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ORDINANCE NO. 2009-14

AN ORDINANCE AMENDING PART ELEVEN – PLANNING AND ZONING CODE, TITLE THREE – CODE ADMINISTRATION, CHAPTER 1121 – NONCONFORMING USES, LOTS, AND STRUCTURES, SECTIONS 1121.01 – PURPOSE, 1121.03 – NONCONFORMING USES OF BUILDINGS, STRUCTURES OR LAND, AND 1121.04 – NONCONFORMING BUILDINGS AND STRUCTURES OF THE CODIFIED ORDINANCES OF THE CITY OF WILLOUGHBY HILLS AND REPEALING ANY AND ALL CONFLICTING LEGISLATION.

WHEREAS, the purpose and intent of Chapter 1121 is to recognize the existence of uses, buildings, lots, structures, and conditions that lawfully existed at the time of the Planning and Zoning Code’s enactment, and amendments thereto, but which now do not conform with one or more of the regulations contained in the City’s Planning and Zoning Code; and

WHEREAS, Section 1121.01 as currently written considers nonconforming status to be incompatible with the current regulations affecting the redevelopment of such nonconforming properties; and

WHEREAS, within the City of Willoughby Hills existing commercial development now situated in a B-District classification may not conform to all of the various new requirements imposed upon new development where none previously existed; and

WHEREAS, in the event of accidental destruction by fire or weather of individual buildings or structures, reconstruction of such buildings or structures under the current code may not be compatible with surrounding properties and may limit the redevelopment of such accidentally destroyed buildings or structures and may even make the redevelopment of such properties unfeasible, thereby creating vacant properties not contributing to the general health of the area and community and could result in blighted conditions; and

WHEREAS, reconstruction of such accidentally destroyed buildings or structures, as they substantially existed before such accidental destruction, would serve to maintain the value and viability of the commercial area; and

WHEREAS, in the interest of the general welfare of the City of Willoughby Hills and in order to promote the general advantages of public peace, health, safety, morals, convenience, welfare and prosperity of the residents and property owners of the City of Willoughby Hills, this Council is of the opinion that **Chapter 1121 – Nonconforming Uses, Lots, and Structures**, should hereby be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, LAKE COUNTY, STATE OF OHIO, THAT:

SECTION 1. The existing **Section 1121.01 – Purpose** of the Codified Ordinances of the City of Willoughby Hills be, and it hereby is, amended to read and provide in its entirety as follows:

“Chapter 1121 Nonconforming Uses, Lots, and Structures

1121.01 PURPOSE.

The purpose of this Section is to recognize the existence of uses, buildings, lots, structures, and conditions that lawfully existed at the time of this Planning and Zoning Code’s enactment, or amendment

thereto, but which now do not conform with one or more of the regulations contained in this Planning and Zoning Code. Nonconforming status is considered to be incompatible with permitted uses, buildings, lots, conditions and structures. Therefore, nonconforming uses, buildings, lots, structures and conditions are subject to regulations limiting their use, restoration, reconstruction, extension, and substitution. The regulations in this Chapter are established in order to achieve the following purposes:

- (a) To permit the continuance but control of nonconforming uses so as to minimize any adverse effects the uses might have on the adjoining properties and development.
- (b) To regulate their maintenance and repair.
- (c) To require their permanent discontinuance if not operated for certain periods of time.
- (d) To bring about eventual conformity of all uses in accordance with the objectives of the Master Plan and Planning and Zoning Code of the City.
- (e) To establish regulations for the development of nonconforming lots.”

SECTION 2. The existing **Section 1121.03 – Nonconforming Uses of Buildings, Structures or Lands**, of the Codified Ordinances of the City of Willoughby Hills be and it hereby is, amended to read and provide in its entirety as follows:

“1121.03 NONCONFORMING USES OF BUILDINGS, STRUCTURES, OR LAND.

A nonconforming use continues so long as it remains otherwise lawful and does not constitute a public nuisance, subject to the following regulations:

- (a) **Change or Substitution to Another Nonconforming Use.** A nonconforming use of a building, structure or land shall not be changed or substituted to another nonconforming use unless:
 - (1) The Board of Building and Zoning Appeals, on appeal, finds that the use proposed is equally appropriate or more appropriate to the district than the existing nonconforming use, and that the use proposed is in less conflict with the character of uses permitted in the applicable zoning district than the existing nonconforming use, and that the proposed substitution is of no greater intensity than the previous use, pursuant to the criteria in **Section 1121.03(c)(1), Expanding Nonconforming Uses and Structures**. In permitting such change, the Board of Building and Zoning Appeals may prescribe appropriate conditions and safeguards in accordance with other provisions of this Planning and Zoning Code and when made a part of the terms under which the change is granted.
 - A. Whenever a nonconforming use is changed to a less intensive use, such use shall not thereafter be changed to a more intensive nonconforming use.
 - B. Whenever a nonconforming use is changed to a use permitted in the district in which the lot is located, it shall cease to be considered a nonconforming use. Upon such compliance, no nonconforming use shall be made, resumed or reinstated.
 - C. Violation of any conditions and/or safeguards prescribed shall be deemed a violation of this Planning and Zoning Code and shall be punishable under **Chapter 1107, Enforcement and Penalty**.
 - (2) An application is filed with the Board of Building and Zoning Appeals and such application includes payment of the fee established by the City, and the items required in **Chapter 1117, Appeals and Variances**.
- (b) **Land Occupied by Nonconforming Use.**
 - (1) **Expansion of Nonconforming Use of Land.** A nonconforming use of land shall not be physically enlarged, increased, nor extended to occupy a greater area of land than was occupied by the use at the time it became nonconforming.
 - (2) **Relocation of Nonconforming Use of Land.** A nonconforming use of land shall not be moved in whole or in part to any portion of the lot or parcel other than those portions occupied by the use at the time it became nonconforming.

