

STATE OF GEORGIA
COUNTY OF FULTONAN ORDINANCE TO AMEND ARTICLE 22, APPEALS AND ARTICLE 28, REZONING AND OTHER AMENDMENT PROCEDURES, OF THE SANDY SPRINGS ZONING ORDINANCE

WHEREAS, the Mayor and City Council of the City of Sandy Springs find that from time to time it is necessary to amend sections of the Zoning Ordinance to correct, clarify, and update the provisions of the Ordinance; and

WHEREAS, there have been issues that have arisen regarding the expiration of rezoning, use permits, and variances; and

WHEREAS, it has been determined that the ordinance needs to be amended to clarify the expiration and extension of rezoning, use permits, and variances and also to clarify language related to these applications.

NOW, THEREFORE, to accomplish the foregoing, the Mayor and City Council of the City of Sandy Springs, Georgia, pursuant to their authority, do hereby adopt the following Ordinance:

1.

Article 22, *Appeals and Article 28, Rezoning and Other Amendment Procedures*, of the City of Sandy Springs Zoning Ordinance are hereby amended by the deletion of their entirety and the following inserted therefor:

ARTICLE XXII

APPEALS22.1. PURPOSE.

The purpose of this Article is to establish procedures for appealing the strict application of regulations contained herein and conditions of zoning when those regulations impose a hardship on the development of property, and to provide for interpretation of the text of this Zoning Ordinance and the City Zoning Map. Appeals are authorized herein to be considered by various bodies and individuals depending on the type of appeal and its relationship to land use petitions. Variances apply to the development standards and district standards per the Zoning Ordinance. Modifications apply to the approved conditions of zoning or use permits.

22.2. DECISION MAKING AUTHORITY.

The following are the powers and jurisdiction of the various decision makers and administrative bodies.

22.2.1. CITY COUNCIL. The City Council shall have the following powers and duties under the provisions of this Zoning Ordinance:

- A. To hear and decide land use petitions, and modifications pursuant to Article XXII and Article XXVIII;
- B. To hear and decide requests for concurrent variances in conjunction land use petitions, and/or zoning modifications pursuant to Article XXII and Article XXVIII; and
- C. To initiate a land use petition or a modification of approved zoning conditions.

22.2.2. BOARD OF APPEALS (BOA). The (BOA) shall have the following powers and duties under the provisions of this Zoning Ordinance:

- A. To hear and decide petitions for primary variance requests;
- B. To hear and decide appeals from the interpretation of any of the provisions of this Zoning Ordinance by the Director in accordance with Section 22.2.3;
- C. To hear and decide appeals when it is alleged that there is an error in any order, requirement, decision, or determination made by any City official in the enforcement of this Zoning Ordinance;
- D. To hear and decide appeals from a permitting or procedural decision of the Director or Deputy Director regarding minor or administrative variance requests; and
- E. To hear and decide appeals from a decision of the City made pursuant to an ordinance subject to the appeals provisions of this Article.

22.2.3. DIRECTOR. The Director shall have the following jurisdiction, power and duties under the provisions of this Zoning Ordinance:

- A. To determine the type of appeal petition or land use process the property owner/agent is required to utilize;
- B. To consider and decide on minor variances to minimum yard requirements, not to exceed ten percent (10%) of such requirement, as long as property owners with standing do not object;
- C. To consider and decide on administrative minor variances of no more than one (1) foot;
- D. To consider and decide on administrative variances;
- A. To consider and decide on administrative modifications to conditions of zoning;
- F. To interpret the provisions of the Zoning Ordinance related to the following:

1. Inconsistent, vague or obscure language;
2. Provisions which are in conflict or are confusing;
3. Conflicting or redundant procedural requirements.

G. To establish procedural requirements for review of appeal petitions.

22.2.4. LIMITATION ON AUTHORITY. The authority and jurisdiction of hearing bodies and individuals as provided herein shall be limited as outlined in the following. In exercising this jurisdiction, each hearing body or individual shall have authority to determine whether it has jurisdiction.

- A. There shall be no variances to permitted uses or accessory uses as specified in the zoning district regulations, administrative/use permit or zoning conditions.
- B. There shall be no variances to the minimum lot area nor the minimum district size required in each zoning district.
- A. There shall be no variances to the minimum lot frontage on a street as required in designated zoning districts of the Zoning Ordinance.
- D. There shall be no modification to increase the density or change the use approved under the rezoning case except to allow for the development of a conservation subdivision.
- E. There shall be no modification to revise a site plan that, as determined by the Director results in a significant change in the approved concept. Such a site plan revision shall require rezoning pursuant to Article XXVIII.
- F. There shall be no relief or variance from the standards of Article XXII or Article XXVIII.

22.3. VARIANCES. A variance is a request for relief from the provisions of the Zoning Ordinance. The type of variance necessary shall be determined by the Director or designee. There are six (6) types of variance petitions, which are listed below and described in the following sections:

1. Administrative variance;
2. Minor variance/administrative minor variance;
3. Primary variance;
4. Secondary variance;
5. Interpretation; and
6. Concurrent variance.

22.3.1. VARIANCE CONSIDERATIONS. Variances may be considered in all districts. Primary variances and concurrent variances shall only be granted upon showing that:

- A. Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance; or,
- B. The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public; or
- C. Conditions resulting from existing foliage or structures bring about a hardship whereby a sign meeting minimum letter size, square footage and height requirements can not be read from an adjoining public road.

22.4. ADMINISTRATIVE VARIANCE.

The Director is authorized by this Zoning Ordinance to consider an administrative variance whenever;

1. A property owner maintains that a provision contained in the City's Development Regulations Ordinance, as applied to a specific situation, is not in the best interest of the public health, safety and welfare;
2. There is a request for the alteration of the ten (10) foot improvement setback required along all buffers as required in the conditions of zoning and/or in Section 4.23.1, MINIMUM LANDSCAPE STRIPS AND BUFFERS; and
3. There is a request up to a ten percent (10%) reduction in the number of required parking spaces per Section 18.2.4, ADMINISTRATIVE REDUCTION OF SPACES CONSTRUCTED.

22.5. ADMINISTRATIVE MINOR VARIANCE.

The Director may grant an administrative minor variance up to one (1) foot from any minimum yard requirement.

22.6. MINOR VARIANCE.

The Director may grant minor variances to minimum yard requirements, not to exceed ten percent (10%) of such requirement, as long as no objection has been submitted in writing to the Director. An appeal to a minor variance decision must be filed as a secondary variance request.

22.7. PRIMARY VARIANCE.

A request for a variance from any Zoning Ordinance provision that is not being handled as a minor, administrative minor or concurrent variance shall be heard and decided by the BOA in accordance with Section 22.3.1.

