

- **SECTION 4.2 - REZONING, TEXT AMENDMENTS AND CONDITIONAL USES**

The Official Zoning Map may be amended from time to time and conditional uses may be approved for specific properties by the City Council under the procedures hereinafter specified. In addition, changes in the conditions of approval may also be approved by the City Council following the procedures in this section. All of these types of actions shall be referred to as "zoning changes", along with the following: 1. Adoption of the zoning ordinance or text amendments to the ordinance; 2. Rezoning of land; 3. The approval of a masterplan or an amendment to a masterplan.

4.2.1 Initiation.

A.

An application for a zoning change may be initiated by the City Council, the Planning Commission **the Director**, or by any person who owns property within the City. Unless initiated by the City Council or the Planning Commission, all such applications shall be initiated by the owner of a majority interest in the property affected.

B.

All applications shall be submitted to the Director within filing deadlines and on application forms adopted from time to time by the Community Development Department. The application forms and filing deadlines on a public hearing scheduled shall be published and made available to the public. All applications shall be accompanied by a non-refundable fee as fixed from time to time by the Community Development Department. A fee shall not be charged if the City or Planning Commission initiates an application.

C.

An application for a zoning change affecting the same property shall not be considered by the City Council more often than once every 12 months; provided, however, that the City Council may approve a reduction in the waiting period to no less than six (6) months.

4.2.2 Public hearing process.

Before taking final action on a proposed zoning change, the Planning Commission and the City Council each shall hold a public hearing on the proposal. The Director shall publish a schedule of the public hearing dates on an annual basis, along with the application filing deadlines.

A.

Notification to the General Public.

1.

At least 15 days but not more than 45 days prior to each public hearing, notice shall be published in a newspaper of general circulation within the City. The Director shall prepare such notice, which shall state the time, place and purpose of the hearing.

2.

A zoning change initiated by a party other than the City Council or the Planning Commission shall be heard at a public hearing only upon:

a.

The notice, in addition to the requirements above, shall include the location of the property, the present zoning classification of the property, and the proposed zoning classification of the property or the conditional use requested; and

b.

The Director shall post, at least 15 days prior to the public hearing, on a conspicuous place on the property for which an application has been submitted, a sign or signs stating the date, time and place for the public hearing, and the public hearing case number.

c.

Notice to Surrounding Property Owners. If the proposed zoning change affects only one (1) property, notice shall also be given to surrounding property owners as follows:

3.

At least ten (10) days prior to the first public hearing at which a zoning change will be considered, the Director shall cause a notice to be mailed to all persons owning record title to property located within 500 feet of the property that is the subject matter of the zoning change.

4.

The notice shall state the time, place and purpose of the hearings by the Planning Commission and the City Council. The written notice shall be mailed to the last known address of the property owners as such addresses appear on the Fulton County ad valorem tax records.

B.

Associated Applications for CLUP Amendments or Variances. If an application for a zoning change is associated with a proposed Comprehensive Land Use Plan amendment or exception variance, the public notice for the zoning change may be combined with the public notice required for the associated applications.

1.

The Director shall submit each application to the Planning Commission, together with a report of the Director's findings and a recommendation. The Planning Commission shall review and take action upon each application after holding a public hearing. In making a recommendation on each application, the Planning Commission shall follow the standards set forth under this Section. The recommendation of the Planning Commission and that of the Director, together with the minutes of the Planning Commission hearing at which the application is reviewed, shall be submitted to the City Council. ~~If the Planning Commission does not act upon an application~~ **If the Planning Commission does not act upon an application, the Director may** take it to the City Council without a recommendation from the Planning Commission. No member of the Planning Commission shall rule on a matter in which he or she has a financial interest.

[\(Ord. No. 687, § 1, 3-17-2014\)](#)

4.2.3 Standards for zoning changes.

A.

Zoning Map Amendments (Rezoning).

1.

In order to be approved, a rezoning must be in conformity with the designation for the property on the Future Land Use Map contained in the Comprehensive Plan, as most recently amended.

2.

