

STATE OF GEORGIA

COUNTY OF CLAYTON

ORDINANCE NO. 2012 – 54

AN ORDINANCE TO AMEND THE CLAYTON COUNTY ZONING ORDINANCE, SPECIFICALLY ARTICLE 9 “NONCONFORMING STRUCTURES, LOTS, AND USES” SO AS TO DELETE SECTIONS 9.4 AND 9.5 AND INSERT IN LIEU THEREOF NEW SECTIONS 9.4 AND 9.5; TO PROVIDE AN EFFECTIVE DATE OF THIS ORDINANCE; TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE FOR CODIFICATION; TO PROVIDE FOR SEVERABILITY; AND FOR OTHER PURPOSES.

WHEREAS, the Board of Commissioners have determined there is a need to revise Article 9 “Nonconforming Structures, Lots, and Uses”, Section 9.4 “Nonconforming Structures” and Section 9.5 “Nonconforming Uses or Major Structures, and Premises in Combination”.

NOW THEREFORE, BE IT ORDAINED BY THE CLAYTON COUNTY

BOARD OF COMMISSIONERS AND IT IS HEREBY ORDAINED

PART I

Section 1. The Clayton County Zoning Ordinance, as amended, is hereby further amended by deleting Article 9 “Nonconforming Structures, Lots, and Uses”, Section 9.4 “Nonconforming Structures” and inserting in lieu thereof a new Article 9 “Nonconforming Structures, Lots, and Uses”, Section 9.4 “Nonconforming Structures” to read as follows:

9.4 Nonconforming Structures

Where a lawful structure exists at the effective date of adoption or amendment of this article that could not be built under the terms of this chapter by reasons of restriction on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it is and remains otherwise lawful subject to the following provisions:

- A. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity; but any structure or portion thereof may be enlarged or altered if the degree of its nonconformity remains the same or is decreased, provided such structure is used for a permitted use.
- B. 1. **One- and two-family residential structures:** Should such nonconforming one- or two-family residential structure or nonconforming portion of structure be destroyed, by any means, in whole or in part, it may be reconstructed in the same location and upon its previous foundation and to its previously existing height, provided said reconstruction does not increase the previously existing degree

of nonconformity and further provided that said reconstructed structure is used for a permitted use.

2. **All other structures:** Should such nonconforming multifamily residential, commercial or industrial structure and should a portion of the structure located on a parcel be destroyed by any means to an extent of more than sixty (60) percent of the total replacement cost of all structures on the parcel at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this Article.
 3. **Accessory structures:** When nonconforming, shall be subject to the same provisions as govern the primary structure to which they are an accessory.
- C. **Moving:** A nonconforming structure may be moved on its own lot only if the Zoning Administrator determines that such movement reduces the degree of nonconformity to the maximum extent reasonably feasible, or eliminates such nonconformity, but shall in no case be moved on its own lot in such a manner as to increase the degree of nonconformity.
Where a nonconforming structure is moved off its previous lot, it shall thereafter conform to the regulations for the district in which it is located after it is moved. Nothing contained herein shall prevent the strengthening or restoring to safe condition of any structure or part thereof declared unsafe by any public official charged with protecting the public safety, upon order of such official.
- D. In cases where land is taken for public purposes from legal lots of record at the time of such taking in such manner as to reduce yards previously provided in relation to a portion of a structure below yard requirements generally applicable within the district, the portion of the structure involved shall be construed to be nonconforming.
- E. **Removal of abandoned antennas.** Any antenna that is not operated for a continuous period of one (1) year shall be considered abandoned, and the owner of such antenna shall remove same within ninety (90) days of receipt of notice from the Department of Community Development about such abandonment. If such antenna is not removed within said ninety (90) days, the Board of Commissioners may authorize the County Attorney to pursue court approval for the removal or repair at the expense of the property owner. All expenses related to the removal or repair shall be placed upon the tax roll for the property to which the fence is associated unless immediately reimbursed by the property owner.

If there are two (2) or more users of a single antenna, then this provision shall not become effective until all users cease using the antenna.