22.8. SECONDARY VARIANCE/INTERPRETATION.

The BOA shall consider appeals of variance decisions and interpretations made by any Department Director or Deputy Department Director authorized to grant a variance request or interpretation. This type of appeal is considered a secondary variance.

22.9. CONCURRENT VARIANCES.

The City Council may consider a concurrent variance from any standards of the Zoning Ordinance which shall be filed simultaneously with land use petitions or zoning modification requests on the same property based on the conceptual plan submitted with the petition for the same agenda. The Planning Commission shall also hear and make recommendations on concurrent variances filed with land use petitions. The City Council shall consider such concurrent variance requests in accordance with the standards set forth in Section 22.3.1. Public notification shall be in accordance with Sections 22.13.9 and 28.3.

22.9.1. LIMITATIONS ON CONCURRENT VARIANCES.

- A. The City Council may only consider variance requests as part of, or in conjunction with, a land use petition or modification petition.
- B. OPEN.
- C. If a petition for a variance to the BOA duplicates a concurrent variance request denied by the City Council, such petition shall not be accepted by the Director prior to the expiration of six (6) months from the date of the City Council's denial of the variance request. A variance request to the BOA cannot be considered simultaneously with the same variance request pending before the City Council.

22.9.2. PETITION FOR CONCURRENT VARIANCE. Each petition for a concurrent variance shall be submitted to the Director in accordance with the advertised filing deadlines for the City Council meetings. A regular variance fee shall be charged and the petition shall comply with all advertising and notification requirements specified in Article XXVIII, REZONING AND OTHER AMENDMENT PROCEDURES. One notice sign may serve for both the land use petition, zoning modification, and concurrent variance request as long as the sign is marked to indicate all actions which are pending.

The variance case file number for each concurrent variance requested shall be included on the rezoning petition.

22.10. MODIFICATIONS. A modification is a request for relief from the conditions of a zoning or use permit when a site development proposal does not comply with

approved conditions. There are two (2) different types of modifications which are listed below and described in the following sections:

1. Administrative modification; and
2. Zoning modification.

22.10.1. PETITION FOR MODIFICATION. A request to modify a condition of zoning or use permit may be initiated by the property owner, the Planning Commission or the City Council. Petitions shall be submitted to the Director in accordance with the deadline schedule adopted by the City Council. A modification petition shall include a legal description of the property for which the modification is requested and a written explanation of the circumstances upon which the requested change of condition is based including the reason why development or use of the property, as approved, cannot be accomplished without the modification of a condition. Petitioners shall submit a revised site plan illustrating the requested modification. The type of modification necessary is determined by the Director.

22.11. ADMINISTRATIVE MODIFICATION. An administrative modification petition may be filed if the Director determines that the modification request is not prohibited by Section 22.2.4, LIMITATION ON AUTHORITY, will constitute only a technical change, and does not involve significant public interest, or public interest has been addressed by letters expressing no objections from property owner(s) with standing and/or neighborhood associations. The Director shall send the administrative modification decision to the City Council for confirmation at the next appropriate regular meeting.

22.11.1. APPEAL OF AN ADMINISTRATIVE MODIFICATION DECISION. If a petitioner wishes to appeal the decision of the Director regarding an administrative modification, or if it is determined by the Director that a request will involve a matter of public interest, the petitioner must file a separate petition requesting a zoning modification on forms available from the Department.

22.12. ZONING MODIFICATION. A zoning modification petition shall be filed if an approved zoning condition cannot be met and it is determined by the Director that the petition involves significant public interest and is in compliance with Section 22.2.4, LIMITATION ON AUTHORITY. The zoning modification request shall be presented to the City Council for consideration in a public hearing.

22.13. GENERAL PROCEDURES.

This section contains basic steps common to all variances and modifications requests.

22.13.1. PETITIONS. All petitions for variances, interpretations and modifications shall be filed with the Director on forms available from the Department. The type of petition process necessary to accomplish the change requested by the petitioner shall be determined by the Director. The Director shall transmit the petition and all documents constituting the record to the appropriate hearing body or individual.

- 22.13.2. STANDING. Standing refers to a party or parties allowed to initiate a request for variances or modifications which are limited to the following:
- A. Modification petition - A request for a modification may be initiated by the property owner or its agent, the Planning Commission or the City Council;
 - B. Variance petition - A request for a variance may be initiated by the property owner of the subject property or its agent;
 - C. Secondary variance petition - A request for a secondary variance may be initiated by the property owner of the subject property or its agent, or the owner of other real property within three hundred (300) feet of the boundaries of the subject property; and
 - D. Interpretation petition - A request for an interpretation of a decision of the Director may be requested by any individual.
- 22.13.3. FILING DEADLINES.
- A. Petitions for variances, interpretations and modifications shall be submitted in accordance with the advertised filing deadlines, depending on the type of petition, in accordance with Section 28.2.3 of the Zoning Ordinance.
 - B. Concurrent variance petitions shall be filed in accordance with the filing deadline for a land use petition, or zoning modification request in accordance with Section 28.2.3 of the Zoning Ordinance.
 - C. The Director has the discretion to extend the filing deadline by two (2) days or more, when deemed necessary by the Director, for all petitions except administrative minor and minor variance petitions. A letter from the petitioner explaining the delay in filing shall be submitted prior to the close of the filing deadline.
- 22.13.4. WITHDRAWAL OF PETITION.
- A. A petition may be withdrawn by the petitioner in writing at any time before the public hearing notice advertisement is published and/or the notice of the hearing is posted on the property.
 - B. A petition which does not require a public hearing may be withdrawn at any time before notification of a decision is mailed.
 - C. Once the public hearing has been properly advertised, the request for withdrawal of the petition must be placed on the public hearing agenda and the appropriate decision-making body shall act on the withdrawal request.
- 22.13.5. FEES. At the time of filing a petition, a petitioner shall pay fees as established by the City Council. Fees paid are not refundable except where the Director

determines that a petition was accepted in error, or the fee paid exceeded the amount due, in which case the amount of the overpayment will be refunded to the petitioner.

If consideration of a petition is postponed or delayed due to the petitioner's failure to comply with any of the provisions of this Article, the Director shall assess additional fees as may be determined by the Department to be the additional administrative costs associated with such postponement or delay.

22.13.6. LEGAL ACTION STAYED. The filing of an appeal authorized by this Article shall operate as a stay of any enforcement proceedings by the City until final resolution of the appeal. No City Council or BOA action shall be taken on any property which is the subject of any litigation pending in state or federal court wherein the City or its agents or officials are parties.

22.13.7. PUBLIC HEARING. A public hearing shall be conducted by the stated hearing body of each appeal petition before taking action thereon except those authorized to be considered administratively. The schedule of public hearings and deadlines for the filing of an appeal shall be established by the City Council.

