



ALAN WILSON  
ATTORNEY GENERAL

March 31, 2025

The Honorable Robert Krouse  
Mayor  
Town of Surfside Beach  
210 US Highway 17 South  
Surfside Beach, SC 29575-6034

Dear Mr. Krouse:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

Statement of Facts:

We, all members of the town council in Surfside Beach, would like an opinion as to what, if any, state codes or property zoning laws would apply to the following question.

If an ocean front property, which the structure is in non-conformance with the town's setback ordinance is bought, the structure is torn down then subdivided it into two separate properties, that both new structures would be need to be built in compliance with our town code? Or would the two new properties continue with the non-conformance?

We have enclosed the following documents to aid in a determination of an opinion:

Chapter 14 - Flood Damage Prevention, Surfside Beach Code of Ordinances  
Chapter 17 - Zoning, Surfside Beach Code of Ordinances

### Law/Analysis

The South Carolina Local Government Comprehensive Planning Enabling of 1994 is codified in the South Carolina Code of Laws at Chapter 29 of Title 6. Therein, section 6-29-730 addresses nonconformities.

The regulations may provide that land, buildings, and structures and the uses of them which are lawful at the time of the enactment or amendment of zoning regulations may be continued although not in conformity with the regulations or amendments, which is called a nonconformity. The governing authority of a municipality or county may provide in the zoning ordinance or resolution for the continuance, restoration, reconstruction, extension, or substitution of nonconformities. The governing authority also may provide for the termination of a nonconformity by specifying the period or periods in which the nonconformity is required to cease or be brought into conformance, or by providing a formula where the compulsory termination of nonconformities may be so fixed as to allow for the recovery or amortization of the investment in the nonconformity.

S.C. Code § 6-29-730.<sup>1</sup> The Town of Surfside Beach adopted such ordinances in Chapter 17 of its Code of Ordinances. Reference should be made to relevant ordinances therein to determine whether the Code permits continuation of a particular nonconforming use or structure. Article V of the Code of Ordinances addresses nonconformities with sections 15-502 addressing nonconforming uses, and 17-503 addressing nonconforming structures. Section 17-503(b) allows for a nonconforming structure to be enlarged, but not in a way which increases its nonconformity. Further, a structure may also be “altered to decrease its nonconformity.” Id. Article VIII, contains further restrictions related to shore protections with section 17-806 addressing nonconforming

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<sup>1</sup> See also Gurganious v. City of Beaufort, 317 S.C. 481, 490, 454 S.E.2d 912, 917–18 (Ct. App. 1995) (citations omitted).

Once a valid zoning ordinance is enacted based upon a comprehensive zoning plan, it is generally recognized that nonconforming uses detract from the public purpose to be achieved by the plan. As such, they are not favored, and they should be made conforming as soon as reasonably possible. While a property owner has a constitutionally protected right to continue the use following enactment of a zoning ordinance, provisions terminating the nonconforming use upon destruction of a specified portion of the premises, or upon failure to begin reconstruction within a specified time thereafter are proper, so long as the maximum amount of destruction permitted and the time allowed is reasonable.

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structures “located seaward of the shore protection line.” These ordinances regarding alteration of property and the loss of nonconforming status do not expressly state subdividing a property terminates this status. Therefore, in light of the lack of demonstrated legislative intent, it is this Office’s opinion that a court is unlikely to find subdividing a property terminates a property’s nonconforming status by itself.

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General