

Agenda Item

File ID: 2022-2543

Substitute

5/25/2023

Public Hearing: YES ☒ NO ☐

Department: Planning and Sustainability

SUBJECT:

Commission District(s): County-wide

Application of the Director of Planning & Sustainability for text amendments to the DeKalb County Zoning Ordinance to align with updates to the state zoning procedure statutes. Amendments include but are not limited to Section 9.1.3 (Defined Terms), Section 7.1.2 (Governing Bodies), Section 7.2.4 (Public Hearings), Section 4.1.3 (Use Table), and Section 7.5.8 (Appeals of Decisions of the Zoning Board of Appeals).

Petition No.: TA-23-1246181

Proposed Use: N/A

Location: County-wide

Parcel No.: N/A

Information Contact: Brandon White, Current Planning Manager

Phone Number: 404-371-2155

PURPOSE:

Application of the Director of Planning & Sustainability for text amendments to the DeKalb County Zoning Ordinance to align with updates to the state zoning procedure statutes. Amendments include but are not limited to Section 9.1.3 (Defined Terms), Section 7.1.2 (Governing Bodies), Section 7.2.4 (Public Hearings), Section 4.1.3 (Use Table), and Section 7.5.8 (Appeals of Decisions of the Zoning Board of Appeals).

RECOMMENDATION:

COMMUNITY COUNCIL: (Apr. 2023) CC-1: Deferral; CC-2: Deferral; CC-3: Deferral; CC-4: Denial; CC-5: Deferral. (Dec. 2022) CC-1: Deferral; CC-2: Full Cycle Deferral; CC-3: Approval; CC-4: Denial; CC-5: Full Cycle Deferral.

PLANNING COMMISSION: (May 2, 2023) Defer to June 27, 2023. (Jan. 5, 2023) Full Cycle Deferral.

STAFF RECOMMENDATION: Defer to June 27, 2023 BOC meeting.

PLANNING STAFF ANALYSIS: House Bill 1405, a revision to the O.C.G.A §36-66 Zoning Procedures, was approved by the Georgia General Assembly in the Spring of 2022 and ratified by the Governor on May 13, 2022. This major revision to zoning procedures, which provide minimum statewide directives for many of the zoning related procedures that we administer, takes effect on July 1, 2023. The *Zoning Ordinance* must be updated to reflect these procedural changes by the effective date.

PLANNING COMMISSION VOTE: (May 2, 2023) Deferral to the Board of Commissioners 8-0-0. Jon West moved, Jan Costello seconded for Deferral to the June 27, 2023 Board of Commissioners a.m. meeting, with the request that Planning Staff hold a virtual, town hall meeting to allow Community Councils and other County entities the opportunity to see a final draft before it is presented to the BOC. (Jan. 5, 2023) Full Cycle

Deferral 9-0-0. Jana Johnson moved, LaSonya Osler seconded for a Full Cycle Deferral, per Staff recommendation.

COMMUNITY COUNCIL VOTE/RECOMMENDATION: (Apr. 2023) CC-1: Deferral 6-0-0; **CC-2:** Deferral 9-0-0; **CC-3:** Deferral 6-0-0 to allow the amendment to be finalized and vetted; **CC-4:** Denial 10-0-0; **CC-5:** Deferral 9-0-0 until review of draft document. **(Dec. 2022) CC-1:** Deferral 8-0-0; **CC-2:** Full Cycle Deferral 7-0-0; **CC-3:** Approval 8-0-1; **CC-4:** Denial 8-0-0; **CC-5:** Full Cycle Deferral 6-0-0.

