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AN ORDINANCE
BY COUNCILMEMBER ALEX WAN

AN ORDINANCE TO AMEND CHAPTER 32D (NC-5 CHESHIRE BRIDGE ROAD SOUTH NEIGHBORHOOD COMMERCIAL DISTRICT) OF THE 1982 ATLANTA ZONING ORDINANCE, AS AMENDED, FOR THE PURPOSE OF ADDING SPECIFIC REGULATIONS REGARDING THE AMORTIZATION AND DISCONTINUANCE OF LEGAL, NONCONFORMING USES WITHIN SAID DISTRICT; AND FOR OTHER PURPOSES.

WHEREAS, the NC-5 Cheshire Bridge Road South Neighborhood Commercial District was created by Ordinance 04-O-1822, adopted January 3, 2005 to implement recommendations from the Cheshire Bridge Road Study adopted by City Council on September 21, 1999, and approved by the Mayor on September 30, 1999; and

WHEREAS, the purposes and intent of Neighborhood Commercial (NC) zoning districts are set forth in Chapter 32 of the Atlanta Zoning Ordinance and which include the need to:

(i) Protect existing neighborhood-oriented commercial areas from uses and building forms which are incompatible with the scale, character and needs of the adjacent neighborhoods;

(ii) Preserve and restore existing, traditional and pedestrian scale buildings in established, historic neighborhood commercial districts; and

(iii) Place reasonable controls on the development of larger scale highway-oriented retail, service, office and dining uses which are intended to serve larger areas of the city than a single neighborhood or a small group of neighborhoods; and

WHEREAS, the NC-5 Cheshire Bridge Road South Neighborhood Commercial District purpose includes the creation of a diverse business community of a size, scale and character that supports the public health, safety and welfare of the adjacent neighborhoods; and

WHEREAS, the NC-5 Cheshire Bridge Road South Neighborhood Commercial District recognizes that the area continues to fail to reach its potential as the private sector is hesitant to invest in the area inundated with a number of legal, nonconforming uses that give the area a negative perception detrimental to its market image; and

WHEREAS, Georgia law establishes that legal, nonconforming uses run with the land and benefit subsequent purchasers (*See* Henry v. Cherokee County, 290 Ga.App 355 (2008)) but also recognizes the right of local governments to require cessation of legal, nonconforming uses over a reasonable period of time, said practice being referred to as "amortization". (*See* B.B.C. Land & Dev., Inc. v. Butts County, 281 Ga. 472 (2007); Flippen Alliance for Community Empowerment v. Brannan, 267 Ga.App. (2004)); and

WHEREAS, the enactment of an amortization period for legal, nonconforming uses in the NC-5 District will further the intent and purpose of the NC districts generally and the NC-5 district specifically.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS:

Section 1: The 1982 Zoning Ordinance of the City of Atlanta, as amended, is hereby amended by adding Section 16-32E.003-.004 regulating uses in the NC-5 Cheshire Bridge Road South Neighborhood Commercial District and which shall read as follows:

Section 16–32E.003. – Amortization of Legal, Nonconforming Uses

1. Purpose. Nonconforming uses are declared to be incompatible with permitted uses in the NC-5 District. The purpose of this section is to provide a process whereby the City shall require the discontinuance of legal, nonconforming uses in the NC-5 District through amortization within a reasonable period of time and in a fair and equitable manner.

2. Definitions. For purposes of this Chapter, the following terms shall have the following meanings:
    a. Amortization shall mean a grace period, a time during which a land use regulation is not enforced and during which the operator of a legal, nonconforming use may continue the use until such time as the operator has approximately recouped its investment. At the end of such time, the use must be discontinued or brought into conformance.
    b. Legal, nonconforming use shall mean a use involving individual structure(s) with a replacement cost of $5000 or more, or of structures and premises in combination, in lawful existence at the effective date of adoption or amendment of this District that would not be allowed in the district under the terms of this District's regulations.
    c. Recoupment of investment shall mean a basic financial calculus to determine the amount of time necessary to realize the value of an investment plus any return that is required by the investor.

3. Applicability. This section applies to all legal, nonconforming uses within the NC-5 District, including those regulated by chapter 28A of the Atlanta Zoning Ordinance. Notwithstanding the foregoing, this section shall not apply to those uses regulated by O.C.G.A. § 32-6-83 pertaining to nonconforming outdoor advertising signs.

4. Registration of legal, nonconforming uses. The owner(s) or authorized agent(s) of the real property upon which exists a claimed legal, nonconforming use(s) within the NC-5 District shall register each claimed legal, nonconforming use with the director of the office of buildings no later than March 1, 2013 or 30 days after the effective date of this chapter, whichever is later, and shall renew this registration annually.

    The director shall promulgate a form for the registration of said nonconforming uses and shall annually inspect said uses to assure that they continue in all other respects in

conformity with all other provisions of this part and any other applicable ordinance or regulation of the City of Atlanta, including Chapter 24 of the zoning ordinance on nonconformities. In verifying the qualification of a use, the director of the office of buildings may consider all relevant and material evidence that establishes the continuous existence of the use prior to the effective date of the applicable zoning amendment which rendered such use nonconforming. The fee for initial registration shall be $50.00. The fee for each subsequent renewal shall be $25.00. These fees represent those costs associated with the administrative compliance with these requirements and shall be used to offset those costs.

Any nonconforming use that does not comply with the registration requirements herein shall be deemed to be an illegal use and shall be subject to the regulations applicable to illegal uses and all other enforcement provisions specified in section 16-30.001. It is the burden of the landowner to establish any legal nonconforming rights in the use that would otherwise be illegal and subject to immediate removal. Failure to register shall make the operator of the claimed legal, nonconforming use ineligible for the extended amortization period.

