

JUN 12 2012

ORDINANCE NO. 31A-268

Board of Supervisors
James City County, VA

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 24, ZONING, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA BY AMENDING ARTICLE VII, NONCONFORMITIES, BY AMENDING AND RENAMING SECTION 24-628, NONCONFORMING USES WITH NEW NAME STATEMENT OF INTENT; BY AMENDING SECTION 24-631, PERMITTED CHANGES OF NONCONFORMING USES; SECTION 24-633, EXPANSION/IMPROVEMENTS TO NONCONFORMING USE; AND BY AMENDING AND RENAMING SECTION 24-634, RESTORATION/REPLACEMENT OF A NONCONFORMING USE WITH NEW NAME RESTORATION/REPLACEMENT OF A NONCONFORMING USE OR STRUCTURE.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 24, Zoning, is hereby amended and reordained by amending Article VII, Nonconformities, by amending Section 24-628, Statement of intent; Section 24-631, Permitted changes of nonconforming uses; Section 24-633, Expansion/improvements to nonconforming uses; and Section 24-634, Restoration/replacement of a nonconforming use or structure.

Article VII. Nonconformities.

Sec. 24-628. ~~Nonconforming uses~~ *Statement of intent.*

(a) *Purpose and intent.* The purpose of this article is to regulate nonconforming uses *and structures* 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 *and structures* may change according to law and the provisions of this chapter.

(b) *Term defined.* The term "nonconforming use" shall mean any activity using land, building, sign, lot, and/or structure for purposes which were legally established prior to the effective date of this chapter, or subsequent amendment to it, and which would not be permitted to be established in a zoning district in which it is located by the currently adopted regulations: *"Nonconforming structure" shall mean any structure not in conformance with current ordinance regulations.*

(c) *Status.* 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) *Accessory or incidental uses.* A use that is accessory or incidental to a permitted principal use cannot be made the basis for a nonconforming principal use.

Sec. 24-629. Continuation of nonconforming uses.

(a) A nonconforming use may continue as it existed when it became nonconforming provided however, if any nonconforming use is discontinued for a period of two years, it shall lose its nonconforming status and any further use shall be required to conform to the provisions of this chapter. A nonconforming use shall not be changed unless provided for in section 24-631 of this article.

(b) 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.

(c) No use accessory to a principal nonconforming use shall be continued after nonconforming status is lost for the principal use.

Sec. 24-630. Verification of nonconforming uses needed prior to any change in a nonconforming use.

(a) Prior to the approval of any change in, or restoration of, a nonconforming use permitted by section 24-631 of this ordinance, the lawful status of the use shall be verified in writing by the zoning

administrator. The zoning administrator may also verify in writing 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) 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.

(d) *Classification of use.* 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 of the property 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 the provisions of section 24-633.

(e) *Basis for administrator's decision.* 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.

Sec. 24-631. 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.

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

(c) A nonconforming use may change to a more restricted nonconforming use upon approval by the zoning administrator. The zoning administrator's approval shall include a determination in writing that the proposed use is "more restricted" than the existing nonconforming use and shall not be given until the nonconforming status of the use has been verified in accordance with section 24-630 of this article. 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;
- (2) Whether the proposed use will increase the intensity of the nonconforming use, including hours of operation, traffic, lighting, odor, noise and similar impacts;

(3) Whether the proposed use will have a more or less detrimental effect on conforming uses in the neighborhood; and

(4) How the quantum overall 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 approval of the change to a "more restricted" use, site plan approval as set forth in section 24-143 is required when structural modifications or additions are necessary.

Sec. 24-632. Repairs and maintenance to nonconforming uses.

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.

Sec. 24-633. Expansion/improvements to nonconforming uses.

(a) *Restriction for structure.* 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.

(b) *Restriction for area.* Any permitted expansion shall occur only on the lot occupied by the nonconforming use *or structure* and no area of any lot not originally devoted to the nonconforming use shall be utilized for any aspect of such expansion *notwithstanding the combination of lots to bring a nonconforming structure into compliance.*

(c) *One-family dwellings.* For a nonconforming one-family dwelling use, the dwelling may be expanded without limitation, except as provided for in this chapter. 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 they are 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.

