

ARTICLE V

NONCONFORMING USES

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

- Lots,
- Structures,
- Uses of land and structures, and
- 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 nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that nonconformities 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.

Nonconforming uses are declared by this Ordinance to be incompatible with permitted uses in the districts involved. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming 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 NONCONFORMING LOTS OF RECORD. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory building may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than these applying to area or width, or both, of the lots shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Appeals.

If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this ordinance, nor shall any division of any parcel

be made which creates a lot with width or area below the requirements stated in this Ordinance.

SECTION 5.2 NONCONFORMING 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 \$1,000, the use may be continued so long as it remains otherwise lawful, provided:

1. No such nonconforming 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 nonconforming 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 nonconforming use of land ceases for any reason for a period of more than 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 nonconforming use of land.

SECTION 5.3 NONCONFORMING 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 that 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 nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity;
2. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than seventy-five (75) percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this Ordinance; and
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.

SECTION 5.4 NONCONFORMING USES OF STRUCTURES OR OF STRUCTURES AND PREMISES IN COMBINATION. If lawful use involving individual structures with a replacement cost of \$1,000 or more, or of structure and premises in combination, exists at the effective date of adoption or amendment 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 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 Ordinance, but no such use shall be extended to occupy any land outside such building;
3. If no structural alterations are made, any nonconforming use of structure, or structure and premises, may as a special exception be changed to another nonconforming use provided that the Board of Appeals, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Appeals may require appropriate conditions and safeguards in accord with the provisions of this Ordinance;
4. Any structure, or 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 district, and the nonconforming use may not thereafter be resumed;
5. When a nonconforming use of structure, or structure and premises in combination, is discontinued or abandoned for eighteen (18) consecutive months or for 36 months during any five-year (5) period (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. The nonconformity of the structure and premises shall be calculated from the date of adoption of this amended section of this Ordinance (*adopted 3-22-2010*). However, the property owner must submit a written request to the Director of Planning and Development with required fees for review and approval. The Director of Planning and Development may approve use of nonconforming structure and premises up to two years with a onetime extension for additional twelve months. Substantial variation from the conformity as determined by the Director of Planning and Development will require Mayor and Council approval. The approval of nonconforming structure does not automatically approve nonconforming sign(s). The Director of Planning and Development cannot approve nonconforming signs on nonconforming structures and premises; and
6. Where nonconforming use status applies to a 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 seventy-five (75) percent of the replacement cost at the time of destruction.

SECTION 5.5 REPAIRS AND MAINTENANCE. On any nonconforming structure or portion of a structure containing a nonconforming 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 10 percent of the current replacement cost of the nonconforming portion of the structure as the case may be, provided that the cubic content existing when it became nonconforming shall not be increases.

If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be 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.

SECTION 5.6 USES UNDER SPECIAL EXCEPTION PROVISIONS NOT NONCONFORMING USES. Any use, which is permitted as a special exception in a district under the terms of this ordinance (other than a change through Board of Appeals action from a nonconforming use to another use not generally permitted in the district) shall not be deemed a nonconforming use in such district, but shall without further action be considered a conforming use.

SECTION 5.7 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 nonconforming 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 ninety (90) days.
2. Outdoor advertising signs and billboards deemed a nuisance or hazard shall conform within eight (8) calendar 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. Nonconforming open storage operations, such as truck parking, automobile wrecking or salvage material storage and similar uses shall be made conforming within two (2) calendar years.
5. Nonconforming frame, block or light metal structures shall be made conforming within twenty-five (25) calendar years.
6. All other nonconforming structures shall be made conforming within forty (40) calendar years.
7. Structures incurring damage of less than 50 percent (50%) of fair market value above the foundation may be restored, reconstructed and used as before, provided that such restoration is commenced within six (6) calendar months from the date

damages were incurred. If reconstruction is not commenced within six (6) months, the use of said land or structure shall thereafter conform with the provisions of this Ordinance. Fair market value shall be determined by reference to current statutory provisions pertaining to real estate assessment and the records of the county assessor.

SECTION 5.8 LOTS OF RECORD. All lots or parcels of record as of the effective date of this amendment and all lots or parcels which have been submitted by way of preliminary plat and approved by the Department in accord with the provisions of the Snellville Zoning Ordinance of 1983, as of the effective date of this amendment, that are made unbuildable by the stream buffer and setback provisions, may still be developed on a case by case basis. Requests for development of these lots shall be made to the Mayor and Council. If development is allowed, the maximum possible impervious surface setback and stream buffer width, given the configuration of the lot, shall be maintained.

SECTION / ARTICLE	DESCRIPTION	AMENDMENT DATE
Section 5.8	Lots of Record (adopted) (effective 10/28/1997)	09/15/1997
Section 5.8	Lots of Record (amended)	03/26/2001
Section 5.3	Nonconforming Structures (amended)	03/22/2010
Section 5.4	Nonconforming Uses of Structures or of Structures and Premises in Combination (amended)	03/22/2010