



M E M O R A N D U M

TO: Ms. Rebecca Keefer, City of Dunwoody City Planner
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FROM: Atlanta Apartment Association

RE: Proposed Changes to Nonconformities Provisions in the City of
 Dunwoody Zoning Ordinance

DATE: September 6, 2013

This memorandum details concerns the Atlanta Apartment Association and its constituent members have regarding proposed changes to certain nonconformities language in the City of Dunwoody zoning ordinance.

I. Removal of Section 27-34.

Currently the City of Dunwoody zoning ordinance includes Section 27-34 which specifically provides that any high rise apartments legally existing in an O-I district before the change in the O-I ordinance to remove high rise apartments as a permitted use are considered “conforming” and not subject to the nonconforming regulations in Article V, Division 6 of the zoning ordinance. Section 27-34(c) specifically provides that if such a high rise apartment development is damaged, it may be reconstructed provided such reconstruction is completed within five years of the damage. Section 27-34 has not been carried forward in the proposed new City of Dunwoody zoning ordinance. This means existing high rise apartment developments in O-I that were previously grandfathered will no longer be considered “conforming” under the new City of Dunwoody zoning ordinance and will be subject to the general rebuilding requirements for all nonconformities. Current Section 27-34 should be included in the new City of Dunwoody zoning ordinance.

II. Change to Nonconformities Language – New Article 29.

a. Removal of Percentage to Determine Replacement Ability – New Section 27-29-30-F and New Section 27-29-40-F(3).

Currently the City of Dunwoody zoning ordinance allows redevelopment of a nonconforming structure or use if the damage is less than 60% of the fair market value. The 60% threshold, a threshold that has been found acceptable to the majority of commercial lenders, has been deleted in the proposed new City of Dunwoody zoning ordinance. As detailed in subparagraph (b) hereinbelow, the 60% threshold has been replaced with the concept of intentional versus accidental damage. The question becomes what happens if there is partial damage? For example, if one or 2 units in 20 unit building





are intentionally damaged by a tenant, the currently proposed language in Section 27-29-30-F(1) does not appear to allow repair and reconstruction of those units. A corollary to that issue is what happens to the balance of the building in the event of partial damage? Another issue with the deletion of the 60% threshold is the question of what happens if an entire building is destroyed in a development with multiple buildings. May the intentionally destroyed building be replaced if the balance of the nonconforming development is intact? The language needs to be clarified to confirm how partial damage will be treated.

b. What is Deemed to be “Intentional” vs. “Accidental” - New Section 27-29-30-F(1) and New Section 27-29-40-F(3)(a).

The language in the new proposed Section 27-29.30-F(1) and Section 27-29.40-F(3)(a) does not allow for repair or reconstruction of any damage if intentionally destroyed or damaged “by causes within the control of the property owner or tenant”. The new proposed language needs to be revised to accommodate negligence and other acts of the owner and tenant that are within the control of the owner or tenant but not necessarily intended to cause destruction. For example, under the new proposed language, destruction of a building due to a tenant leaving a lit cigarette or candle could preclude reconstruction.

c. Prohibition of Repair in Event of Intentional Tenant Damage – Section 27-29.30-F(1).

Section 27-29.30-F(1) precludes redevelopment of a nonconforming structure if the damage incurred was intentionally destroyed by a cause in control of a tenant. Based on that Section, if a tenant committed arson and destroyed the entire development, reconstruction would be prohibited despite the fact that the owner had no role in the destruction. Tenant destruction should be removed from Section 27-29.30(F)(1) and the ability to reconstruct should be contingent upon the involvement and intention of the owner in such damage or destruction.

Sincerely,

Director of Governmental Affairs
Atlanta Apartment Association