(d) *Business or industrial uses.* For uses in any district where the activity 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.

(e) *Businesses or industrial uses not connected to public water and sewer.* Expansion of a use 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.

(f) *Expansion allowance resulting from right-of-way dedication.* Existing business or industrial uses which are permitted within any district and which have been made nonconforming with respect to open space, perimeter landscape requirements or setback requirements as a result of a right-of-way dedication to the county or the Virginia Department of Transportation without compensation shall be allowed to expand in accordance with the current zoning ordinance under the conditions which existed prior to the dedication.

(g) *Miscellaneous changes.* Minor alterations, cosmetic modifications, interior renovations and similar changes for nonconforming uses *or structures* may be permitted, subject to the following standards:

- (1) 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,

(2) 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.

(h) *Expansion required by law.* Improvements may be made to the nonconforming use *or structure* for the sole purpose of accessibility or public safety when such improvements are necessitated by a local, state, or federal law. Such improvements may be approved by the zoning administrator and are not subject to paragraphs (d) and (g) of this section.

Sec. 24-634. Restoration/replacement of a nonconforming use *or structure*.

(a) A nonconforming use *or structure* damaged by casualty may be restored in accordance with the provisions of this section, provided such restoration has started within 12 months of the date of the casualty and is complete within 24 months of the date of the casualty. 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.

(b) Nonconforming uses other than buildings and signs (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.

(c) Such restoration shall not include any minor alterations, cosmetic modifications, interior renovations or similar changes unless approved under the provisions of section 24-633 of this article, nor shall such restoration include any expansion unless approved under the provisions of section 24-633.

Such restoration may include changes that make the use *or structure* less nonconforming than it was prior to the casualty.

(d) Nothing in this section shall be construed to prevent the removal of a valid nonconforming manufactured home from property and replacement of that unit with another comparable manufactured home that meets the current HUD manufactured housing code. Such replacement unit shall retain the valid nonconforming status of the prior unit. For purposes of this article, a "nonconforming mobile home or manufactured home" shall be defined as any mobile home or manufactured home which does not meet all current zoning requirements and which was:

- (1) Located in the county prior to April of 1969, or any replacement thereof;
- (2) Located pursuant to a conditional use permit, either with or without an expiration date;
- (3) Located pursuant to a special use permit; provided, however, any manufactured home located pursuant to a special use permit with an expiration date shall be removed from the site upon expiration of the special use permit unless a new special use permit is approved to lawfully continue the use; or
- (4) A replacement for a mobile home or manufactured home located pursuant to a conditional or special use permit not specifically prohibited by the permit.

(e) A nonconforming office building meeting all current zoning requirements except connection to public water and sewer which is located within an industrial district may be replaced upon issuance of a special use permit excepting the use from the public water and sewer requirements. The replacement office building shall not exceed 4,000 square feet in floor area.

Sec. 24-635. Moving a nonconforming use.

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 other sections of this article.

Sec. 24-636. 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 24-650(c).

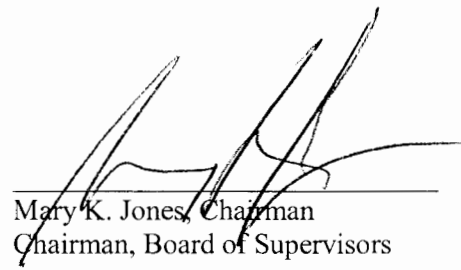
(b) In addition to the changes that may be allowed to nonconforming lots by this chapter, nonconforming lots may change as follows:

- (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 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.

Sec. 24-637. Appeals.

Administrator's decision; appeal to board of zoning appeals. The decision of the zoning administrator under section 24-631(c), section 24-630(c), and section 24-633(a)(3) shall be final after 30 days unless an appeal is filed to the board of zoning appeals in accordance with section 24-663 of this chapter.

Secs. 24-638 - 24-643. Reserved.



Mary K. Jones, Chairman
Chairman, Board of Supervisors

ATTEST:



Robert C. Middaugh
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
MCGLENNON	AYE
ICENHOUR	AYE
KALE	AYE
KENNEDY	AYE
JONES	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 12th day of June, 2012.

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