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MEMORANDUM

To: City Council
From: Madalyn Smith, Senior Planner
Date: June 12, 2023
Subject: Text Amendment
Chapter 27 – Changes to the Nonconformities Regulations

ITEM DESCRIPTION

This item is a proposed text amendment to the zoning ordinance to amend when a nonconforming use is considered abandoned.

DISCUSSION

The Nonconformities division of the code dictates a set of rules that allow nonconforming uses, i.e. uses that were lawfully established but no longer comply with requirements of the zoning ordinance, to continue operating.

When a nonconforming use is abandoned, it cannot be reinstated. Sec. 27-554(f) stipulates what constitutes abandonment, however, the stipulations are overly broad. In practice, this code section has allowed nonconforming uses to continue, even after it has been discontinued for a lengthy period of time or if the use has failed to obtain proper licensing.

As a result, staff has proposed updated regulations that more closely align with surrounding jurisdictions.

STAFF RECOMMENDATION

Staff recommends **APPROVAL.**

ATTACHMENTS

- Current and Proposed Code for Chapter 27, Article III, Division 3

AN ORDINANCE TO AMEND CHAPTER 27 (ZONING ORDINANCE) OF THE CITY OF DUNWOODY CODE OF ORDINANCES; TO AMEND THE REGULATIONS FOR NONCONFORMING USES;

WHEREAS, the City of Dunwoody provides provisions for legal nonconforming uses; and

WHEREAS, the current provisions are overly broad; and

WHEREAS, the City wishes to place reasonable limits on nonconformities that have the potential to adversely affect surrounding properties; and

WHEREAS, this amendment is necessary to ensure the health, safety, and welfare of Dunwoody residents.

NOW, THEREFORE, the Mayor and City Council of the City of Dunwoody HEREBY ORDAIN that Chapter 27, Section 168 is amended as follows:

Sec. 27-554. - Nonconforming uses.

- (a) *Description.* A nonconforming use is a land use that was lawfully established in accordance with all zoning regulations in effect at the time of its establishment but that is no longer allowed by the use regulations of the zoning district in which the use is now located. Lawfully established uses that do not comply with any applicable separation (or spacing) distance requirements (e.g., those that require one land use to be located a certain minimum distance from another land use) are also deemed nonconforming uses.
- (b) *Change of use.* A nonconforming use may be changed to any other use that is allowed in the subject zoning district. Once changed to a conforming use, a nonconforming use may not be re-established.
- (c) *Expansion of use.* A nonconforming use may not be expanded in any way that increases the extent of nonconformity.
- (d) *Remodeling and improvements.* A building in which a nonconforming use is located may be remodeled or otherwise improved as long as the remodeling or improvements do not violate the other regulations of this zoning ordinance.
- (e) *Moving.*
 - (1) A nonconforming use may be moved in whole or in part to another location on the same lot only if the movement or relocation eliminates or reduces the extent of nonconformity.
 - (2) A nonconforming use may be moved to another lot only if the use is allowed under the zoning regulations that apply to that (relocation) lot.
- (f) *Loss of nonconforming status.*
 - (1) *Abandonment.*

- a. Once a nonconforming use is abandoned, its nonconforming status is lost and any new, replacement use must comply with the regulations of the zoning district in which it is located.
 - b. A nonconforming use is presumed abandoned when the use is discontinued or ceases for a continuous period of six months or more.
 - c. A nonconforming open-air use of land is presumed abandoned when the use is discontinued for a continuous period of three months or more.
 - d. A nonconforming use is also presumed abandoned when the owner and/or operator fails to obtain a business license or renew an existing business license, as required under the City Code, for the operation of such nonconforming use.
 - ~~d. The presumption of abandonment may be rebutted upon showing, to the satisfaction of the community development director, that during such period the owner of the land or structure has been:

 - ~~1. Maintaining the land and structure in accordance with all applicable Municipal Code requirements and did not intend to discontinue the use;~~
 - ~~2. Actively and continuously marketing the land or structure for sale or lease for that particular nonconforming use; or~~
 - ~~3. Engaged in other activities that affirmatively prove there was not intent to abandon.~~~~
 - e. Any period of discontinued use caused by government action, unintended fire or natural disaster will not be counted in calculating the length of discontinuance.
- (2) *Change to conforming use.* If a nonconforming use is changed to a conforming use, no matter how short the period of time, all nonconforming use rights are lost and re-establishment of the nonconforming use is prohibited.
- (3) *Destruction.*
- a. *Intentional destruction.* When a building containing a nonconforming use is intentionally destroyed, razed or dismantled by a deliberate act of the owner or the owner's agent, re-establishment of the nonconforming use is prohibited.
 - b. *Accidental destruction.* Unless a building containing a nonconforming use is loses its nonconforming use rights pursuant to subsection (f)(3)a., the building and use may be restored or repaired provided that no new nonconformities are created and that the existing degree of nonconformity is not increased. A building permit to reconstruct a destroyed or damaged building must be obtained within two years of the date of occurrence of such damage.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-29.40), 10-14-2013)

SO ORDAINED, this ____ day of _____, 2022.

Approved:

Lynn P. Deutsch, Mayor

STATE OF GEORGIA
CITY OF DUNWOODY

ORDINANCE 2023-XX-XX

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk (Seal)

City Attorney