



To: Planning Commission

From: Michelle Alexander, Director of Community Development

Date: April 21, 2016

Subject: TA16-0006 - An Ordinance to Amend Section 4.3.1. Nonconforming Lots, Uses of Land and Structures, of the Sandy Springs Zoning Ordinance

Department of Community Recommendation:

APPROVAL of an amendment to Section 4.3.1. Nonconforming Lots, Uses of Land and Structures, of the Sandy Springs Zoning Ordinance

Background:

A Section 4.3.1. Nonconforming Lots, Uses of Land and Structures, of the Sandy Springs Zoning Ordinance provides for the continuance and cessation of existing nonconforming lots, uses and structures.

Discussion:

The major elements of the proposed amendment by Staff are as follows:

Sec. 4.3.1 Nonconforming Lots, Uses of Land and Structures: The responsibility of the owner to provide evidence of the legal, nonconforming status of their property is explicitly stated.

Sec. 4.3.1.B. Continuance of Nonconforming Structure or Building: Clarification is provided to allow nonconforming buildings and structures to be expanded or rebuilt if the degree of nonconformity is not increased, without receiving approval from the Board of Appeals.

Amendment Schedule:

Planning Commission Public Hearing – April 21, 2016

City Council Public Hearing – May 19, 2016

Attachments:

Draft Mark-up

Draft Ordinance

COMMUNITY DEVELOPMENT

7840 Roswell Road, Building 500 • Sandy Springs, Georgia 30350 • 770.730.5600 • SandySpringsGA.gov

MARKED-UP FOR AMENDMENT

4.3.1. NONCONFORMING LOTS, USES OF LAND AND ~~USES—OF STRUCTURES~~. The purpose of the Zoning Ordinance is to have orderly use of property. Nonconforming uses that existed legally prior to the adoption or change of the Zoning Ordinance create land uses that do not conform to the Zoning Ordinance. It is the purpose of this nonconforming use provision to allow legally existing nonconforming uses to be retained with certain limitations to protect adjacent property owners and the public from the inconsistencies created by nonconforming uses. It is the intent that over time all nonconforming uses will be eliminated. The amortization of nonconforming adult establishment uses shall be governed by Section 26-37 of the Code.

The owner of the property upon which exists a nonconforming use, or structure or building shall carry the burden of demonstrating that said nonconformity was established legally prior to the adoption of this ordinance, and, for nonconforming uses, that the use has been continuous since.

- A. Continuance of Nonconforming Uses. A nonconforming use of a building, structure or land that was legal prior to the enactment of the Zoning Ordinance or an amendment to the Zoning Ordinance shall be allowed to continue legally even though such use does not conform with the provisions of the Zoning Ordinance, subject to the following provisions:
1. The nonconforming use shall not be expanded to occupy a greater area of land or building area.
 2. The nonconforming use shall continue in the original building structure or land area that was originally occupied by the nonconforming use.
 3. The nonconforming use shall not be intensified or escalated, for example, by increasing the number of deliveries, employees or customers coming to the nonconforming use, or noise, dust, fumes or other pollutants emanating from the nonconforming use.
 4. The nonconforming use shall not be reinstated after it has been abandoned. It shall be prima facia evidence of abandonment for the owner and/or operator of the nonconforming use to:
 - a. discontinue the nonconforming use for twelve (12) months; or
 - b. fail to obtain a new or renew an existing business license as required under the Code for the operation of such nonconforming use; or
 - c. fail to declare and remit the sales tax required by state law for the nonconforming use.

