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MEMORANDUM

To: Mayor and City Council

From: Steve Foote, AICP
 Community Development Director

Date: February 13, 2017

Subject: Amendment to City of Dunwoody Ordinances – 2nd Read
 Chapter 27 - DVO, Dunwoody Village Overlay, subsections (c) and (l)

ITEM DESCRIPTION

Request to consider zoning text amendments to the Dunwoody Village Overlay (DVO) threshold requirement for partial and full compliance found in Section 27-97, subparagraphs (c) and (l). The proposed revisions are attached to this memo.

BACKGROUND

The past several years have seen an improvement in the economy and investment in the City of Dunwoody and properties in the Dunwoody Village Overlay. This has resulted in several development requests within the Village for new construction and renovations. The development interest has brought to light the wording in the Overlay regulations and allowed staff and the Council to consider the nature of the current wording and its impact on commercial properties. The regulations require compliance with certain site criteria when the scale of the project (cost of work proposed) exceeds pre-determined thresholds (based on the DeKalb County valuation). In several recent instances the property owner or developer has submitted a request for relief from regulations in the Dunwoody Village Overlay to the City Council. In each case the request has been approved highlighting a need to consider revising the current regulations.

The proposed amendment was initiated in response to Council’s request that staff review and consider changes to these regulations. While a more comprehensive review of the DVO will be undertaken in the future, the proposed amendment is intended to address the particular issue related to ‘thresholds’ and allow reasonable re-use of existing buildings in the Village.

DISCUSSION

In 2015 the Council approved a SLUP request for interior renovations at 1441 Dunwoody Village Parkway to allow the owner to exceed threshold limitations for interior renovations. Similar discussions regarding the DVO requirements and thresholds were or are being held with owners of the former Hickory House restaurant, the Shoppes at Dunwoody, and other sites within the Village. Each conversation illustrates the restrictive nature of the current thresholds and how they inhibit the renovation and re-use of properties without a lengthy SLUP request.

Denis Shortal Mayor
 Eric Linton, ICMA-CM City Manager
 Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
 Jim Riticher City Council Post 2
 Doug R. Thompson City Council Post 3

Terry Nall City Council Post 4
 Lynn Deutsch City Council Post 5
 John Heneghan City Council Post 6

The current wording for the compliance thresholds is below.

(c) Thresholds for compliance.

- (1) Full compliance. *Except as otherwise expressly stated by the specific provisions of this section (Section 27-97), permits for the following building and construction activities may be issued only if the entire building is determined to comply with the applicable regulations:*
 - a. *Construction of a new building;*
 - b. *Construction of building additions that result in a ten-percent or greater increase in the floor area or building coverage of the existing building;*
 - c. *Exterior construction or remodeling with a total value of 15 percent or more of the county tax assessor's 100 percent assessed value of the existing improvements only; and*
 - d. *Interior construction or remodeling with a total value of 25 percent or more of the county tax assessor's 100 percent assessed value of the existing improvements only.*
- (2) Partial compliance. *Permits for exterior remodeling or building activities that do not trigger full compliance may be issued only if the portion of the building affected by the work is determined to be in compliance with all applicable overlay district regulations.*

A few observations on the above regulations are provided below.

1. "Building and construction" activities are not currently defined and are subject to interpretation.
2. Threshold percentages are relatively low, especially for "full" compliance.
3. The implication of exceeding the threshold can be significant; e.g. possible demolition of the building and reconstruction within the prescribed setback zone.
4. The regulations were adopted during a time when very little, if any, development or re-use was occurring and with the good intentions of implementing site requirements within the Village.

When past requests have come before the city, staff has had to determine which types of 'building and construction' activities were to be included in the threshold calculations. Certain non-permitted activities like painting and re-carpeting were not included, nor were improvements necessary for complying with life-safety regulations.

Attached is the draft re-write of these code provisions. The proposed wording includes separate definitions for renovation vs. remodeling activities, and specifies the types of activities that are not included in threshold calculations. Housekeeping changes to guide the consistent application of the regulations have also been included. Threshold percentages have been adjusted to allow more productive re-use of a property before partial or full compliance is required. The most significant changes impact renovation and remodeling activities.

The proposed draft is a starting point for discussion. Staff believes that the proposed changes, or an alternative wording/threshold percentage, are essential if the city intends to allow property owners the ability to maintain the condition of their facilities and make reasonable interior modifications for the purpose of accommodating new tenants for a longer time period before compliance is required.

The draft changes may be summarized as follows:

1. Relaxes the size of a building addition that can occur without triggering full compliance (increases cap from 10% to 25% of floor space). This would allow a

former bank drive-through to be repurposed/enclosed for commercial use (such as dining area) without requiring full tear down or a SLUP application to avoid compliance.

