06-O -1066

AN ORDINANCE

BY COUNCILMEMBER ANNE FAUVER

AN ORDINANCE TO AMEND SECTION 16-24.005 (5) OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA (THE ZONING ORDINANCE) SO AS TO PROVIDE THAT IF PROPERTY UPON WHICH A NONCONFORMING USE OF A MAJOR STRUCTURE OR MAJOR STRUCTURE AND PREMISES IN COMBINATION, IS REZONED DURING THE ONE YEAR GRANDFATHERING PERIOD PURSUANT TO A LIVABLE COMMUNITIES INITIATIVE (LCI) PROCESS, SAID NONCONFORMING USE STATUS SHALL CEASE AND THE MAJOR STRUCTURE OR MAJOR STRUCTURE AND PREMISES IN COMBINATION SHALL NOT THEREAFTER BE USED EXCEPT IN CONFORMITY WITH THE REGULATION OF THE DISTRICT IN WHICH IT IS LOCATED; TO WAIVE CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

Whereas, the Livable Communities Initiative (LCI) Process is a community planning process for the purpose of promoting smart growth and creating communities which are environmentally healthy, economically strong, and socially equitable; and

Whereas, the rezoning of property pursuant to this planning process should be highly regarded and favorably considered; and

Whereas, when an entire community comes together to shape its own future through changes in land use and zoning classifications, such action should not be taken lightly; and

Whereas, incompatible and nonconforming uses should yield to the present will and desire of the community.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: Section 16-24.005 of the Code of Ordinances of the City of Atlanta, Georgia (the Zoning Ordinance) which currently provides as follows:

Sec. 16-24.005. Nonconforming uses or major structures or of major structures and premises in combination.

If lawful use involving individual structures with a replacement cost of $5000 or more, or of structures and premises in combination, exists at the effective date of adoption or amendment of this chapter that would not be allowed in the district under the terms of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

(1) No existing structure devoted to a use not permitted by this chapter in the district in which it is located shall be enlarged, extended or moved, except in changing the use of a structure to a use permitted in the district in which it is located.

(a) Intent: Although the general intent not to permit expansion of nonconformities set forth in section 16-24.001 is reaffirmed, where indefinite continuation of nonconforming uses in major permanent structures with fixed foundations and with replacement costs exceeding $5000 seems assured, it is hereby found to be adverse to the general public interest to require that such uses remain in mislocated buildings, or to prohibit enclosure of existing outdoor sales, service or storage operations.

(b) Special exception authorized: The board of zoning adjustment may, therefore, by special exception, permit enlargement, extension or moving on the same lot, subject to general requirements and procedures applying to special exceptions and with the following special requirements, limitations and considerations. No such special exception shall be issued on locations and for classes of cases indicated in section 16-24.003.

(c) Materials to be submitted with application: Applications shall be accompanied by site and building plans, photographs of the property and of surrounding property, evidence of continued use, extent of present outdoor sales, service or storage operations, and such other material as may be appropriate in the circumstances of the case. During processing of the application, additional information reasonably necessary to the making of required findings may be called for and shall be provided before decisions are made.

(d) Limitations on extension or expansion: Floor area shall not be increased except to provide for interior sales, service or storage operations replacing existing outdoor sales, storage or service; and outdoor sales, storage or service thus replaced shall not be resumed in the future. In no case shall floor area be increased by more than 35 percent of that existing at the time the use became nonconforming. No floor area increase shall be permitted which is likely to have the effect of intensifying the nonconforming use by increasing traffic, number of customers or employees, or other means. At nonconforming service stations, no floor area increase shall be permitted which would allow total floor area to exceed 2000 square feet.

(e) Screening: Where the lot adjoins or abuts a lot in a residential district directly or with an intervening alley (but not with an intervening street), a solid screening fence or wall not less than six (6) nor more than eight (8) feet in height, or approved vegetative screening, shall be provided and maintained in good condition and appearance; except that such screening shall not be located in required yards adjacent to streets or where it could interfere with visibility at intersections or traffic ways.

(f) Access, parking and service area: Before such special exceptions are granted, the board shall seek the advice of appropriate city agencies or officials concerning adequacy of design, scale, location and improvement of existing access and parking and service areas, and shall require correction of any deficiencies it finds to be of substantial significance as a condition to the granting of the exception.

(g) Signs, lighting of premises: Where such special exceptions are granted, limitations appropriate to the nature of the surrounding area shall be placed on the number, size, character and location of signs and the nature of lighting of signs and premises. Such limitations may require removal, redesign and/or relocation of existing signs and lighting.