Public hearings are not required for administrative variances, minor variances, administrative minor variances and administrative modifications; however, notification in accordance with Section 22.13.9.B is required.

22.13.8. EVALUATIONS AND REPORTS. The hearing body shall have before it, at the time of hearing, a report from the Director which shall summarize the hardship or justification reported by the petitioner as related to the petition and background information for variances, modifications, and interpretations, and any other information requested by the hearing body. The hearing body shall hear, analyze, consider, and make a written report of its decision in accordance with Section 22.13.12. NOTICE OF DECISIONS.

22.13.9. PUBLIC NOTIFICATION.

A. For those petitions which require a public hearing (primary variances, secondary variances, concurrent variances, and zoning modifications), notice shall be given as follows:

1. Publication of notice – The Director shall publish notice of the public hearing in a newspaper of general circulation at least fifteen (15) days, but no more than forty-five (45) days prior to the public hearing at which a petition will be heard. The published notice shall contain the time, place and purpose of the hearing and the location of the property, if applicable (secondary variances may not always be property specific). Re-notification is not required when a petition is deferred by the City Council or the BOA.
2. Posting of notice - The petitioner or agent shall post a sign as issued by the Department in a conspicuous location on each public street frontage of the subject site, at least twenty (20) days, but not

more than forty-five (45) days, prior to the public hearing at which a petition will be heard.

The sign shall be mounted and posted as specified by the Department. Property that is not posted on the twentieth (20th) day before the scheduled hearing date will be administratively removed from the agenda. The sign will remain posted on-site until final action by the appropriate hearing body is taken.

When the BOA defers a petition, the petitioner is required to post an updated sign with new hearing dates twenty (20) days prior to the next scheduled hearing date. When the City Council defers a petition, an updated sign is not required.

The posted sign shall contain the date, time, place and purpose of the hearing.

For zoning modifications, all notices shall contain all of the items listed in the previous sentence, the location of the property, the zoning and/or use permit case number to be modified and the condition number(s) to be modified.

The posting of a sign is not required when a secondary variance is not requested by the property owner or owner's representative.

It is the petitioner's responsibility to remove or cause to be removed any public notice sign required to be posted pursuant to this Article. If any sign required by this Article to be posted by the petitioner is not removed within forty-eight (48) hours of final action by the appropriate hearing body, it shall constitute a violation of this Article and the Director shall issue a citation. Any violation of this Article shall be an offense and the violator shall be subject to the penalty provisions set forth in Article XXIX.

The failure of a petitioner or agent on two (2) consecutive occasions to post notice as provided in this Section in connection with a petition shall be considered willful disregard of the petitioner's obligation to comply with this Zoning Ordinance. In such event, the petition shall be denied pursuant to Section 22.13.10 herein, and shall be subject to all provisions herein relating to denied petitions.

3. Notice of the public hearing shall be postmarked fifteen (15) days prior to the hearing date and shall be given by regular mail to all property owners within three hundred (300) feet of the boundaries of the property whose names appear on the current tax records of Fulton County as retrieved by the City's Geographic Information System. Re-notification is not required when a petition is deferred by the City Council or the BOA.

The mailing of public notices is not required when a secondary variance is sought by other than the property owner.

- B. For petitions for administrative modification, the Director shall determine what notification, if any, is reasonable on a case by case basis.

22.13.10. DECISIONS. The City Council, BOA, and the Director, in considering petitions under this Article, shall do one (1) of the following:

- A. Approve or partially approve the petition;
- B. Approve and impose conditions related to the petition;
- C. Deny the petition;
- D. Hold the petition for further study not less than thirty (30) days; or
- E. Withdraw the petition.

22.13.11. BOA DECISION ON SECONDARY VARIANCES/INTERPRETATIONS. The BOA may take the following actions pursuant to a secondary variance and/or an interpretation appeal:

- A. Affirm an order, requirement, or decision, wholly or partly;
- B. Reverse an order, requirement, or decision, wholly or partly;
- C. Clarify an order, requirement, or decision, wholly or partly, by presenting an interpretation of the text in the form of a statement of clarification. Such statement shall not contain substitute language, but shall rely upon language and definitions contained in the Zoning Ordinance, and definitions contained in the most current edition of the Merriam-Webster Collegiate Dictionary.

22.13.12. NOTICE OF DECISIONS. Written notice of all decisions shall be placed in the official case file and shall be forwarded to the petitioner by regular mail within seven (7) working days from the date of the decision by the following authority:

- A. The Director shall provide written notification of the BOA's decisions;
- B. The Director shall, with respect to minor variances, administrative variances, and administrative modifications provide written notification of such decisions. The approval of a building permit shall constitute notice of approval for an administrative minor variance; and
- C. The City Clerk shall provide, with respect to zoning modifications and concurrent variances, written notification of the City Council's decisions.

22.13.13. RECONSIDERATION OF DENIED PETITION. If a variance or modification petition is denied by the Director, the City Council or the BOA, a petition for the same variance or modification item shall not be considered until:

- A. At least six (6) months has elapsed from the date of the decision; or

- B. New information pertinent to the subject, not previously considered, is submitted by the petitioner and the six (6) month period is waived by the hearing body.

If a petition is denied by the Director, the petitioner may appeal the decision to the appropriate hearing body depending on the type of petition.

This provision is not intended to supersede provisions of Section 28.2 as related to decisions regarding land use petitions.

22.13.14. APPEALS.

- A. Appeal to BOA. Any person aggrieved by a decision of the City made pursuant to an ordinance subject to the appeals provisions of this Article may submit an appeal in writing to the Department within thirty (30) days of the City's decision. The appropriate appeal form may be obtained from the Department.

The appeal shall be heard by the BOA in accordance with the rules and regulations of the BOA and as set forth in this Code. The hearing shall take place not more than ninety (90) days after the filing of an appeal with the Department.

- B. Appeal to Superior Court. The decision of the BOA is a final decision. Any appeal of such a decision shall be pursued by petition for writ of certiorari filed with the Superior Court of Fulton County within thirty (30) days of the date of the decision in accordance with applicable provisions of Georgia law.

22.13.15. EXPIRATION OF VARIANCE. A variance shall expire unless the property owner takes action to vest the variance in accordance with Section 22.13.16. within a period of thirty six (36) months from the date it is granted by the hearing body or the Director, or fails to secure an approved extension in accordance with Section 22.13.18.

The filing of a request for extension authorized by this Article shall operate as a stay of the expiration of a variance until a decision is made by the Department.

22.13.16. VESTING OF VARIANCE. Upon the occurrence of one (1) of the three (3) conditions listed immediately below, a variance shall be considered vested.