2. Increases the exterior construction/remodeling cap from 15% to 25% of property's assessed building tax valuation.
3. Defines a new interior "renovation" threshold cap of 50% for 'partial' compliance and 75% for full compliance.
4. Defines a new interior "remodeling" threshold cap of 35% for 'partial' compliance and 50% for full compliance.
5. Adds definitions for "renovations" and "remodeling" activities.
6. Specifies that calculation formulas do not include amounts invested for interior or exterior ADA and life safety improvements, or unpermitted work (painting, flooring replacement, etc.).
7. Clarifies that calculations apply cumulatively over time and for all buildings on the site. Not to individual occurrences or structures.
8. Adds a provision for the Community Development Director to determine appropriate site improvements for achieving 'partial' compliance without requiring a SLUP application.

PLANNING COMMISSION

The proposed changes were reviewed by the Planning Commission during their December 13th meeting. After discussion a Motion was made to support the text amendments (5-8 above) adding definitions, addressing what is used in value calculations, stating that calculations apply over time and are cumulative, and allowing the Community Development Director to determine partial compliance (these include paragraphs (1)d. and then paragraphs (3)-(6) in the draft document). Proposed changes incorporating different threshold percentages (1-4 above) were not recommended for approval, but left for Council consideration. Motion passed 3 For (Grossman, Grove, Player) and 2 Against (Herod, O'Brien); Abstain: 0; Absent: 2 (Anders, Dallas)

UPDATE

During the Council discussion on 1st Read there was general support for the proposed changes. Based on questions from the Council staff offers the following responses.

1. Staff has submitted a request to iWorqs to modify the software to include fields that track this information over time and ensure that threshold allowances are verified. We anticipate this will be possible. If not, appropriate alternative measures to track this will be taken.
2. Staff recommends that the current process not be changed and that the City not assume any responsibility for notifying potential purchasers of a property's status. The department will keep records for City purposes and provide information upon request. This retains the current process. However, since the proposed code change significantly increases the threshold for partial and full compliance, the chance of an adverse impact on a purchaser is being reduced.
3. The baseline figure to be used for renovation and remodeling work will be the DeKalb County assessed valuation established at the time of the first permitted work.

Modifying this number as re-assessments are made would work against the intent of the threshold cap.

4. Staff has included a statement under 'partial' compliance 'e' that allows exterior façade work to be a condition of partial compliance without counting against the exterior construction threshold. This should facilitate making the facades more attractive.
5. Staff has researched the possibility of using valuation per building verses the overall site. However, the DeKalb County Assessor's Office does not publish this information. For that reason and others, staff recommends no change to this wording.

RECOMMENDATION

2nd Reading. Staff recommends adoption of the amendments as presented.

Attachments:

Proposed Amendment to Chapter 27, Section 27-97(c) & (l) – with revisions

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2017-XX-XX

AN ORDINANCE OF THE CITY OF DUNWOODY REVISING CERTAIN PROVISIONS OF THE DUNWOODY VILLAGE OVERLAY OF THE ZONING ORDINANCE (CHAPTER 27 OF THE CITY CODE) TO AMEND THE THRESHOLD REQUIREMENTS FOR PARTIAL AND FULL COMPLIANCE; AND FOR OTHER PURPOSES

WHEREAS, the City of Dunwoody is charged with providing for the health, safety and welfare of the citizens of the City; and

WHEREAS, there have been several development requests in the Dunwoody Village area of the City in the last year or two; and

WHEREAS, certain provisions of the Dunwoody Village Overlay of the City of Dunwoody Zoning Ordinance, Chapter 27, Section 27-97, currently require compliance with certain site criteria when the scale of the project exceeds pre-determined thresholds; and

WHEREAS, as a result of several requests for relief from these requirements that have been granted by Mayor and City Council, the Mayor and City Council wish to re-examine these provisions; and

WHEREAS, the Mayor and City Council find that the current regulations are too restrictive, specifically the relatively low threshold percentages, significant implication of exceeding the threshold, and the regulations reflect their passage in a less economically friendly environment for mass development; and

WHEREAS, the Mayor and City Council find that the proposed changes to these provisions are essential to allow property owners the ability to maintain the condition of their facilities and make reasonable interior modifications for the purpose of accommodating new tenants for a longer time period before compliance is required; and

WHEREAS, the Mayor and City Council have conducted a properly-advertised Public Hearing prior to adoption of this Ordinance.