(h) Hours and conditions of operation: As a condition to the granting of the special exception, the board may establish such limitations on hours and conditions of operations as it finds reasonably necessary to protect the safety, security, comfort and tranquility of the area, and particularly of nearby residential uses.

(i) Findings required: No such special exception shall be granted except upon findings by the board that the nonconforming use has continued and is likely to continue indefinitely, and that the actions proposed in the application as submitted, and with the conditions and safeguards attached and accepted by the applicant, would result in substantial reduction of existing adverse effects on surrounding property and/or in other substantial public advantage.

(2) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this chapter, but no such use shall be extended to occupy any land outside such building.

(3) Changes in nonconforming uses of major structures or of major structures and uses in combination shall be permitted as follows:

(a) To any use conforming to the regulations of the district in which located; or

(b) To any use permitted in the most restrictive district in which such original nonconforming use is first permitted by this part, subject to the requirements and regulations concerning such use in the district; provided however, that no nonconforming nonresidential use shall be changed to a residential use in any district in which similar residential uses are not permitted.

(4) Any major structure, or major structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the districting in which it located; and the nonconforming use may not thereafter be resumed.

(5) When a nonconforming use of a major structure or major structure and premises in combination is discontinued for a continuous period of one (1) year, the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located. Such restriction shall not apply if such cessation is as a direct result of governmental action impeding access to the premises.

(6) Where nonconforming use status applies to a major structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. "Destruction," for the purpose of this subsection, is defined as damage to an extent of more than 60 percent of the replacement cost at the time of destruction.

(a) Where damage is to an extent 60 percent or less of replacement cost, such structures may be restored to the same or lesser size in the same location; provided however, that restoration shall begin within 12 months of damage and be diligently carried to completion; and nonconforming use may be resumed and continued as before, or on a lesser scale, but shall not be enlarged or intensified. Unless restoration is so

initiated and completed, the use shall terminate and not be resumed. Remodeling shall not be deemed removal or destruction. Destruction made necessary by repairs, maintenance and/or remodeling shall not be construed to be removal or destruction.

(b) Special exception for replacement or reconstruction of destroyed major structures containing nonconforming uses: Where a major structure containing a nonconforming use is destroyed to an extent of more than 60 percent of replacement cost at time of destruction, the board of zoning adjustment may, by special exception, permit its replacement or reconstruction in whole or in part upon making all of the following findings:

(i) That the cause of destruction was not the deliberate action of the owner or occupant of the structure or their agents; and

(ii) That nothing contained in the provisions of section 16-24.003 required termination of such nonconforming use; and

(iii) That the board finds substantial public advantage in continuance of the nonconforming use; and

(iv) That the primary purpose of continuing the nonconforming use is not to continue a monopoly; and

(v) That replacement or reconstruction in the manner proposed, with related actions imposed in conditions and safeguards by the board, would reduce any previous adverse effects of the use on neighboring properties.

(7) Special Exception for the Expansion of Nonconforming Residential Uses in the R-4 and R-5 Residential Districts.

(a) The board of zoning adjustment may, by special exception, permit the enlargement, extension or moving on the same lot of a structure containing a nonconforming multifamily use in an R-4 or R-5 Residential District or the enlargement, extension or moving on the same lot of a structure containing a nonconforming two-family use in an R-4 Residential District, upon making all of the findings set forth in this subsection (7)(a), (i) through (v) below, each of which shall specifically be made a part of the record of such special exception proceedings. With respect to each such required finding, the burden of proof shall be on the person asserting an entitlement to the nonconforming use to show, by clear and convincing evidence, his or her entitlement to a nonconforming use, the continuous maintenance of such use, and the substantial likelihood that such use will continue indefinitely. In order to grant any such special exception, the board must find that:

(i) The total number of residential units and bedrooms on the subject property remains the same or is decreased; and

(ii) Any proposed floor area increase shall not intensify the nonconforming use by increasing traffic, use of on-street or off-street parking, number of residents or by other means; and

(iii) The height and scale of the buildings resulting from the proposed expansion is in character with adjoining buildings in the neighborhood; and

(iv) The total coverage of the lot resulting from the proposed expansion is consistent with the character of other homes in the neighborhood; and

(v) The nonconforming use has continued and is likely to continue indefinitely, and the actions proposed in the application as submitted, and with the conditions and

safeguards attached and accepted by the applicant, would not adversely affect surrounding properties.

(b) Before any such special exception is granted and in addition to the requirements of paragraph (a) of this subsection (7), the board shall seek the advice of appropriate city agencies or officials concerning the adequacy of design, scale, location and improvement of existing access and parking and shall require correction of any deficiencies it finds to be of significance as a condition to the granting of any such special exception.