RESOLUTION TO ENSURE GREATER NOTICE TO THE PUBLIC FOR ZONING RELATED HEARINGS

WHEREAS, the Georgia Constitution vests county governing authorities with the power to zone property for particular use;

WHEREAS, in 1985 the General Assembly adopted the Georgia Zoning Procedures Law (“ZPL”), codified at O.C.G.A. § 36-66-1 et seq, which provides the minimum procedural standards, including notice and public hearing requirements, for the exercise of all zoning powers in Georgia;

WHEREAS, the 1985 ZPL required counties to provide notice in a newspaper of general circulation at least fifteen (15) but not more than forty-five (45) days prior to the public hearing for all zoning decisions;

WHEREAS, in 2022 the Georgia General Assembly amended the ZPL to create separate notice requirements for “legislative” zoning decisions and decisions of a local zoning board exercising “quasi-judicial” zoning powers, whereby the County must provide notice fifteen (15) to forty-five (45) days prior to a public hearing for a “legislative” zoning decision and thirty (30) days prior to a “quasi-judicial” zoning decision;

WHEREAS, the Board of Commissioners recognizes that it is unclear under current law whether a decision to approve or deny a special land use permit application is a “legislative” zoning decision (which requires 15-45 day’s notice), or a “quasi-judicial” zoning decision (which requires 30 day’s notice);¹

WHEREAS, the Board of Commissioners finds that the best policy is to ensure that notice for special land use permit application hearings be given at least thirty (30) but no more than forty-

¹ The ZPL characterizes a local board’s decision to grant or deny a special land use permit application as “legislative.” But in *Riverdale Land Grp., LLC v. Clayton Cnty.*, 354 Ga. App. 1 (2020), the Georgia Court of Appeals explained that “the ZPL’s characterization of a zoning board’s decision on an application for a special-use permit as ‘legislative’ is not determinative.” *Id.* at 8. In two other decisions, the Georgia Court of Appeals has offered conflicting opinions on the matter. In *York v. Athens Coll. of Ministry, Inc.*, 348 Ga. App. 58 (2018), the court held that “the determination to grant the special use permit was quasi-judicial.” *Id.* at 61. But in *Davis v. Rockdale Art Farm, Inc.*, 354 Ga. App. 82 (2020), the court held that “the approval of the application for the special use permit constituted a zoning decision or legislative action.” *Id.* at 86. The Georgia Supreme Court has not issued an opinion on the matter, although its opinion in *City of Cumming v. Flowers*, 300 Ga. 820 (2017), suggested, without deciding, that special land use permit decisions are “quasi-judicial.” *Id.* at 828, n. 5 (explaining that a special use permit decision is “similar to” a quasi-judicial variance decision).

five (45) days prior to the public hearing so as to comply with both notice requirements until the Georgia Supreme Court provides further guidance;

WHEREAS, the Board of Commissioners recognizes that most members of the public seek information concerning matters of public interest on internet websites, including the DeKalb County government website rather than physical newspapers that require a subscription;

WHEREAS, the ZPL state law does not require counties to provide notice in a newspaper of general circulation prior to hearings before the community council or the planning commission;

WHEREAS, the Board of Commissioners finds that providing notice of community council and planning commission hearings on the DeKalb County Planning Department's website, rather than a newspaper of general circulation, provides greater notice to the public;

NOW, THEREFORE, BE IT RESOLVED, that at least fifteen (15) but not more than forty-five (45) days prior to community council and planning commission hearings, the Planning Department shall post on the Department's website in a conspicuous location a notice that includes the time, place, and purpose of the hearing;

BE IT FURTHER RESOLVED, that at least thirty (30) but no more than forty-five (45) days prior to a hearing concerning a special land use permit application before the Board of Commissioners, the Planning Department shall cause to be published within a newspaper of general circulation a notice of hearing that includes the time, place, and purpose of the hearing,

BE IT FURTHER RESOLVED, that the notice provisions concerning special land use permit hearings set forth in this resolution shall be reviewed by the County Attorney if and when the Georgia Supreme Court renders a final decision making clear the notice requirements applicable to special land use permit applications, in which case the County Attorney and the Planning Director shall submit an amended Resolution to the Board of Commissioners to provide notice in accordance with that decision;

BE IT FURTHER RESOLVED, that this Resolution shall become effective when adopted, and that all resolutions and parts of resolutions in conflict with this Resolution are hereby repealed.

ADOPTED by the Board of Commissioners of DeKalb County, this 27th day of

May 24, 2023

June 2023.

Robert Patrick

ROBERT PATRICK
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this 27th day of
June, 2023.