THEREFORE, THE MAYOR AND COUNCIL FOR THE CITY OF DUNWOODY HEREBY ORDAIN AS FOLLOWS:

Section 1: Chapter 27 (Zoning) of the City of Dunwoody Code is hereby revised by amending Section 27-97 subsections (c) and (l) to read as follows:

Sec. 27-97. DVO – Dunwoody Village Overlay.

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**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2017-XX-XX

(c) *Thresholds for Compliance.*

- (12) *Partial compliance.* Permits for the following activities may be issued only as described herein below.
- a. Exterior construction and/or remodeling work described in (2) below ~~or building activities~~ that does not trigger full compliance may be issued provided ~~only that if~~ the portion of the building affected by the work is determined to be in compliance with ~~all~~ applicable overlay district regulations.
 - b. Interior renovations, maintenance, and/or repair activities exceeding fifty percent (50%) of the county tax assessor's valuation may be authorized provided that partial compliance is achieved according to paragraph 'd' below.
 - c. Interior remodeling or construction with a total value exceeding thirty-five percent (35%) of the county tax assessor's valuation may be authorized provided that partial compliance is achieved according to paragraph 'd' below.
 - d. Partial compliance shall be achieved as determined by the Community Development Director's reasonable discretion and includes those site and/or building improvements which can be achieved without requiring the demolition of principal buildings or the removal of substantial portions of parking lots. Improvements required under partial compliance may include, but are not limited to; 27-97 (f) signs, (h) landscaping, (i) subsections 2, 4, 7-9, and (j) public areas, service areas and retaining walls as determined by the Community Development Director. Modification of the Director's decision may be sought per Section 27-97 (l).
 - e. Calculations used for determining partial compliance do not include the cost of interior or exterior improvements required to comply with ADA and/or life-safety code requirements, **or exterior or interior improvements required as a condition of partial compliance.** Work that does not require the issuance of a building permit, such as, painting and carpet replacement, is not included.

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CITY OF DUNWOODY

ORDINANCE 2017-XX-XX

(21) *Full compliance.* Except as otherwise expressly stated by the specific provisions of this section (section [27-97](#)), permits for the following building and construction activities may be issued only if the entire building is determined to comply with ~~the~~ applicable [Dunwoody Village overlay district](#) regulations:

- a. Construction of a new building;
- b. Construction of building additions that result in an [increase of twenty-five](#)~~ten~~ percent (25%) or [more](#)~~greater increase~~ in the floor area or building coverage of the existing building;
- c. Exterior construction or remodeling [of the building, that does not increase the floor area of the building, but has a total value exceeding](#) ~~with a total value of twenty-five~~[15](#) percent (25%) ~~or more~~ of the county tax assessor's [valuation](#)~~100 percent assessed value of the existing improvements only~~; and

~~a. Interior construction or remodeling with a total value of 25 percent or more of the county tax assessor's 100 percent assessed value of the existing improvements only.~~

- d. Interior renovation, maintenance, and/or repair activities exceeding seventy-five percent (75%) of the county tax assessor's valuation.
- e. Interior remodeling, construction, and/or addition activities exceeding fifty percent (50%) of the county tax assessor's valuation.
- f. Calculations used for determining full compliance do not include the cost of interior or exterior renovations, maintenance, or repair work as defined herein, or [interior or exterior](#) improvements required to comply with ADA and/or life-safety code requirements. Work that does not require the issuance of a building permit, such as, painting and carpet replacement, is not included. [All remodeling, construction and addition work as defined herein is included.](#)

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CITY OF DUNWOODY**

ORDINANCE 2017-XX-XX

~~*Partial compliance.* Permits for Exterior remodeling or building activities that do not trigger full compliance may be issued only if the portion of the building affected by the work is determined to be in compliance with all applicable overlay district regulations. Interior construction or remodeling with a total value of 25 percent or more of the county tax assessor's 100 percent assessed value of the existing improvements only.~~

- (3) *Renovations, Maintenance & Repair:* include the replacement, including the upgrading, of fixtures, appliances, countertops, painting and wallpaper, window coverings, flooring, roofing, exterior facades, and other similar features of building.
- (4) *Remodeling, Construction, & Additions:* include the physical alteration of a structure by moving, constructing, or the addition of new walls, plumbing, bathrooms, or similar space changes.
- (5) All references in this Section to the "county tax assessor's valuation" shall mean the most recently published data from DeKalb County and refers to the 100% assessed valuation of existing improvements only (building). Land value is not included.
- (6) All calculations of improvements for full or partial compliance shall be cumulative for all buildings on the entire site and over time. Calculations are not 'per building' or 'per occurrence.'

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(l) *Modifications and adjustments.* The regulations of subsections (e) through (k) above and decisions of the Community Development Director in (c)(2) may be modified only if reviewed and approved in accordance with the special land use permit procedures of article V, division 3.