The Planning Commission and the City Council shall consider the following standards in considering a rezoning application, giving due weight or priority to those factors particularly appropriate to the circumstances of each application:

a.

Whether the zoning proposal will permit a use that is suitable in view of the zoning, use and development of adjacent and nearby property.

b.

Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.

c.

Whether the zoning proposal will adversely affect the natural environment.

d.

Whether there are substantial reasons why the property cannot or should not be used as currently zoned.

e.

Whether the zoning proposal will result in a use that will or could cause an excessive or burdensome use of public facilities or services, including but not limited to existing streets and transportation facilities, schools, water or sewer utilities, and police or fire protection.

f.

Whether the zoning proposal is supported by new or changing conditions not anticipated or reflected in the existing zoning on the property.

g.

Whether the zoning proposal reflects a reasonable balance between the promotion of the public health, safety, morality or general welfare against the right to unrestricted use of property.

h.

Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.

i.

The extent to which the zoning proposal is consistent with the Comprehensive Plan.

B.

Conditional Use Standards. A conditional use otherwise permitted within a zoning district shall be considered to be compatible with other uses permitted in the district, provided that due consideration is given to the following objective criteria at a public hearing and satisfactory provisions or arrangements are made for:

1.

Access into and out of the property with regard to traffic and pedestrian safety, volume of traffic flow, and emergency vehicles, as well as the type of street providing access;

2.

The extent to which refuse areas, loading and service areas, off street parking, and buffers and screening are provided on the property;

3.

Ensuring that the conditional use will not be injurious to the use and enjoyment of the environment or of other property in the immediate vicinity or diminish and impair property values within the surrounding neighborhood;

4.

Ensuring that the conditional use will not increase local or state expenditures in relation to the cost of servicing or maintaining neighboring properties;

5.

Ensuring that the conditional use will not impede the normal and orderly development of surrounding property for uses predominant in the area; and

6.

Ensuring that the location and character of the conditional use is considered to be consistent with a desirable pattern of development for the city, in general.

C.

Planning Commission Recommendation. In taking action on a zoning change, the Planning Commission by majority of those voting may recommend approval, approval with conditions, or denial, or may request that the City Council refer the application back to the Planning Commission for further study or make any other recommendation it deems appropriate.

1.

City Council.

a.

A public hearing on each application shall be convened at the scheduled time by the Mayor, who shall preside. The Mayor may impose reasonable time limitations on the public discussion of each zoning proposal. To the extent reasonably possible, equal amounts of time shall be made available to those speaking for and against the application. If reasonable time limitations permit, any member of the general public may speak at a hearing. However, the applicant and adjacent property owners shall be afforded the first opportunity to speak. The Director or any Council member designated by the Mayor shall present the recommendation of the Director if it differs from the recommendation of the Planning Commission.

b.

At the public hearing, following all presentations from the applicants and the public, action may be taken by the City Council by majority of those voting approving, approving with conditions, or rejecting the proposal, or allowing withdrawal if so requested by the applicant (with or without prejudice), or the City Council may table the proposal for consideration at its next regular meeting, or the City Council may refer the matter back to the Planning Commission for further consideration.

c.

If the application for a zoning change is associated with a proposed amendment to the Comprehensive Land Use Plan or an application for an exception variance, the City Council shall first take action on the CLUP amendment.

(1)

If the CLUP amendment is denied, the zoning change may not be approved unless conformity to the purpose and intent of the CLUP and the land use designation of the Future Land Use Plan Map is achieved.

(2)

If the CLUP amendment is approved, action may then be considered on the proposed zoning change.

(3)

If the zoning change is denied, the exception/variance may not be approved.

(4)

If the zoning change is approved, with or without conditions, action may then be considered on the proposed exception/variance.

D.

Referral to Planning Commission for Further Consideration.

1.

The Director shall conduct such further studies as appropriate and shall present any application to the Planning Commission that has been heard by the City Council and referred back to it for further consideration. Public notice of the Planning Commission and City Council's hearing and take action as described above.

2.

After the Planning Commission's rehearing and action on the referred application, the City Council shall hold a public hearing on the application, following the same procedures set forth for its hearings, above.