5. Failure to follow any state, federal or local administrative procedure or regulation that is required for the nonconforming use shall be prima facie evidence of abandonment.
 6. The nonconforming use shall not be changed to another nonconforming use.
 7. The nonconforming use shall maintain any screening or buffering that existed prior to the use becoming a nonconforming use or that was later voluntarily added.
 8. If the use constitutes a nuisance as defined by state law, it is not and shall not become a nonconforming use.
- B. Continuance of Nonconforming Structure or Building. A building or structure that is nonconforming or that contains a nonconforming use at the time of enactment of the Zoning Ordinance or at the time of enactment of an amendment to the Zoning Ordinance may be retained, except that:
- ~~1. The nonconforming structure or building shall not be enlarged, altered or rebuilt, in a way which increases the degree of nonconformity; any nonconforming structure or building may be enlarged, altered or rebuilt if the degree of nonconformity remains the same or decreases, provided that it is used for a permitted use under the current Zoning Ordinance except for repairs necessary to maintain the structure or building in a safe and sanitary condition; and~~
 1. A nonconforming structure or building may be expanded, altered or rebuilt where such expansion, alteration or rebuilding is conforming with all the applicable requirements of the Zoning Ordinance; the degree of nonconformity shall not be increased in any manner by the expansion, alteration or rebuilding. Expansion on the vertical plane, such as the addition of another story to a nonconforming building, shall be considered an expansion of the nonconformity and therefore prohibited. Regular maintenance and repairs are excluded from this provision.
 2. The nonconforming structure or building shall not be rebuilt, altered or repaired after damage or deterioration exceed seventy-five percent (75%) of its replacement cost at the time of destruction, except in conformity with this Ordinance. A permit to begin such restoration shall be applied for no later than six (6) months from the date the damages were incurred. At the request of the applicant, the Director may grant at his/her discretion one (1) extension or more of a maximum of six (6) months each, upon demonstration of extenuating circumstances outside of the owner's control. The applicant shall request an extension in writing, no later than thirty (30) days prior to the expiration of the grace period.

3. This section does not apply to signs. See Article XXXIII.

A request to expand, alter or rebuild an existing nonconforming structure or building may be brought before the Board of Appeals, subject to Article XXII of this ordinance, as a variance.

C. Dangerous Uses. Nothing in this section shall be construed to allow a use that is dangerous to the general public to continue to exist. Nothing in this section shall be construed not to require changes to buildings and structures to comply with any fire code, life safety code or other safety ordinance or regulation.

TA16-0006
Reading: May 17, 2016

STATE OF GEORGIA
COUNTY OF FULTON

**AN ORDINANCE TO AMEND SECTION 4.3.1, NONCONFORMING LOTS,
USES OF LAND AND STRUCTURES,
OF THE SANDY SPRINGS ZONING ORDINANCE**

WHEREAS, the Mayor and City Council of the City of Sandy Springs find that from time to time it is necessary to amend sections of the Zoning Ordinance to correct, clarify, and update the provisions of the Ordinance; and

WHEREAS, the Mayor and City Council of Sandy Springs have determined that revision of the regulations relating to nonconforming conditions is required for use of the ordinance by staff, citizens, and the development community; and

NOW, THEREFORE, to accomplish the foregoing, the Mayor and City Council of the City of Sandy Springs, Georgia, pursuant to their authority, do hereby adopt the following Ordinance:

1.

Section 4.3.1, *Nonconforming Lots, Uses of Land and Uses of Structures*, of the City of Sandy Springs Zoning Ordinance is hereby amended by the deletion of said article in its entirety and the following inserted therefore:

4.3.1. **NONCONFORMING LOTS, USES OF LAND AND STRUCTURES**. The purpose of the Zoning Ordinance is to have orderly use of property. Nonconforming uses that existed legally prior to the adoption or change of the Zoning Ordinance create land uses that do not conform to the Zoning Ordinance. It is the purpose of this nonconforming use provision to allow legally existing nonconforming uses to be retained with certain limitations to protect adjacent property owners and the public from the inconsistencies created by nonconforming uses. It is the intent that over time all nonconforming uses will be eliminated. The amortization of nonconforming adult establishment uses shall be governed by Section 26-37 of the Code.