(c) Where the enlargement, extension or movement on the lot would otherwise require the granting of a variance application, nothing in the provisions of paragraph (a) of this subsection (7) shall be construed as relieving the special exception applicant from the necessity of also obtaining the requisite variance or variances otherwise necessary.

(d) Any nonconforming multifamily residential structure in an R-4 or R-5 District, including any nonconforming duplex in an R-4 Residential District or structure and land in combination in an R-4 or R-5 Residential District in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which it is located and the nonconforming use may not thereafter be resumed.

(e) When the use of any portion of a nonconforming multifamily residential structure in an R-4 or R-5 District or a nonconforming duplex in an R-4 District is discontinued for a continuous period of 12 months, the structure, or structure and premises in combination shall not thereafter be used except in conformity with the regulations of the district in which it is located.

(f) That the provisions of this section 16-24.005 be and shall be deemed to apply with full force and effect to any nonconforming multifamily residential structure in an R-4 or R-5 District, including any nonconforming duplex in an R-4 Residential District or structure and land in combination in an R-4 or R-5 Residential District.

(g) In connection with any request for a special exception filed pursuant to the provisions of this subsection, the applicant shall identify and file as an exhibit to said application for special exception any and all special exception applications, variance applications, and building permits previously sought by or on behalf of the applicant or a person controlled by the applicant with respect to the subject property, whether or not such application(s) or permit(s) have been approved or granted.

is hereby amended by adding the following language to subsection (5) thereof:

, provided however, if the property upon which a nonconforming use of a major structure or major structure and premises in combination, is rezoned during said one (1) year period pursuant to a Livable Communities Initiative (LCI) Process, said nonconforming use status shall cease and the major structure or major structure and premises in combination shall not thereafter be used except in conformity with the regulations of the district in which it is located.

So that when amended, said subsection (5) shall provide as follows:

Sec. 16-24.005. Nonconforming uses or major structures or of major structures and premises in combination.

If lawful use involving individual structures with a replacement cost of $5000 or more, or of structures and premises in combination, exists at the effective date of adoption or amendment of this chapter that would not be allowed in the district under the terms of this chapter, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

(1) No existing structure devoted to a use not permitted by this chapter in the district in which it is located shall be enlarged, extended or moved, except in changing the use of a structure to a use permitted in the district in which it is located.

(a) Intent: Although the general intent not to permit expansion of nonconformities set forth in section 16-24.001 is reaffirmed, where indefinite continuation of nonconforming uses in major permanent structures with fixed foundations and with replacement costs exceeding $5000 seems assured, it is hereby found to be adverse to the general public interest to require that such uses remain in mislocated buildings, or to prohibit enclosure of existing outdoor sales, service or storage operations.

(b) Special exception authorized: The board of zoning adjustment may, therefore, by special exception, permit enlargement, extension or moving on the same lot, subject to general requirements and procedures applying to special exceptions and with the following special requirements, limitations and considerations. No such special exception shall be issued on locations and for classes of cases indicated in section 16-24.003.

(c) Materials to be submitted with application: Applications shall be accompanied by site and building plans, photographs of the property and of surrounding property, evidence of continued use, extent of present outdoor sales, service or storage operations, and such other material as may be appropriate in the circumstances of the case. During processing of the application, additional information reasonably necessary to the making of required findings may be called for and shall be provided before decisions are made.

(d) Limitations on extension or expansion: Floor area shall not be increased except to provide for interior sales, service or storage operations replacing existing outdoor sales, storage or service; and outdoor sales, storage or service thus replaced shall not be resumed in the future. In no case shall floor area be increased by more than 35 percent of that existing at the time the use became nonconforming. No floor area increase shall be permitted which is likely to have the effect of intensifying the nonconforming use by increasing traffic, number of customers or employees, or other means. At nonconforming service stations, no floor area increase shall be permitted which would allow total floor area to exceed 2000 square feet.

(e) Screening: Where the lot adjoins or abuts a lot in a residential district directly or with an intervening alley (but not with an intervening street), a solid screening fence or wall not less than six (6) nor more than eight (8) feet in height, or approved vegetative screening, shall be provided and maintained in good condition and appearance; except that such screening shall not be located in required yards adjacent to streets or where it could interfere with visibility at intersections or traffic ways.

(f) Access, parking and service area: Before such special exceptions are granted, the board shall seek the advice of appropriate city agencies or officials concerning adequacy of design, scale, location and improvement of existing access and parking and service

areas, and shall require correction of any deficiencies it finds to be of substantial significance as a condition to the granting of the exception.

(g) Signs, lighting of premises: Where such special exceptions are granted, limitations appropriate to the nature of the surrounding area shall be placed on the number, size, character and location of signs and the nature of lighting of signs and premises. Such limitations may require removal, redesign and/or relocation of existing signs and lighting.