E.

Change in Conditions of Approval. Any application that proposes a change in the conditions of approval previously established by the City Council through action on a zoning change shall be reviewed in light of the standards set forth in this section for a map amendment or conditional use, as appropriate.

4.2.4 Withdrawal and deferral.

A.

Any applicant wishing to withdraw a proposed zoning change shall file a written request for withdrawal with the Director.

1.

If the request for withdrawal is received prior to the publication of notice for the public hearings, the application shall be withdrawn administratively on the refiling of a proposed zoning change on the property.

2.

Should any request for withdrawal be made by the applicant at the City Council's public hearing, the application shall remain on the public hearing agenda and the withdrawal request shall be considered for approval or denial, with or without prejudice, by the City Council.

B.

Any applicant wishing to defer a proposed zoning change shall file a written request for deferral with the Director.

1.

A written request may be received by the Director up to three times for any zoning application. The first two deferral requests may be granted by the Director. A third deferral request requires Planning Commission or City Council approval.

2.

Each written request for deferral shall be accompanied by \$100.00 readvertising fee.

4.2.5 Developments of regional impact.

A.

Any application that would result in a zoning change that meets or exceeds the following criteria shall be considered a Development of Regional Impact:

1.

Developments of Regional Impact Thresholds;

2.

Office uses—Greater than 500,000 net square feet;

3.

Commercial, Wholesale and Distribution uses—greater than 700,000 net square feet;

4.

Hospitals—Greater than 600 new beds;

5.

Housing—Greater than 500 new lots or units;

6.

Industrial Park or single user greater than 500 acres, or employing more than 2,000 people, or using more than 100,000 gallon per day of water;

7.

Hotels—Greater than 500 rooms;

8.

Mixed Land Use—Greater than 500,000 net square feet;

9.

Airports—Any new airport, new runway, or runway extension;

10.

Attractions or recreational uses—Greater than 2,000 parking spaces or more than 7,500 permanent seats;

11. Post-Secondary School—New school with capacity of more than 3,000 students, or, expansion of this type school by least 25% of capacity;
12. Waste Disposal uses—New facility or expansion of use of an existing facility by 50% or more, intending to accept waste from another jurisdiction; and
13. Wastewater Facilities, Quarry, Asphalt or Cement Plants. Petroleum storage greater than 50,000 barrels, if within 1,000 feet of any water supply, or, storage greater than 200,000 barrels.

B.

Demand on Infrastructure Threshold—To be used only if a use does not fit into one of the above categories:

1. Electrical—Any increase in average electrical demand greater than 100 megawatts.
2. Natural Gas—Any increase in demand for natural gas greater than 100,000 therms per day.
3. Water—Any increase in demand of greater than 100,000 gallons per day or will absorb the reserve capacity of another jurisdiction.
4. Wastewater Treatment—Any increase in treatment of greater than 500,000 gallons per day or will absorb the reserve capacity of another jurisdiction.
5. Transportation—Any increase greater than 1,500 peak hour vehicle trips per day.

C.

Any Development of Regional Impact or demand on infrastructure shall be submitted by the applicant to the Atlanta Regional Commission prior to a zoning change or CLUP amendment submission of the application to the City.

D.

The City Council shall not take final action to approve a Development of Regional Impact or demand on infrastructure until a report shall have been received from the Atlanta Regional Commission reflecting its findings and recommendations, if any, or if said report is not received within 60 days of its submittal to the Atlanta Regional Commission.

4.2.6 Effect.

A.

Approval of a zoning change on a property shall be in full force and effect upon its approval or upon the state effective thereof.

B.

For a property on which a use, building, structures, or other improvements existed in conformity with this Ordinance prior to the effective date of a zoning change affecting property, any such use, building, structures, or other improvements no longer in conformance shall be governed under the provisions for Nonconformities in this ordinance.

C.

Any use, building, structures, or other improvements for which a building permit has been issued in conformity with this Ordinance prior to the effective date of a zoning change affecting the property may continue to completion as though no change had occurred and, upon completion, shall be governed under the provisions for nonconformities in this Ordinance.