(c) **Structures Occupied by Nonconforming Use.**

- (1) **Expanding Nonconforming Uses within Structures.** Upon approval by the Board of Building and Zoning Appeals, a nonconforming use of an existing structure may be extended throughout any parts of a building that were arranged or designed for such use at the time of adoption or amendment to this Planning and Zoning Code, provided the intensity of the nonconforming use is not increased and no such use shall be extended to occupy any land outside such building not previously occupied by such nonconforming use. In determining whether intensity of use is increased, the Board of Building and Zoning Appeals shall consider the following:
 - A. Hours of operation;
 - B. Volume and type of sales;
 - C. Type of processing activity;
 - D. Nature and location of storage;
 - E. Traffic generation by volume, type, and characteristics;
 - F. Parking and loading characteristics; and
 - G. Noise, smoke, odor, glare, vibration, radiation, and fumes.
 - (2) **Expansion of Building(s).** No such building shall be enlarged or expanded to increase the nonconforming use. No additional structures shall be constructed in connection with such nonconforming use.
 - (3) **Alteration or Reconstruction of a Building Occupied by a Nonconforming Use.** No building or structure occupied by a nonconforming use shall be altered, improved, or reconstructed except when:
 - A. The use is changed to a use permitted in the district in which it is located, or
 - B. The building or portion thereof is demolished by any means that is not the voluntary action of the property owner, in which case the building(s) may be reconstructed substantially the same as existed prior to destruction. When used above, the term “substantially the same” is related to the building size and setbacks, the number of parking spaces, parking setbacks, driveway locations, landscaping, screening, etc. Such reconstruction shall be approved by the Planning and Zoning Commission and such reconstruction pursuant to this Section shall not be unreasonably withheld.
- (d) **Discontinuance of Use.** Whenever a nonconforming use of a building, part of a building, lot or part of a lot is discontinued for more than one (1) year, such discontinuance shall constitute abandonment of such use and any subsequent use of the building, part of a building, lot or part of a lot shall conform to the use regulations specified by this Code for the district in which such land is located.”

SECTION 3. The existing **Section 1121.04 – *Nonconforming Buildings and Structures*** of the Codified Ordinances of the City of Willoughby Hills be and it hereby is, amended to read and provide in its entirety as follows:

“1121.04 NONCONFORMING BUILDINGS AND STRUCTURES.

A nonconforming building or structure may continue to be used or occupied by a use permitted in the district in which it is located so long as it remains otherwise lawful and does not constitute a public nuisance, subject to the following provisions:

- (a) **Additions and Moving.** A nonconforming building or structure shall not be added to, enlarged, or moved unless the addition(s) or part(s) moved conforms to the regulations of the district in which it is located.

- (b) **Restoration of Damaged Building or Structure.** If a nonconforming building or structure is damaged or destroyed by any means, which is not a voluntary action of the property owner, those portions so destroyed or damaged may be restored substantially the same as existed prior to destruction provided the reconstruction is begun within 12 months of the damage or destruction. When used above, the term "substantially the same" is related to the building size and setbacks, the number of parking spaces, parking setbacks, landscaping, screening, etc. Any restoration that exceeds the original footprint and/or floor area shall comply with Subsection 1121.04(a).
- (c) **Change in Principal Use of Building.** The principal use of a nonconforming building may be changed to any other use permitted in the district in which it is located so long as the new use complies with all regulations of this Planning and Zoning Code specified for such use, except the regulations to which the building did not conform prior to the change in use.
- (d) Variations from district regulations on area, lot coverage, lot width, height, yards, location on the lot may be granted by the Board of Building and Zoning Appeals where necessary and where such appeal for a variance meets the requirements of Section 1117.09(c)(1), ***Area Variance.*** The Zoning Administrator may allow the extension of an existing nonconforming building line if the extension maintains the same or creates a greater distance from the lot line."

SECTION 4. All Ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance.

SECTION 5. The actions of this Council concerning and relating to the passage of this legislation were conducted in lawful meetings of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 6. This Ordinance shall be in full force and effect at the earliest time permitted by law.

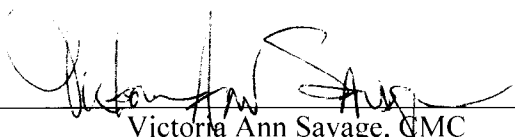
Public Hearing Advertised: **March 16, 2009**
Public Hearing Held: **April 23, 2009**

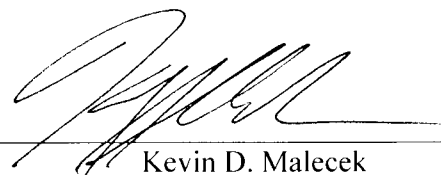
First Reading: **March 26, 2009**
Second Reading: **April 9, 2009**
Third Reading: **April 23, 2009**

PASSED: April 23, 2009

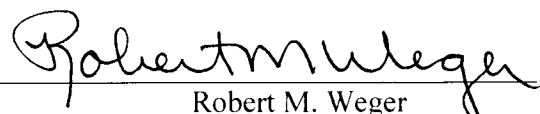
Submitted to the Mayor for his approval
on this 25 day of April, 2009

ATTEST:


Victoria Ann Savage, CMC
Clerk of Council


Kevin D. Malecek
President of Council

Approved by the Mayor
April 23, 2009


Robert M. Weger
Mayor