- A. Prior to the expiration of a Land Disturbance Permit pursuant to applicable provisions of the Development Regulations Ordinance, a vesting determination may be made by the Department that substantial progress, as defined in Section 22.13.17., has been made toward the completion of on-site construction depicted on the site plan approved with the variance.
- B. The issuance of a certificate of occupancy and/or certificate of completion and/or structure specified in the approved conditions.

- C. The issuance of a business license for the approved use, but only when no new construction or land disturbance is approved and/or required as a condition of rezoning.

22.13.17. SUBSTANTIAL PROGRESS. To demonstrate substantial progress for purposes of vesting a variance, the Department shall approve a construction schedule for a Land Disturbance Permit which includes at least fifty percent (50%) of the public improvements for a specified phase. Substantial progress shall have been demonstrated when, within one (1) year of the date of issuance of the Land Disturbance Permit, the Department observes a level of accomplishment or expenditures on the project which produces measurable and verifiable evidence that the activities undertaken comply with those objectives and representations of the approved construction schedule.

Refusal to certify that substantial progress has been achieved may be appealed in accordance with this Article.

22.13.18. EXTENSIONS.

- A. Extension by Director. In connection with a variance, the Director is authorized to grant, in writing, an extension for a maximum period of twelve (12) months, subject to the qualifying conditions listed in this Section. To request an extension by the Director, the property owner must submit a petition to the Department at least thirty (30) days prior to the expiration of the variance.

No more than one (1) twelve (12) month extension per variance may be granted by the Director for any of the qualifying conditions listed in this Section (except a court action delay).

- B. Extension by the BOA. Any additional requests for extension of a variance beyond the twelve (12) month extension granted by the Director may be considered by the BOA, subject to the qualifying conditions listed in this Section.

To request an extension by the BOA, the property owner must submit a petition to the Department at least thirty (30) days prior to the expiration of the twelve (12) month extension period granted by the Director pursuant to this Section.

The Department shall prepare an analysis and recommendation as to whether the documentation in the petition is sufficient based on one (1) of the four (4) qualifying conditions which may validate an extension request by the BOA. The Department shall submit its recommendation to the BOA.

- C. Qualifying conditions. In every petition for an extension of a variance, the property owner shall provide an affidavit documenting at least one (1) of the following:

1. A delay resulting from court action involving the variance or a previous extension on the subject property for which an extension is sought. Extensions approved in connection with court action shall remain valid for one (1) year beyond the granting of an order or the expiration of an appeal period before any court with jurisdiction.
 2. Non-availability of utilities or facilities resulting from government inaction. In those instances where wastewater facilities are available for a fraction of the desired capacity, or when capacity was available at some time during the one (1) year period, but not during the sixty (60) days prior to expiration, the Director or the BOA, as applicable, shall evaluate such case's qualifications for an extension on its individual merits considering any evidence that might indicate a diligent effort to proceed with development.
 3. A delay in development resulting from wetlands regulatory procedures requires the petitioner to provide a copy of the petition acknowledgment letter from the Savannah Regulatory Branch of the Corps of Engineers as documented evidence. Said petition should have been filed at least six (6) months before the expiration of the variance.
 4. An inability to obtain financing, despite documentation of the property owner's efforts during the three (3) months prior to the petitioner seeking an extension and continuing until one (1) week prior to consideration of the extension request by the Director or the BOA, as applicable. Documentation shall consist of two (2) official denials signed by officers of two (2) different lending institutions who have final jurisdiction over such financing transactions.
- 22.13.19. NOTICE OF EXPIRATION. At least ninety (90) days prior to the expiration of a variance, the Director shall send by certified mail a notice of expiration to each owner of record as shown in the tax records.
- 22.14. BOA.
- 22.14.1. MEMBERSHIP. The BOA shall consist of seven (7) members appointed by the City Council. The members shall serve terms concurrent with the terms of the Planning Commission. Members shall not hold any other public office or position in the City. Annual elections shall be held by the BOA to elect one of its members as chairperson for a one- (1) year term. The chairperson may serve an unlimited number of one- (1) year terms.
- 22.14.2. VACANCIES. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.
- 22.14.3. REMOVAL OF MEMBERS. Members may be removed for cause by the City Council upon written charges and after a public hearing.

- 22.14.4. PAY. Members of the BOA shall serve without compensation for their services on the BOA, but may be paid for any necessary expenses incurred in the performance of duties authorized by the BOA, as may be fixed from time to time by the City Council.
- 22.14.5. SECRETARY. The Director shall serve as Secretary to the BOA. The Secretary shall keep minutes of proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; and shall keep records of evidence, examinations and official actions, all of which shall be filed and shall be a public record.
- 22.14.6. POLICIES AND PROCEDURES. The BOA shall adopt and publish policies, procedures and rules in keeping with the provisions of this Ordinance. Such shall be available in the Department.
- 22.14.7. MEETINGS. Meetings of the BOA shall be held at least once each month to dispose of matters scheduled. Additional meetings may be called by the chairman. Scheduled meetings of the BOA, including places and dates, and deadlines for the filing of petitions, shall be approved by the City Council and published by the Director.

ARTICLE XXVIII

REZONING AND OTHER AMENDMENT PROCEDURES

- 28.1. GENERAL AMENDMENTS. Whenever the public necessity, convenience, general welfare or good zoning practice justify such action, and after consideration by the City Planning Commission, the City Council may, by resolution, change the regulations set forth in this Zoning Ordinance (text amendment) or amend the City Zoning Maps.

In amending the City Zoning Maps, the City Council may approve a rezoning petition and/or use permit request or a more restrictive zoning district based on the ranking of City zoning district intensities. The City Council may consider a variance filed concurrently with a rezoning petition and/or use permit request. For purposes of this Article, a rezoning petition shall be deemed to include, if applicable, a variance filed concurrently with a rezoning petition and a use permit request shall be deemed to include, if applicable, a variance filed concurrently with a use permit request.

In approving any rezoning petition and/or use permit request, the City Council shall impose conditions of approval as deemed necessary and appropriate to mitigate potentially adverse influences or otherwise promote the public health, safety or general welfare.

Rezoning petitions, use permit requests and/or concurrent variances are sometimes referred to in this text together as land use petitions and the property owner submitting a land use petition is referred to as the petitioner. An approved use permit request is referred to in this text as a use permit. All land use petitions

approved by the City Council are subject to conditions approved by the City Council.

- 28.2. LAND USE PETITIONS. Land use petitions may be initiated by the property owner or the City Council on forms included in the Department's land use petition application package available from the Department.

No final action shall be taken on a land use petition affecting the same parcel more often than one (1) time every twelve (12) months when the petition is initiated by the property owner.