5. Automatic Amortization Period. All legal, nonconforming uses, with the exception of those seeking an extension as hereafter provided, shall cease within two years of the effective date of this ordinance.

6. Extended Amortization Period. For each registered use claiming legal, nonconforming status, and claiming two years from the effective date of this ordinance is an unreasonable amortization period, the registrant may seek an extension beyond the automatic two year amortization period in the following manner:
    a. Within six months of the expiration of the automatic two year amortization period, the registrant shall file an application for extension with the secretary of the board of zoning adjustment in the same manner as an application for variance.
    b. Within five business days of an application for extension, the secretary shall give notice to the building director and registrant of the need to establish an economic review panel to assist the board in determining a reasonable amortization period beyond the two year automatic amortization period.
    c. The economic review panel shall be comprised of three (3) licensed real estate appraisers knowledgeable in real estate economics in general, and more specifically, in the economics of business and real property valuation, in the following manner:
        i. one (1) person selected by the building director,
        ii. one (1) person selected by the registrant, and
        iii. one (1) person selected by the first two (2) appointees. The first two (2) appointees shall be picked within 30 days of the application filing with the board of zoning adjustment. If the first two (2) appointees cannot agree on a third person within 30 days thereafter, the third appointee shall be selected by the commissioner of the department of community development within five (5) days after the expiration of the 30-day period; and the commissioner shall notify the two appointees, the

building director, the registrant, and the secretary in writing of his selection. Such writing shall constitute the official convening of the economic review panel.

d. Upon convening of the economic review panel, both the registrant and the office of buildings shall submit all evidence and documentation responsive to the factors for determining reasonableness to the secretary to the board of zoning adjustment within 30 days who shall transmit the same to the economic review panel. Further evidence or documentation from any interested party may be made a part of the record by submitting such evidence or documentation to the secretary by a date certain and the secretary shall transmit said materials to the economic review panel.

e. The economic review panel shall convene at its discretion and shall review the evidence of reasonableness in relation to the standards and criteria set forth in subsection d.003 (7) (a-m). The economic review panel may, in its discretion, convene a meeting to hear testimony or oral argument by any interested party, provided that notice for such meeting shall be as is provided for board hearings.

f. Within 45 days after the economic review panel is established, the panel shall complete an evaluation of reasonable amortization period, applying the standards and criteria set forth in subsection d.003(7)(a-m) and shall complete and forward a written report on this evaluation to the board. At the next available regular board hearing following receipt of the report from the economic review panel, the board shall hold a public hearing to take final action. The economic review panel shall make a presentation of its written report to the board.

g. If, after reviewing all of the evidence, the board finds that said standards and criteria set forth in subsection d.003(7)(a-m) were considered by the economic review panel, the board shall adopt the economic review panel's report, including the amortization period recommended, unless, based on all of the evidence and documentation presented to the board, the board finds by a vote of a three-fourths majority of a quorum present that the economic review panel acted in an arbitrary manner, or that their report was based on an erroneous finding of a material fact. In such a case, the amortization period shall not be adopted and the board shall remand the matter to the economic review panel with instruction to review the correct standard and/or facts, as the case may be, and revise its report by a date certain for the subsequent consideration of the board at the next available regular board hearing following receipt of the report from the economic review panel.

7. Factors. The economic review period shall recommend and the board of zoning adjustment shall require the discontinuance of such use within a definite and reasonable period of time. A reasonable period of time beyond the automatic amortization period, if any, shall be guided by and determined based on the following factors:

a. Information relating to the structure located on the property, including feasibility with which a nonconforming use of a conforming or nonconforming building may be converted to a conforming use;
b. Nature of the use;
c. Location of the property in relation to surrounding uses;

d. Description of the character of and uses in the surrounding neighborhood;
e. Cost of the property and improvements to the property;
f. Benefit to the public by requiring termination of the non-conforming use;
g. Burden on the property owner resulting from the termination of the non-conforming use;
h. The length of time the use has been in existence and the length of time the use has been non-conforming. This length of time shall include the automatic two year amortization period;
i. Amount of capital investment in the structures or improvements on the property at the time the use became nonconforming;
j. Amount of investment realized to date and the amount remaining, if any, to be recovered during the amortization period;
k. Removal costs that are directly attributable to the establishment of a discontinuance date;
l. Other costs and expenses that are directly attributable to the establishment of discontinuance date; and
m. Calculation according to the Recoupment of Investment Model attached hereto as Exhibit "A".

8. Appeals. The registrant, the building director, or any property owner within 300 feet of the nonconforming use may seek review of the board's decision by writ of certiorari to the Fulton County Superior Court within 30 days.

Section 16–32E.004. – Severability

Should any section or provision of this chapter be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this chapter as a whole or any section thereof other than the section or provision specifically declared to be invalid

Exhibit "A"

Recoupment of Investment Model for Determining Amortization Periods for Legal, Nonconforming Uses	
n= $\frac{\log n\ (1-Pi/A)}{\text{nog n}\ (1/1+i)}$ where, n= amortization period P= base cost (adjusted value of business investment) A= Annual income i= rate of return	
	Hypothetical Case Assumptions
Non-conforming use	Car repair shop
Initial investment in equipment and improvements (exclusive of land) pre-dating amortization ordinance	$200,000
Date of Zoning Change	2005, 7 years ago
Useful Life of Equipment/Improvements	10 years (for IRS purposes)
Method of Depreciation	Straight line
Depreciated Value (since zoning change)	$60,000
Annual Income from Shop	$20,000
Required Return on Investment	15%
Amortization Period Prescribed (APP)	3 Years
Automatic Amortization Period (AAP)	2 Years
Extended Amortization Period (APP-AAP)	1 Year