Section 2. The Clayton County Zoning Ordinance, as amended, is hereby further amended by deleting Article 9 “Nonconforming Structures, Lots, and Uses”, Section 9.5 “Nonconforming Uses or Major Structures, and Premises in Combination” and inserting in lieu thereof a new Article 9 “Nonconforming Structures, Lots, and Uses”, Section 9.5 “Nonconforming Uses or Major Structures, and Premises in Combination” to read as follows:

9.5 Nonconforming Uses or Major Structures, and Premises in Combination

If lawful use involving individual structures with a replacement cost of five thousand dollars (\$5,000.00) or more, or of structures and premises in combination, exists at the effective date of adoption or amendment of this article 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:

- A No existing structure devoted to a use not permitted by this article 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.
1. **Intent:** Although the general intent not to permit expansion of nonconformities set forth in subsection 9.1 is reaffirmed, where indefinite continuation of nonconforming uses in major permanent structures with fixed foundations and with replacement costs exceeding five thousand dollars (\$5,000.00) seems assured, it is hereby found to be adverse to the general public interest to require that such uses remain in dislocated buildings, or to prohibit enclosure of existing outdoor sales, service or storage operations.
 2. **Special exception authorized:** The Board of Zoning Appeals 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 subsection 9.3.
 3. **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.
 4. **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 thirty-five (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 two thousand (2,000) square feet.
 - 5.. **Screening:** Where the lot adjoins or abuts a lot in a residential district 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.
 6. **Access, parking and service area:** Before such special exceptions are granted, the Board of Zoning Appeals shall seek the advice of the Zoning Administrator 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.
 7. **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.

8. **Hours and conditions of operation:** As a condition to the granting of the special exception, the Board of Zoning Appeals 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.
 9. **Findings required:** No such special exception shall be granted except upon findings by the Board of Zoning Appeals 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.
- B. 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 article, but no such use shall be extended to occupy any land outside such building.
 - C. Changes in nonconforming uses of major structures or of major structures and uses in combination shall be permitted as follows:
 1. To any use conforming to the regulations of the district in which located; or
 2. 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.
 - D. 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.
 - E. 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.
 - F. 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 sixty (60) percent of the replacement cost of all structures located on the parcel at the time of destruction.
 1. Where damage is to an extent sixty (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 twelve (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.
 2. 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 fifty (50) percent of replacement cost at time of destruction, the board of

zoning appeals may, by special exception, permit its replacement or reconstruction in whole or in part upon making all of the following findings:

- a. That the cause of destruction was not the deliberate action of the owner or occupant of the structure or their agents; and
 - b. That nothing contained in the provisions of subsection 9.3 required termination of such nonconforming use; and;
 - c. That the board finds substantial public advantage in continuance of the nonconforming use; and
 - d. That the primary purpose of continuing the nonconforming use is not to continue a monopoly; and
 - e. That replacement or reconstruction in the manner proposed, with related actions imposed in conditions and safeguards by the Board of Zoning Appeals, would reduce any previous adverse effects of the use on neighboring properties.
- G. Uses permissible by conditional use permit or special exception not to be construed as nonconforming uses. Except as otherwise provided herein, any use which is permissible by conditional use permit or special exception in a district shall not be considered a nonconforming use in the district if in lawful existence prior to passage of the requirement for such conditional use permit or special exception, but shall without further action be considered a conforming use. So long as such use remains the same, structural alterations within the general limits of the regulations of this chapter shall be permitted on the premises of such use; but any enlargement, extension, movement or replacement of such use, with respect to land or structures, shall require a special exception or special use permit, as appropriate to the case, as though it were a new use.

PART II

(a) It is hereby declared to be the intention of the Board of Commissioners that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Board of Commissioners to be fully valid, enforceable and constitutional.

(b) It is hereby declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase therein. It is hereby further declared to be the intention of the Board of Commissioners, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the

Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

PART III.

All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

PART IV.

The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

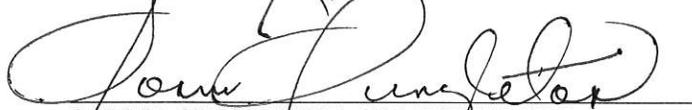
SO ORDAINED this 13th day of March 2012.

CLAYTON COUNTY BOARD OF COMMISSIONERS


ELDRIN BELL, CHAIRMAN


WOLE RALPH, VICE CHAIRMAN


GAIL B. HAMBRICK, COMMISSIONER


SONNA SINGLETON, COMMISSIONER

 *opposed*
MICHAEL EDMONDSON, COMMISSIONER

ATTEST:


SHELBY D. HAYWOOD, CLERK