At any time, the City Council may initiate a land use petition on property which was previously rezoned; however, a six (6) month waiting period from the date of the final City Council action is required when a land use petition was previously denied.

If a land use petition was previously denied, the petitioner must demonstrate that the proposed land use petition is significantly different from the one previously denied to the satisfaction of the City Council before it can be considered for a re-initiation. A significant difference includes, but is not limited to a change in zoning district, use, density, height, buffers or other methods of screening, or other items which were discussed at a public hearing.

Appeals to Superior Court.

Any appeal of, or other legal challenge to, a final decision of the City Council regarding a land use petition shall be pursued by petition for writ of certiorari filed with the Superior Court of Fulton County within thirty (30) days of the date of the decision of the City Council in accordance with applicable provisions of Georgia law.

- 28.2.1. FILING DEADLINES. A land use petition, complete in all particulars, shall be submitted in accordance with the advertised filing deadlines. The Director may extend the filing deadline by two (2) days or more, when deemed necessary by the Director, with a letter of explanation from the petitioner justifying the delay of submittal. An incomplete land use petition will not be accepted.
- 28.2.2. WITHDRAWAL PRIOR TO ADVERTISING. If a land use petition has not been advertised for public hearing, a petition may be withdrawn. The petitioner shall submit a written request for withdrawal stating the reason for the request. The request shall be made to and accepted by the Director. No refunds of petition fees will be made.
- 28.2.3. WITHDRAWAL AFTER ADVERTISING. After a land use petition has been advertised for public hearing, it may only be withdrawn by the City Council at the public hearing. A withdrawal shall not be deemed final action and shall not bar submission of a new land use petition. A written request for withdrawal stating the reason for the request shall be made to the Director.

28.2.4. LAND USE PETITION REQUIREMENTS. In order to be accepted by the Department, all land use petitions shall include the following with the required number of copies of each as prescribed by the Director:

- a. Pre-petition review form;
- b. Signed and notarized petition with original signatures;
- c. Legal description;
- d. Letter of intent;
- e. Site plan which meets the requirements specified in Article 28.5.2;
- f. Site plan checklist which indicates compliance with site plan requirements specified in Section 28.5.2;
- g. Environmental Site Analysis, as described in Section 28.4.3.1;
- h. 8 ½" x 11" site plan;
- i. Zoning impact analysis for rezoning petitions, as described in Section 28.4.1;
- j. Disclosure form;
- k. Public Participation Plan, as described in Section 28.4.7;
- l. Public Participation Report, as described in Section 28.4.7;
- m. Traffic Impact Study, as described in Section 28.4.4, if applicable;
- n. Metropolitan River Protection Act pre-preview letter, if applicable;
- o. MARTA corridor plan review form, if applicable;
- p. Development of regional impact review form, if applicable;
- q. Environmental Impact Report, as described in Section 28.4.3.2, if applicable;
- r. Other documents as identified in the pre-petition review; and
- s. Non-refundable filing fee.

28.3. PUBLIC HEARING AND NOTICE REQUIREMENTS.

28.3.1. PUBLIC NOTICE REQUIREMENTS. Notice of the City Planning Commission and the City Council hearings shall be given simultaneously at least fifteen (15) days but not more than forty-five (45) days prior to the date of the City Council public hearing and shall be published in a newspaper of general circulation. Re-notification is not required when a land use petition is deferred by the City Council.

- a. Sign Posting. The petitioner or his/her agent shall post a sign as issued by the Department in a conspicuous location on each public street frontage of the subject property not later than 8:30 a.m. on the 20th day prior to the City Planning Commission hearing.

The sign shall be mounted and posted as specified by the Department. Property that is not posted as required will be administratively removed from the agenda.

When the City Council defers a land use petition, the petitioner is required to post an updated sign with new hearing dates twenty (20) days prior to the next scheduled hearing date. When a land use petition is deferred by the City Council for less than twenty (20) days, posting an updated sign is not required.

It is the petitioner's responsibility to remove or cause to be removed any public notice sign required to be posted pursuant to this Article. If any sign required by this Article to be posted by the petitioner is not removed within forty-eight hours of final action on the applicable land use petition, it shall constitute a violation of this Article and the Director shall issue a citation. Any violation of this Article shall be an offense and the violator shall be subject to the penalty provisions set forth in Article XXIX.

The failure of a petitioner or agent on two (2) consecutive occasions to post notice as provided in this Section in connection with a petition shall be considered willful disregard of the petitioner's obligation to comply with this Zoning Ordinance. In such event, the petition shall be denied and shall be subject to all provisions herein relating to denied petitions.

- b. Notice by Mail. The Department shall give notice by regular mail to all property owners within three hundred (300) feet of the boundaries of the subject property who appear on the Fulton County tax records as retrieved by the City's Geographic Information System (GIS). The notices shall be mailed a minimum of fifteen (15) days prior to the hearing date. Re-notification by mail is not required when a land use petition is deferred by the City Council.

The published and mailed notices shall contain the time, place, and purpose of the scheduled hearing, the location of the property, and the present and proposed zoning classifications and/or use permit requested. The posted sign shall include all of the items required in the published notice except the location of the property. Notice shall not be considered inadequate if the mail is not delivered.

- 28.3.2. PUBLIC HEARING REQUIREMENTS. Before adopting any change to the City Zoning Maps or text of the Zoning Ordinance, the City Council shall hold a public hearing following the public hearing by the City Planning Commission where a recommendation was made on the land use petition.

Any public hearing required by this Article shall be called and conducted in accordance with the following procedures. For purposes of this Section, the term "hearing body" shall refer to both the Mayor and City Council and the City Planning Commission. Nothing contained in this Section shall be construed as prohibiting a presiding officer or hearing body from conducting a public hearing in a fair, orderly, and decorous manner.

- a. Presiding Officer. The presiding officer shall preside over the respective public hearing. In the case of the Mayor and City Council, the Mayor shall preside, or in the absence of the Mayor, the Mayor Pro Tempore. In the absence of both the Mayor and Mayor Pro Tempore, another member of the City Council shall be designated to preside over the public hearing. In the case of the City Planning Commission, the chairman shall preside, or in the absence of the chairman, the vice chairman, if designated. If neither is present to preside, another member of the City Planning Commission shall be designated to preside.