(h) Hours and conditions of operation: As a condition to the granting of the special exception, the board may establish such limitations on hours and conditions of operations as it finds reasonably necessary to protect the safety, security, comfort and tranquility of the area, and particularly of nearby residential uses.

(i) Findings required: No such special exception shall be granted except upon findings by the board that the nonconforming use has continued and is likely to continue indefinitely, and that the actions proposed in the application as submitted, and with the conditions and safeguards attached and accepted by the applicant, would result in substantial reduction of existing adverse effects on surrounding property and/or in other substantial public advantage.

(2) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this chapter, but no such use shall be extended to occupy any land outside such building.

(3) Changes in nonconforming uses of major structures or of major structures and uses in combination shall be permitted as follows:

(a) To any use conforming to the regulations of the district in which located; or

(b) To any use permitted in the most restrictive district in which such original nonconforming use is first permitted by this part, subject to the requirements and regulations concerning such use in the district; provided however, that no nonconforming nonresidential use shall be changed to a residential use in any district in which similar residential uses are not permitted.

(4) Any major structure, or major structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the districting in which it located; and the nonconforming use may not thereafter be resumed.

(5) When a nonconforming use of a major structure or major structure and premises in combination is discontinued for a continuous period of one (1) year, the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located**, provided however, if the property upon which a nonconforming use of a major structure or major structure and premises in combination, is rezoned during said one (1) year period pursuant to a Livable Communities Initiative (LCI) Process, said nonconforming use status shall cease and the major structure or major structure and premises in combination shall not thereafter be used except in conformity with the regulations of the district in which it is located.** Such restriction shall not apply if such cessation is as a direct result of governmental action impeding access to the premises.

(6) Where nonconforming use status applies to a major structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming

status of the land. "Destruction," for the purpose of this subsection, is defined as damage to an extent of more than 60 percent of the replacement cost at the time of destruction.

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(i) That the cause of destruction was not the deliberate action of the owner or occupant of the structure or their agents; and

(ii) That nothing contained in the provisions of section 16-24.003 required termination of such nonconforming use; and

(iii) That the board finds substantial public advantage in continuance of the nonconforming use; and

(iv) That the primary purpose of continuing the nonconforming use is not to continue a monopoly; and

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(ii) Any proposed floor area increase shall not intensify the nonconforming use by increasing traffic, use of on-street or off-street parking, number of residents or by other means; and

(iii) The height and scale of the buildings resulting from the proposed expansion is in character with adjoining buildings in the neighborhood; and
(iv) The total coverage of the lot resulting from the proposed expansion is consistent with the character of other homes in the neighborhood; and
(v) The nonconforming use has continued and is likely to continue indefinitely, and the actions proposed in the application as submitted, and with the conditions and safeguards attached and accepted by the applicant, would not adversely affect surrounding properties.
(b) Before any such special exception is granted and in addition to the requirements of paragraph (a) of this subsection (7), the board shall seek the advice of appropriate city agencies or officials concerning the adequacy of design, scale, location and improvement of existing access and parking and shall require correction of any deficiencies it finds to be of significance as a condition to the granting of any such special exception.
(c) Where the enlargement, extension or movement on the lot would otherwise require the granting of a variance application, nothing in the provisions of paragraph (a) of this subsection (7) shall be construed as relieving the special exception applicant from the necessity of also obtaining the requisite variance or variances otherwise necessary.
(d) Any nonconforming multifamily residential structure in an R-4 or R-5 District, including any nonconforming duplex in an R-4 Residential District or structure and land in combination in an R-4 or R-5 Residential District in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district in which it is located and the nonconforming use may not thereafter be resumed.
(e) When the use of any portion of a nonconforming multifamily residential structure in an R-4 or R-5 District or a nonconforming duplex in an R-4 District is discontinued for a continuous period of 12 months, the structure, or structure and premises in combination shall not thereafter be used except in conformity with the regulations of the district in which it is located.
(f) That the provisions of this section 16-24.005 be and shall be deemed to apply with full force and effect to any nonconforming multifamily residential structure in an R-4 or R-5 District, including any nonconforming duplex in an R-4 Residential District or structure and land in combination in an R-4 or R-5 Residential District.
(g) In connection with any request for a special exception filed pursuant to the provisions of this subsection, the applicant shall identify and file as an exhibit to said application for special exception any and all special exception applications, variance applications, and building permits previously sought by or on behalf of the applicant or a person controlled by the applicant with respect to the subject property, whether or not such application(s) or permit(s) have been approved or granted.

Section 2: All ordinances or parts of ordinances in conflict herewith are hereby waived to the extent of any such conflict.