432 of this chapter.

(c) In determining whether a proposed use is a "more restricted" nonconforming use, the following factors, among others, shall be considered:

- (1) Whether the proposed use will change the size and scope of the existing use, and the magnitude of such change; and,
- (2) Whether the proposed use will increase the intensity of the nonconforming use, including hours of operation, traffic, noise, and similar impacts; and,
- (3) Whether the proposed use will have a more or less detrimental effect on conforming uses in the neighborhood; and,
- (4) How the quantum effect of the factors evaluated in preceding subsections (c)(1), (c)(2) and (c)(3) relate to the purpose, policies and objectives of this chapter.

(d) Upon the issuance of an approval to change to a more restricted nonconforming use, site plan approval, as set forth in this chapter, shall be required. (Ord. No. 31A-88, Section 20-107, 4-8-85; Ord. No. 31A-89, 9-9-85)

Section 20-402. Restoration of a nonconforming use damaged by casualty.

(a) A nonconforming use that is damaged by any casualty may be restored to its condition prior to the casualty, provided such restoration is begun within twelve (12) months of the date of the casualty and completed within twenty-four (24) months of the date of the casualty.

(b) Such restoration shall not include any minor alterations, cosmetic modifications, interior renovations or similar changes unless approved under the provisions of section 20-401(a)(5) of this chapter, nor shall such restoration include any expansion unless approved under the provisions of section 20-403 of this chapter. Such restoration may include changes that make the use less nonconforming than it was prior to the casualty.

(c) Prior to any restoration permitted by section 20-402 of this chapter, the nonconformance of the structure shall be verified as set forth in section 20-405 of this chapter.

(d) For all structures except a one-family dwelling, restoration of a nonconforming structure shall require site plan approval as set forth in this chapter. (Ord No. 31A-88, Section 20-108, 4-8-85)

Section 20-403. Expansion of nonconforming uses.

(a) Nonconforming uses may expand only in accordance with the provisions of this section. Any permitted expansion shall occur only on the lot occupied by the nonconforming use, and no area of any lot not originally devoted to the nonconforming use shall be utilized for any aspect of such expansion.

(b) For a nonconforming one-family dwelling use, the dwelling may be expanded without limitation, except as provided for in this section. In addition, new or expanded residential accessory structures and uses (such as a storage shed, garage, swimming pool, etc.) may be permitted subject to the provisions of this chapter. Expansion of the dwelling and new or expanded accessory structures and uses shall meet all current zoning requirements, including height, yard and setbacks, for the zoning district in which located, or the R-1 zoning district if such dwelling is not located in a zoning district where a residential use is permitted. In no case shall a nonconforming one-family dwelling be modified to accommodate additional dwelling units.

(c) For lots in any Business or Industrial district where the use is permitted in the zoning district in which the lot is located, but where the current zoning requirements (including, but not limited to, parking, yards, setbacks, landscaping, screening and buffering, height, signs, lot coverage, connection to public sewer and water) are not met, expansion of the building, and expansion of the land area within the lot devoted to activities other than buildings, may be approved, provided all current zoning requirements applicable to the expansion are met.

(d) Expansion of a use pursuant to Section 20-403(c), above, meeting all zoning requirements except for connection to public water and public sewer may be permitted upon approval of a special use permit excepting the use from the public water and public sewer requirements.

(e) Prior to the approval of expansion of a nonconforming use under section 20-403 of this chapter, the nonconforming use shall be verified as set forth in section 20-405 of this chapter. (Ord. No. 31A-88, Section 20-109, 4-8-85)

Section 20-404. Use of nonconforming lots.

(a) Any unimproved lot of record, existing on the effective date of this chapter, located in any district that is nonconforming as to the lot area, lot width, or lot depth, or combination thereof, required in the zoning district in which the lot is located may be used for any permitted use in such

zoning district, unless specifically prohibited, provided all other requirements of the zoning district are met or the board of zoning appeals establishes setbacks, side, and rear yards in accordance with section 20-419(c).

(b) In addition to the changes that may be allowed to nonconforming lots by section 20-401 et seq. of this chapter, nonconforming lots may change as follows:

- (1) A nonconforming lot may be increased in lot size, lot width, or both, to make the lot less nonconforming.
- (2) The boundaries of a lot that is nonconforming as to lot size or lot width, or both, may be adjusted along with the boundaries of any contiguous conforming lot, provided such adjustment does not make the conforming lot nonconforming and does not make the nonconforming lot more nonconforming.
- (3) When a nonconforming lot is changed as set forth in subsections (b)(1) and (b)(2), or when two (2) or more nonconforming lots are assembled to create a conforming lot, a plat of subdivision shall first be filed and approved in accordance with law.

Section 20-405. Verification of nonconforming uses.

(a) Prior to approval of any change in a nonconforming use permitted by section 20-401 et seq. of this chapter, the lawful status of the use shall be verified by the zoning administrator. The zoning administrator may also verify the lawful status of a nonconforming use not proposed to change, upon the request of the owner of the property on which the use is located, or upon the request of a neighboring property owner.

(b) In verifying the lawful status of a nonconforming use, the zoning administrator shall determine the following:

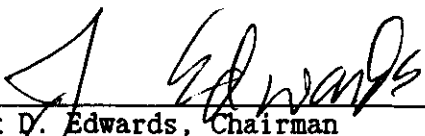
- (1) Whether the use is, in fact, a lawful nonconforming use as defined by this chapter, and, if so, then
- (2) The location and gross floor area (in square feet) of all buildings associated with the nonconforming use; and
- (3) The location, use and size of all structures other than buildings associated with the nonconforming use; and
- (4) The area of land (in square feet) devoted to all aspects of the nonconforming use (including buildings, parking, outside storage, travel ways, open spaces, etc.); and
- (5) A description of the principal use(s) and all accessory uses that make up the lawful nonconforming use as a whole.

(c) If such determination results in the use, or any portion, being verified as a lawful nonconforming use, the zoning administrator shall classify the overall nonconforming use based on the zoning district in which the use would be a permitted use. If the use would be permitted in more than one zoning district, the assigned classification shall be based on the zoning district that is the least intense of all districts where the use would be permitted. The assignment of such a zoning classification shall not operate to change the zoning of the property on which the nonconforming use is located, but shall be used only in determining the applicable criteria for change of the nonconformance use under section 20-401(a)(5) of this chapter.

(d) The decision of the zoning administrator under subsections (b) and (c) shall be final after thirty (30) days unless an appeal is filed to the board of zoning appeals in accordance with section 20-432 of this chapter.

(e) The decision of the zoning administrator shall be based on information provided by the owner of the property on which the nonconforming use is located, on information provided by other persons with knowledge of the property, and on any other information available to the zoning administrator as public record. Such information may include, but shall not be limited to, permits, licenses, tax records, receipts, business records, photographs, plats, plans, bills, utility information, assessment information, and sworn affidavits from individuals with personal knowledge of the use and-or the property on which the use is located.

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Jack D. Edwards, Chairman
Board of Supervisors

ATTEST:



David B. Norman
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
BROWN	AYE
TAYLOR	AYE
MAHONE	AYE
DEPUE	AYE
EDWARDS	AYE

Adopted by the Board of Supervisors of James City County, Virginia,
this 18th day of May, 1987.

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