- b. Opening of Public Hearing. The presiding officer shall indicate that a public hearing has been called on one or more land use petitions made pursuant to this Article and shall open the public hearing. Thereupon, the presiding officer shall call the first case and the hearing body shall consider each land use petition on an individual basis in succession as printed on the published agenda or as otherwise approved by the hearing body; provided, however, that the presiding officer may at his/her discretion call and consider more than one (1) land use petition simultaneously when more than one (1) land use petition involves the same piece of property, and when proceedings would be efficiently completed by combining the hearing and discussion on more than one (1) scheduled matter.
- c. Report of the Director. Upon opening the public hearing, the presiding officer shall recognize the Director or his/her designee, or other agents or representatives of the City, who shall provide a summary of the land use petition and present any recommendations or results of investigations. In the case of public hearings before the Mayor and City Council, the Director or his/her designee shall also provide a written summary of the recommendations made by the City Planning Commission and, if applicable, the Design Review Board. Any member of the hearing body upon recognition by the presiding officer may ask questions of the Director or his/her designee or other City representative providing the report or recommendations.

A limited supply of copies of findings of the initiating party, Director, and City Planning Commission shall be available at the hearing or meeting and available on request to interested members of the public in accordance with O.C.G.A. § 36-67-3.

- d. Petitioner. Following the report of the Director or his/her designee, the presiding officer shall recognize the petitioner or his/her agent, spokesperson, or each of them, who shall present and explain the land use petition within the permitted time. There shall be a maximum time period of ten (10) minutes per land use petition at the public hearing for the proponents to present data, evidence, and opinions; however, the City shall not be obligated to provide the full ten (10) minutes period to the proponents if they elect not to use that much time. Upon motion by a member of the hearing body and upon approval of the entire hearing body, the time allotted to the petitioner or his/her agent or spokesperson for presentation and explanation of the land use petition may be extended.
- Any member of the hearing body upon recognition by the presiding officer may ask questions of the petitioner or agent of the petitioner, or both.
- e. Public. At the conclusion of the petitioner's presentation, the presiding officer shall initiate the public comment portion of the public hearing. The presiding officer may ask for identification of those persons who wish to appear as opponents of the land use petition. If it appears that the number of persons opposing the land use petition is in excess of that which may reasonably be heard, the presiding officer may suggest that a

spokesperson for the group be chosen to make presentations within the permitted time. There shall be a maximum time period of ten (10) minutes per land use petition at the public hearing for the opponents to present data, evidence, and opinions; however, the City shall not be obligated to provide the full ten (10) minute period to the opponents if they elect not to use that much time. Upon motion by a member of the hearing body and upon approval of the entire hearing body, the time allotted to opponents of the land use petition or their spoke person may be extended.

Prior to speaking, each speaker will identify himself/herself and state his/her current address. Any person refusing to identify himself/herself may be refused the right to address the hearing body. Each speaker shall speak only to the merits of the proposed land use petition under consideration and shall address his/her remarks only to the hearing body. Each speaker shall refrain from personal attacks on any other speaker or the discussion of facts or opinions irrelevant to the proposed land use petition under consideration. The presiding officer may limit or refuse a speaker the right to continue, if the speaker, after first being cautioned, continues to violate this procedure.

Any member of the hearing body, upon recognition by the presiding officer, may ask questions of the person giving testimony.

- f. Petitioner's Rebuttal. At the conclusion of public testimony, or upon the expiration of time allotted for public testimony, the petitioner or his/her agent, or both, shall be allowed a short opportunity for rebuttal and final comment, and the time devoted to any rebuttal shall be counted toward the time allotted to the petitioner under paragraph d. above. Any member of the hearing body upon recognition by the presiding officer may ask questions of the petitioner, his/her agent, or both.
- 7g. Close of Hearing. After the above procedures have been completed, the presiding officer will indicate that the public hearing is closed. Upon the closing of the public hearing, the petitioner or his/her agent and any member of the public shall no longer address the hearing body in any way, including hand waving or motions for attention; provided, however, that at any time considered appropriate the presiding officer may reopen the public hearing for a limited time and purpose for members of the hearing body to ask questions of the proponents or opponents of the land use petition.
- 8h. Decision. After the public hearing is closed, the hearing body shall deliberate and subsequently vote on the land use petition. The City Planning Commission shall move to recommend one of the following actions to the Mayor and City Council:
1. Approval
 2. Approval with conditions
 3. Denial
 4. Withdrawal; or
 5. Deferral and remand to the City Planning Commission

Should the City Planning Commission fail to pass a motion as set forth in subsections 1. through 5. above during the meeting at which the land use petition is scheduled, such land use petition shall automatically be forwarded to the Mayor and City Council for consideration with the failure to pass a motion being deemed a recommendation for deferral from the City Planning Commission.

A recommendation by the City Planning Commission to the Mayor and City Council for deferral and remand to the City Planning Commission shall not delay the land use petition from being considered at the advertised public hearing before the Mayor and City Council, nor does it prohibit the Mayor and City Council from taking a final action on the subject land use petition.

The Mayor and City Council may move to approve, approve with conditions, deny, withdraw, or defer and remand to the City Planning Commission. A deferral and remand to the City Planning Commission by the Mayor and City Council requires the posting of an updated sign consistent with this Article.

28.3.3. SECRETARY. The Director or his/her appointee shall serve as secretary to the City Planning Commission. The secretary shall keep minutes of proceedings that shall indicate the vote of each member upon each question and the absence or failure to vote of a member. The secretary shall keep records of evidence, examinations and official actions, all of which shall be filed and shall be public record.

28.4. TECHNICAL EVALUATIONS AND REPORTS. Proposed land use petitions shall be considered by the City Council only after the evaluations and reports required below have been completed and the City Planning Commission has made a recommendation. Such reports shall be public record.

28.4.1. ZONING IMPACT ANALYSIS BY THE CITY PLANNING COMMISSION AND THE DEPARTMENT FOR REZONING PETITION. For each rezoning petition, the City Planning Commission and the Department shall investigate and make a recommendation with respect to the factors listed below, which is referred to herein as the zoning impact analysis. The Department shall make a written record of its investigation and recommendation on each rezoning petition, as well as any other factors it may find relevant, and carry out any other duties with which it is charged by the City Council.

The City Planning Commission shall make a recommendation based on the zoning impact analysis which the Department shall transmit in writing to the City Council.

The zoning impact analysis factors are as follows:

- a. Whether the proposed rezoning will permit a use that is suitable in view of the use and development of adjacent and nearby property;

- b. Whether the proposed rezoning will adversely affect the existing use or usability of adjacent or nearby property;
- c. Whether the property to be affected by the proposed rezoning has a reasonable economic use as currently zoned;
- d. Whether the proposed rezoning will result in a use which will or could cause an excessive burdensome use of existing streets, transportation facilities, utilities, or schools;
- e. Whether the proposed rezoning is in conformity with the policies and intent of the City's Comprehensive Plan;
- f. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the proposed rezoning; and
- g. Whether the proposed rezoning will permit a land use which can be considered Environmentally Adverse to the natural resources, environment and citizens of the City.