**STATE OF GEORGIA
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Section 2: This Amendment shall become effective upon approval by the Mayor and City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Amendment hereby repeals any and all conflicting ordinances and amendments.

SO ORDAINED, this ____ day of _____, 2017.

Approved:

Denis L. Shortal, Mayor

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk

Office of City Attorney

Proposed Amendment to Section 27-97(c)(c) *Thresholds for compliance.* (Dunwoody Village Overlay)

- (1) *Partial compliance.* Permits for the following activities may be issued only as described herein below.
- a. Exterior construction and/or remodeling work described in (2) below ~~or building activities~~ that does not trigger full compliance may be issued provided ~~only that if~~ the portion of the building affected by the work is determined to be in compliance with ~~all~~ applicable overlay district regulations.
 - b. Interior renovations, maintenance, and/or repair activities exceeding fifty percent (50%) of the county tax assessor's valuation may be authorized provided that partial compliance is achieved according to paragraph 'd' below.
 - c. Interior remodeling or construction with a total value exceeding thirty-five percent (35%) of the county tax assessor's valuation may be authorized provided that partial compliance is achieved according to paragraph 'd' below.
 - d. Partial compliance shall be achieved as determined by the Community Development Director's reasonable discretion and includes those site and/or building improvements which can be achieved without requiring the demolition of principal buildings or the removal of substantial portions of parking lots. Improvements required under partial compliance may include, but are not limited to; 27-97 (f) signs, (h) landscaping, (i) subsections 2, 4, 7-9, and (j) public areas, service areas and retaining walls as determined by the Community Development Director. Modification of the Director's decision may be sought per Section 27-97 (l).
 - e. Calculations used for determining partial compliance do not include the cost of interior or exterior improvements required by Code to comply with ADA and/or life-safety code requirements, or exterior improvements required as a condition of partial compliance. Work that does not require the issuance of a building permit, such as, painting and carpet replacement, is not included.

- ~~(1)~~(2) *Full compliance.* Except as otherwise expressly stated by the specific provisions of this section (section 27-97), permits for the following building and construction activities may be issued only if the entire building is determined to comply with ~~the~~ applicable Dunwoody Village overlay district regulations:
- a. Construction of a new building;
 - b. Construction of building additions that result in an increase of twenty-five~~ten~~ percent (25%) or more~~greater increase~~ in the floor area or building coverage of the existing building;
 - c. Exterior construction or remodeling of the building, that does not increase the floor area of the building, but has a total value exceeding ~~with a total value of twenty-five~~ 15~~percent (25%) or more~~ of the county tax assessor's valuation 100 percent assessed value of the existing improvements only; and
 - ~~d. Interior construction or remodeling with a total value of 25 percent or more of the county tax assessor's 100 percent assessed value of the existing improvements only.~~
 - d. Interior renovation, maintenance, and/or repair activities exceeding seventy-five percent (75%) of the county tax assessor's valuation.
 - e. Interior remodeling, construction, and/or addition activities exceeding fifty percent (50%) of the county tax assessor's valuation.

Proposed Amendment to Section 27-97(c)

e.f. Calculations used for determining full compliance do not include the cost of interior or exterior renovations, maintenance, or repair work as defined herein, or interior or exterior improvements required to comply with ADA and/or life-safety code requirements. Work that does not require the issuance of a building permit, such as, painting and carpet replacement, is not included. All remodeling, construction and addition work as defined herein is included.

(2) ~~Partial compliance. Permits for Exterior remodeling or building activities that do not trigger full compliance may be issued only if the portion of the building affected by the work is determined to be in compliance with all applicable overlay district regulations. Interior construction or remodeling with a total value of 25 percent or more of the county tax assessor's 100 percent assessed value of the existing improvements only.~~

(3) *Renovations, Maintenance & Repair:* include the replacement, including the upgrading, of fixtures, appliances, countertops, painting and wallpaper, window coverings, flooring, roofing, exterior facades, and other similar features of building.

(4) *Remodeling, Construction, & Additions:* include the physical alteration of a structure by moving, constructing, or the addition of new walls, plumbing, bathrooms, or similar space changes.

(5) All references in this Section to the "county tax assessor's valuation" shall mean the most recently published data from DeKalb County and refers to the 100% assessed valuation of existing improvements only (building). Land value is not included.

(6) All calculations of improvements for full or partial compliance shall be cumulative for all buildings on the entire site and over time. Calculations are not 'per building' or 'per occurrence.'

(l) *Modifications and adjustments.* The regulations of subsections (e) through (k) above and decisions of the Community Development Director in (c)(2) may be modified only if reviewed and approved in accordance with the special land use permit procedures of article V, division 3.