Michael L. Thurmond

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

Barbara Sanders

Barbara Sanders (F, 8, 2024 12:16 EST)

BARBARA NORWOOD-SANDERS, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

Cedric Hudson

CEDRIC HUDSON
Interim Planning & Sustainability Director

APPROVED AS TO FORM:

Matthew Welch

VIVIANE H. ERNSTES
County Attorney

AN ORDINANCE

**AN ORDINANCE TO AMEND
THE CODE OF DEKALB COUNTY, GEORGIA,
CHAPTER 27, AND FOR OTHER PURPOSES.**

WHEREAS, the Georgia Constitution vests county governing authorities with the power to zone property for particular uses;

WHEREAS, in 1985 the General Assembly adopted the Georgia Zoning Procedures Law (“ZPL”), codified at O.C.G.A. § 36-66-1 et seq, which provides the minimum procedural standards, including notice and public hearing requirements, for the exercise of all zoning powers in Georgia;

WHEREAS, the 1985 ZPL required counties to provide notice in a newspaper of general circulation at least fifteen (15) but not more than forty-five (45) days prior to the public hearing for all zoning decisions;

WHEREAS, in 2022 the Georgia General Assembly amended the ZPL to create separate notice requirements for “legislative” zoning decisions and decisions of a local zoning board exercising “quasi-judicial” zoning powers, whereby the County must provide notice fifteen (15) to forty-five (45) days prior to a public hearing for a “legislative” zoning decision and thirty (30) days prior to a “quasi-judicial” zoning decision of the Zoning Board of Appeals (“ZBA”);

WHEREAS, the 2022 ZPL amendments also require local governing authorities to designate an officer to sign and accept service of certain documents on behalf of the governing authority and the ZBA;

WHEREAS, the 2022 ZPL amendments provide that where a county governing authority adopts supplemental procedural rules beyond the minimum procedural requirements of the ZPL, those supplemental rules will become the minimal procedural requirements for that county;

WHEREAS, the Board of Commissioners seeks to ensure compliance with the ZPL by expressly adopting by reference the ZPL in its entirety, by providing that the procedural requirements of the ZPL shall control over any conflicting provision of the DeKalb County Code,

by expressly adopting the 30-day notice requirement for quasi-judicial zoning decisions, and by designating certain officials by title to sign and accept service of certain documents as required by the ZPL;

WHEREAS, the Board of Commissioners does not intend for any supplemental regulation in the DeKalb County Code to be the mandatory minimum procedure for the exercise of zoning power for purposes of O.C.G.A. § 36-66-2(b)(2), and expressly provides that no zoning decision or decision of the ZBA shall be declared invalid for failure to comply with such supplemental regulation;

NOW THEREFORE, BE IT ORDAINED by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 27 of the Code of DeKalb County, as Revised 1988, is hereby amended as follows:

PART I. ENACTMENT

By replacing section 27-7.1.1(B), section 27-7.1.2(E)(9), and section 27-7.2.4 as follows:

Sec. 7.1.1. - Purpose and intent; compliance with law.

- B. The board of commissioners, planning commission, zoning board of appeals, and community councils shall comply with all applicable provisions of state law, now and as they may be amended hereafter, including, but not limited to, state law concerning open records, open meetings and records retention. The Georgia Zoning Procedures Law, which is codified at O.C.G.A. § 36-66-1 et seq. and hereby incorporated by reference as it currently exists and as may be later amended, shall provide the minimum procedural requirements for all zoning decisions in DeKalb County. To the extent there is a conflict between this zoning code and the Georgia Zoning Procedures Law, the Georgia Zoning Procedures Law controls. No decision under this zoning code shall be declared invalid for failing to comply with any technical requirement of this zoning code that is not mandated by the Georgia Zoning Procedures Law.

Sec. 7.1.2. - Governing bodies.

(E)(9). Staff Support. The director of planning or his/her designee shall serve as secretary to the zoning board of appeals and shall approve or issue any form or certificate necessary to perfect a petition for review as required by O.C.G.A. § 36-66-5.1(c)(1). The county attorney or his/her designee shall accept service of documents required by O.C.G.A. § 36-66-5.1(c)(2). The planning department staff shall make audio or video recordings and keep minutes of the proceedings of the board, showing the vote of each member upon each item, or if absent or failing to vote, indicating such fact, and shall keep records of its official actions and evidence submitted, all of which shall be filed in the office of the planning department and shall be a public record.