28.4.2. ZONING IMPACT ANALYSIS BY PETITIONER. If a rezoning petition is initiated by the property owner, a written documented analysis of the impact of the proposed rezoning with respect to each of the matters enumerated in 28.4.1 is required at the time of filing the rezoning petition.

28.4.3. ENVIRONMENTAL REPORTS. If a land use petition is initiated by the property owner, an Environmental Site Analysis and/or an Environmental Impact Report shall be filed with the land use petition pursuant to the following:

28.4.3.1. ENVIRONMENTAL SITE ANALYSIS. All land use petitions shall include an Environmental Site Analysis ("ESA") to identify environmental conditions on the site to determine if the proposed rezoning or land use may be considered Environmentally Adverse.

The ESA shall detail the following:

- a. How the proposed rezoning or land use conforms to the City's Comprehensive Plan;
- b. The presence or absence of the following and whether the proposed rezoning or land use will encroach or adversely affect any of the following:
 - 1. Wetlands;
 - 2. Floodplains;
 - 3. Streams/stream buffers;
 - 4. Slopes exceeding twenty-five percent (25%) over a ten (10) foot rise in elevation;
 - 5. Vegetation;
 - 6. Wildlife species (including fish);

7. Archeological/historical sites.
- c. How the proposed rezoning or land use implements the following:
1. Protection of environmentally sensitive areas (floodplains, slopes exceeding twenty-five percent (25%), river corridors);
 2. Protection of water quality;
 3. Minimization of negative impacts on existing infrastructure;
 4. Minimization of negative impacts on archeological/historically significant areas;
 5. Minimization of negative impacts on Environmentally Stressed Communities;
 6. Creation and preservation of green space and open space;
 7. Protection of citizens from the negative impacts of noise and lighting;
 8. Protection of parks and recreational green space;
 9. Minimization of impacts to wildlife habitats.

28.4.3.2. ENVIRONMENTAL IMPACT REPORT. Any land use petition for M-1, M-1A or M-2 District industrial development as described in Article X of this Ordinance shall include an Environmental Impact Report (“EIR”) to determine if the proposed use is Environmentally Adverse.

The EIR shall detail the following:

- a. Conformance to the City’s Comprehensive Plan, including adopted City policies;
- b. Impact on air quality of the surrounding area;
- c. Impact on water quality/resources including surface water, ground water, flood plains, and wetlands;
- d. Impact on vegetation, fish, and wildlife species and habitats;
- e. Impact of thermal and explosive hazards on the surrounding area;
- f. Impact of hazardous wastes on the surrounding area;

The EIR shall cite all uses and quantities of any agents listed on the Federal Environmental Protection Agency Lists of Hazardous Wastes.

The EIR shall detail strategies to mitigate or avoid impacts listed above as applicable.

28.4.3.3. REVIEW CRITERIA FOR ESA AND/OR EIR. An ESA and/or EIR shall be reviewed based upon the following:

- a. Whether the land use petition is consistent with the policies of the City’s Comprehensive Plan;
- b. The detail provided for an ESA and an EIR as outlined in Sections 28.4.3.1. and 28.4.3.2. above.

The Department shall review an ESA and an EIR submitted with a land use petition and make recommendations to the City Council with respect to the proposed rezoning or land use. The anticipated impact of the proposed rezoning

or land use on an Environmentally Stressed Community will be included in the Department's recommendation.

As determined by the Director or his/her designee, an EIR may also be required with an application for a Land Disturbance Permit, a building permit, a temporary or permanent certificate of occupancy, or any other permit issued by the Department.

28.4.4. TRAFFIC IMPACT STUDY. A Traffic Impact Study ("TIS") is required when a land use petition equals or exceeds the thresholds indicated in Section 11.4.16 of the City's Development Regulations Ordinance. The TIS shall be prepared by a certified traffic engineer or transportation planner in accordance with the standards required by the Development Regulations Ordinance and must be submitted at the time of the filing of the land use petition.

28.4.5. DEVELOPMENT OF REGIONAL IMPACT STUDY. A Development of Regional Impact Study ("DRI") is required when a land use petition meets or exceeds the thresholds indicated in the Department's land use petition application package. Form 1: Initial DRI Information must be submitted at the time of filing of the land use petition.

28.4.6. OPEN.

28.4.7. PUBLIC PARTICIPATION PLAN AND PUBLIC PARTICIPATION REPORT.

The Public Participation Plan is to ensure that petitioners pursue early and effective public participation in conjunction with their land use petitions, to ensure that the citizens of the City have an adequate opportunity to learn about land use petitions that may affect them, and to ensure ongoing communication between petitioners, adjoining property owners, Environmentally Stressed Communities, community associations and other organizations, elected officials and City staff. A target area for public participation should be determined by the petitioner and Department staff at the time of the pre petition review. Petitioners are required to submit a Public Participation Plan for meeting with interested citizens to advise them of pending land use petitions and to allow citizens the opportunity to discuss concerns and provide input about the proposed development. A petitioner's responsibilities are to inform the public, solicit input, and provide a summary of these activities in the form of a written report (Public Participation Report).

The requirement for a Public Participation Plan does not give communities decision making powers or force a consensus on issues. Petitioners are not obligated to make any concessions or changes based upon input from citizens. Refusal by the community to meet with a petitioner does not mean that the petitioner fails to meet the requirements of the Public Participation Plan.

Dialogue should occur between petitioners and communities before the City Planning Commission hearing, the first public hearing. Public Participation Plans are required with all land use petitions and must be filed simultaneously with the land use petition. Public Participation Reports are required to be submitted no less than seven (7) business days before the scheduled City Council hearing. If

the Public Participation Report is not submitted as required, the City Council may defer the land use petition.

The minimum requirements for Public Participation Plans and Public Participation Reports are as follows:

- a. Public Participation Plan. Every land use petition which requires a public hearing shall include a Public Participation Plan which must be implemented prior to the first public hearing.

Minimum standards:

1. Identify all property owners within one quarter mile of the site and area homeowners' associations, Environmentally Stressed Communities, political jurisdictions, and any other public agencies or organizations which may be affected by a land use petition as determined by the petitioner and Department staff at the time of the pre petition review.
2. Provide explanation of how interested parties will be informed of land use petitions.
3. Provide methods for providing opportunities for discussion of land use petitions with interested parties before public hearings are held. Petitioners are required to schedule at least one (1) meeting at a convenient location and time and notify all interested parties, as identified in subparagraph a. above, of the purpose, place and time of the meeting.
4. Provide petitioner's schedule for completion of the Public Participation Plan.

- b. Public Participation Report. Every petitioner filing a land use petition is required to provide a Public Participation Report on the Department's form no later than seven (7) business days before the scheduled City Council hearing. The Public Participation Report shall be made a part of the official file and a summary will be provided to the City Council.