The owner of the property upon which exists a nonconforming use, or structure or building shall carry the burden of demonstrating that said nonconformity was established legally prior to the adoption of this ordinance, and, for nonconforming uses, that the use has been continuous since.

a. **Continuance of Nonconforming Uses**. A nonconforming use of a building, structure or land that was legal prior to the enactment of the Zoning Ordinance or an amendment to the Zoning Ordinance shall be allowed to continue legally even though such use

1 does not conform with the provisions of the Zoning Ordinance, subject to the
2 following provisions:

- 3 1. The nonconforming use shall not be expanded to occupy a greater area of land or
4 building area.
- 5 2. The nonconforming use shall continue in the original building structure or land
6 area that was originally occupied by the nonconforming use.
- 7 3. The nonconforming use shall not be intensified or escalated, for example, by
8 increasing the number of deliveries, employees or customers coming to the
9 nonconforming use, or noise, dust, fumes or other pollutants emanating from the
10 nonconforming use.
- 11 4. The nonconforming use shall not be reinstated after it has been abandoned. It shall
12 be prima facia evidence of abandonment for the owner and/or operator of the
13 nonconforming use to:
 - 14 i. discontinue the nonconforming use for twelve (12) months; or
 - 15 ii. fail to obtain a new or renew an existing business license as required under
16 the Code for the operation of such nonconforming use; or
 - 17 iii. fail to declare and remit the sales tax required by state law for the
18 nonconforming use.
- 19 5. Failure to follow any state, federal or local administrative procedure or regulation
20 that is required for the nonconforming use shall be prima facia evidence of
21 abandonment.
- 22 6. The nonconforming use shall not be changed to another nonconforming use.
- 23 7. The nonconforming use shall maintain any screening or buffering that existed prior
24 to the use becoming a nonconforming use or that was later voluntarily added.
- 25 8. If the use constitutes a nuisance as defined by state law, it is not and shall not
26 become a nonconforming use.

27
28 b. Continuance of Nonconforming Structure or Building. A building or structure that is
29 nonconforming or that contains a nonconforming use at the time of enactment of the
30 Zoning Ordinance or at the time of enactment of an amendment to the Zoning
31 Ordinance may be retained, except that:

- 32
33 1. A nonconforming structure or building may be expanded, altered or rebuilt where
34 such expansion, alteration or rebuilding is conforming with all the applicable
35 requirements of the Zoning Ordinance; the degree of nonconformity shall not be
36 increased in any manner by the expansion, alteration or rebuilding. Expansion on
37 the vertical plane, such as the addition of another story to a nonconforming
38 building, shall be considered an expansion of the nonconformity and therefore
39 prohibited. Regular maintenance and repairs are excluded from this provision.
- 40
41 2. The nonconforming structure or building shall not be rebuilt, altered or repaired
42 after damage or deterioration exceed seventy-five percent (75%) of its replacement
43 cost at the time of destruction, except in conformity with this Ordinance. A permit
44 to begin such restoration shall be applied for no later than six (6) months from the
45 date the damages were incurred. At the request of the applicant, the Director may
46 grant at his/her discretion one (1) extension or more of a maximum of six (6)

months each, upon demonstration of extenuating circumstances outside of the owner’s control. The applicant shall request an extension in writing, no later than thirty (30) days prior to the expiration of the grace period.

3. This section does not apply to signs. See Article XXXIII.

A request to expand, alter or rebuild an existing nonconforming structure or building may be brought before the Board of Appeals, subject to Article XXII of this ordinance, as a variance.

c. Dangerous Uses. Nothing in this section shall be construed to allow a use that is dangerous to the general public to continue to exist. Nothing in this section shall be construed not to require changes to buildings and structures to comply with any fire code, life safety code or other safety ordinance or regulation.

2.

This Ordinance is effective July 1, 2016; and

ORDAINED this the 17th day of May, 2016.

Approved:

Russell K. Paul, Mayor

Attest:

Michael Casey, City Clerk

(Seal)