Sec. 7.2.4. – Public Hearings.

- A. Zoning decision. The term "zoning decision" is defined in article 9 by reference to the definition of "zoning decision" set forth in state law, O.C.G.A. § 36-66-3, as it now exists and may be amended hereafter.
- B. Zoning decisions initiated by the county. For any zoning decision initiated by the county at least fifteen (15) but not more than forty-five (45) days prior to the date of the public hearing before the board of commissioners, the county shall cause to be published within a newspaper of general circulation within the territorial boundaries of the county, a notice of the hearing before the board of commissioners. The notice shall state the time, place, and purpose of the hearing.
- C. Zoning decisions initiated by a party other than the county. For any zoning decision initiated by a party other than the county, notice of the public hearing shall be provided as follows:
 - 1. The county shall cause a notice of public hearing to be published in a newspaper of general circulation within the county at least fifteen (15) days and not more than forty-five (45) days prior to the public hearing before the board of commissioners. The notice shall include the date, time, place, and purpose of the hearing.
 - a. If the zoning decision is for the rezoning of property, the notice shall include the location of the property, the present zoning classification of the property, and the proposed zoning classification of the property.
 - b. If the zoning decision is for a special land use permit, the notice shall include the location of the property and the proposed use of the property.

2. Written notice of each public hearing shall be mailed by first class mail by the director of planning to all owners of property within two-hundred-fifty (250) feet of the boundaries adjoining the subject property, as such property owners are listed on the records of DeKalb County tax commissioner, at least fifteen (15) days and not more than forty-five (45) days prior to said public hearing. The notice shall include the date, time, place, and purpose of the hearing.
 3. Signs shall be posted on the subject property at least fifteen (15) days and not more than forty-five (45) days prior to the public hearing. The required information on each sign shall be as provided in O.C.G.A. § 36-66-1 et seq., as it now exists and may be amended hereafter. At least one (1) sign shall be posted on each street on which the subject property has frontage in a conspicuous location within ten (10) feet of the right-of-way. One (1) additional sign shall be posted for each additional five hundred (500) feet of frontage or fraction thereof in excess of five hundred (500) feet of frontage on each street on which the subject property has frontage. Signs shall be double-faced and posted so that the face of the sign may be read by the traveling public in both directions, and the applicant shall pay a sign fee, in an amount to be established by the board of commissioners, to the planning department. A dated photograph of each sign shall be submitted by the applicant to the director of planning as evidence of its proper posting.
 4. Where a proposed action includes a combination of zoning decisions, separate notices are not required for each decision so long as the notice contains all relevant information for each proposal.
- D. Decisions of the Zoning Board of Appeals. For any decision of the Zoning Board of Appeals involving appeals of administrative decisions, variances, special administrative permits, special exceptions, conditional use permits, and other similar permits as set forth in O.C.G.A. § 36-66-3(1.1), notice of the public hearing for such decision shall be provided as required by O.C.G.A. § 36-66-4(g) as follows:
1. The county shall cause a notice of public hearing to be published in a newspaper of general circulation within the county at least thirty (30) days prior to the public hearing. The notice shall include the date, time, place, and purpose of the hearing.
 2. Written notice of the public hearing shall be mailed to the owner of the property that is the subject of the proposed action.

3. Signs must be posted on the subject property at least thirty (30) days prior to the public hearing in the same manner as provided for signs relating to a zoning decision.
- E. Staff's analysis and written recommendations shall be available in the planning department and on the departmental website within six (6) business days prior to any public meeting held by the zoning board of appeals or the board of commissioners.

PART II. EFFECTIVE DATE

This ordinance shall become effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole, nor any part thereof, other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this 27th day of June, 2023.



ROBERT J. PATRICK
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this 27th day of June, 2023.



MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:


Barbara Sanders (10/8, 2024 12:16 EST)

BARBARA SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners
And Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

Matthew Welch

VIVIANE H. ERNSTES
County Attorney
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

Cedric Hudson

CEDRIC HUDSON
Interim Director of Planning and Sustainability
DeKalb County, Georgia