

## ARTICLE V

### NON-CONFORMING USES

Within the districts established by this Ordinance or amendments that may later be adopted there exists:

- (1) Lots;
- (2) Structures;
- (3) Uses of land and structures; and,
- (4) Characteristics of use.

which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

Non-conforming uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. A non-conforming use of a structure, a non-conforming use of land, or a non-conforming use of structure and land in combination shall not be extended or enlarged after passage of this Ordinance.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption of this Ordinance. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction.

#### Section 5.1 NON-CONFORMING USES OF LAND (OR LAND WITH MINOR STRUCTURES ONLY)

Where at the time of passage of this Ordinance lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, and where such use involves no individual structure with a replacement cost exceeding One Thousand Dollars (\$1,000), the use may be continued so long as it remains otherwise lawful, provided:

- (1) No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
- (2) No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this Ordinance;
- (3) If any such non-conforming use of land ceases for any reason for a period of more than thirty (30) days, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which such land is located; and,
- (4) No additional structure not conforming to the requirements of this Ordinance shall be erected in connection with such non-conforming use of land.

#### Section 5.2 NON-CONFORMING STRUCTURES

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions 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 remains otherwise lawful, subject to the following provisions:

- (1) No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.
- (2) Should such non-conforming structure or non-conforming portion of structure be destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance.
- (3) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

#### <sup>1</sup>Section 5.3 NON-CONFORMING USES OF STRUCTURES OR OF STRUCTURES AND PREMISES IN COMBINATION

If lawful use involving individual structures with a replacement cost of One Thousand Dollars (\$1,000) or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this Ordinance, that would not be allowed in

the district under the terms of this Ordinance, 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 Ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
- (2) Any non-conforming 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 Ordinance, but no such use shall be extended to occupy any land outside such building;
- (3) If no structural alterations are made, any non-conforming use of a structure, or structure and premises, may as a special use be changed to another non-conforming use;
- (4) Any structure, or structure and land in combination on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the non-conforming use may not thereafter be resumed;
- (5) When a non-conforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six (6) consecutive months (except when government action impedes access to the premises), 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; and,
- (6) Where non-conforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than fifty percent (50%) of the replacement cost at the time of destruction.

#### Section 5.4 REPAIRS AND MAINTENANCE

On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding fifty percent (50%) of the current replacement cost of the non-conforming structure or non-conforming portion of the structure as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.

If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

Any use which is permitted as a conditional use in a district under the terms of this Ordinance (other than a change through Board of Appeals action from a non-conforming use to another use not generally permitted in the district) shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.

#### Section 5.5 AMORTIZATION AND DISCONTINUANCE

There are found to be certain uses of land, buildings and structures which have an adverse effect on the carrying out of the comprehensive plan and which can reasonably be discontinued after a reasonable time irrespective of aforementioned rules as to non-conforming uses. The following uses shall be removed or made conforming within the specified amortization period. Said amortization period shall commence upon the effective date of this Ordinance.

- (1) Fences, walls and foliage which constitute a hazard by virtue of impairing sight distances at a curve or intersection shall be made conforming within one (1) calendar year.
- (2) Outdoor advertising signs and billboards deemed a nuisance or hazard shall conform within eight (8) years.
- (3) All provisions in business or industrial districts of this Ordinance setting forth specifications for the operation of a business or industry requiring fencing or opaque shielding shall be complied with within one (1) calendar year.
- (4) Non-conforming open storage operations, such as truck parking, automobile wrecking or salvage, salvage material storage and similar uses shall be made conforming within two (2) calendar years.
- (5) Non-conforming frame, block or light metal structures shall be made conforming within twenty-five (25) calendar years.

- (6) All other non-conforming structures shall be made conforming within forty (40) calendar years.

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<sup>1</sup> *An Ordinance to Amend Articles V, VI, VII, XI, and XVI of the City of Lawrenceville's 2005 Lawrenceville Zoning Ordinance was adopted October 6, 2008.*