Minimum standards:

1. Provide a list of all parties that were contacted, the methods of notification that were used, and copies of all notification letters.
2. Provide dates and locations of all community and/or other meetings that were attended by the petitioner to discuss a land use petition (attach meeting notices, letters, etc.).
3. Provide the number of people who participated in meetings held to discuss a land use petition (attach sign-in sheets).

4. Provide a summary of concerns and issues expressed by interested parties in meetings held to discuss a land use petition.
5. Provide a summary of the petitioner's response to concerns and issues raised in meetings held to discuss a land use petition.

28.5. CONDITION STANDARDS FOR DEVELOPMENT.

28.5.1. DESIGNATION. Each land use petition shall contain development conditions proposed by the petitioner addressing the proposed use and development of the subject property. Such conditions shall be included in a site plan provided with the land use petition.

28.5.2. PLANS. Site plans for land use petitions must be folded, drawn to scale, no larger than 30" x 42", and shall, at a minimum, include the following information:

- a. Key and/or legend, site location map with North arrow, and scale;
- b. Boundary survey of the subject property which includes dimensions along property lines that match the metes and bounds of the subject property's written legal description and clearly indicates the point of beginning;
- c. Acreage of subject property;
- d. Location of subject property land lot lines and identification of land lots;
- e. Existing and proposed new dedicated and future reserved rights-of-way of all streets, roads, and railroads adjacent to and on the subject property;
- f. Proposed streets on the subject site;
- g. Current zoning of the subject site and adjoining properties;
- h. Existing buildings with square footages and heights (stories), wells, driveways, fences, cell towers, and any other structures or improvements on the subject property;
- i. Existing buildings with square footages and heights (stories), wells, driveways, fences, cell towers, and any other structures or improvements on adjacent properties within four hundred (400) feet of the subject site based on the City's aerial photography or an acceptable substitute as approved by the Director;
- j. Location of proposed buildings (except single family residential lots) with total square footage;
- k. Layout and minimum lot size of proposed single family residential lots;
- l. Topography (surveyed or City) on the subject site and adjacent property within two hundred (200) feet as required to assess runoff effects;

- m. Location of overhead and underground electrical and pipeline transmission/conveyance lines;
- n. Required and/or proposed setbacks;
- o. 100 year flood plain horizontal limits and flood zone designations as shown on survey or Federal Emergency Management Agency Flood Insurance Rate Maps;
- p. Required landscape strips, undisturbed buffers, and any other natural areas as required or proposed;
- q. Required and proposed parking spaces; and loading and unloading facilities;
- r. Lakes, streams, and waters on the subject site and associated buffers;
- s. Proposed stormwater management facilities;
- t. Community wastewater facilities including preliminary areas reserved for septic drain fields and points of access;
- u. Availability of water system and sanitary sewer system;
- v. Tree lines, woodlands and open fields on the subject site;
- w. Entrance site distance profile assuming the driver's eye at a height of 3.5 feet (see City's Development Regulations Ordinance); and
- x. Wetlands shown on the GIS maps or survey.

A request for relief from any of the above site plan requirements may be submitted in writing to the Director for approval prior to the filing deadline. The request should clearly state the reasons for the request. Projects subject to Development of Regional Impact Reviews and other large projects that will be phased shall be required to revise the site plan for each phase of the development to comply with the above standards through a Zoning Modification.

- 28.6. ZONING MAP. The official City Zoning Map will be amended to reflect land use petition approvals. Land use petitions that are approved and permitted but have not vested pursuant to Section 28.11. may be removed by action of the City Council from the City Zoning Map.
- 28.7. APPLICABLE REGULATIONS FOR LAND USE PETITION. Zoning regulations and other federal, state, and City development standards that exist at the time of acceptance of a land use petition or an application for a Land Disturbance Permit shall prevail.
- 28.8. PETITION FEES. Prior to accepting a land use petition or a petition for extension of land use petition approval, the Director shall collect nonrefundable fees as established by the City Council.

If consideration of a land use petition is postponed or delayed due to the petitioner's failure to comply with any of the provisions of this Article, the Director shall assess additional fees as may be determined by the Department to be the additional administrative costs associated with such postponement or delay.

28.9. PROCEDURES FOR MODIFICATION OF ZONING CONDITIONS. See Article XXII.

28.10. EXPIRATION AND EXTENSIONS OF LAND USE PETITION APPROVALS.

- a. Rezoning petition. A rezoning petition approved by City Council shall remain in effect until such time as the subject property is rezoned by action of the City Council, or until such time as the rezoning is declared invalid by any court of competent jurisdiction. For purposes of this Section, a rezoning petition shall be deemed to include, if applicable, a variance filed concurrently with a rezoning petition.
- b. Use permit. A use permit shall expire unless the property owner takes action to vest the land use requested in the use permit in accordance with Section 28.11 within a period of thirty six (36) months from the date of such approval by the City Council, or fails to secure an approved extension in accordance with Section 28.11.2. For purposes of this Section, a use permit request shall be deemed to include, if applicable, a variance filed concurrently with a use permit request.

The filing of a request for extension authorized by this Article shall operate as a stay of the expiration of the use permit until a decision is made by the Department.

28.11. VESTING OF USE PERMIT. Upon the occurrence of one (1) of the three (3) conditions listed immediately below, a use permit shall be considered vested.

- a. Prior to the expiration of a Land Disturbance Permit pursuant to applicable provisions of the Development Regulations Ordinance, a vesting determination may be made by the Department that substantial progress (as defined in Section 28.11.1) has been made toward the completion of on-site construction depicted on the site plan approved with the use permit.
- b. The issuance of a certificate of occupancy and/or certificate of completion and/or structure specified in the approved conditions.
- c. The issuance of a business license for the approved use, but only when no new construction or land disturbance is approved and/or required as a condition of rezoning.

28.11.1. SUBSTANTIAL PROGRESS. To demonstrate substantial progress for purposes of vesting a use permit, the Department shall approve a construction schedule for a Land Disturbance Permit which includes at least fifty percent (50%) of the

public improvements for a specified phase. Substantial progress shall have been demonstrated when, within one (1) year of the date of issuance of the Land Disturbance Permit, the Department observes a level of accomplishment or expenditures on the project which produces measurable and verifiable evidence that the activities undertaken comply with those objectives and representations of the approved construction schedule.

Refusal to certify that substantial progress has been achieved may be appealed in accordance with Article XXII of this Ordinance.

28.11.2. EXTENSIONS.

- a. Extension by Director. In connection with a use permit, the Director is authorized to grant, in writing, an extension for a maximum period of twelve (12) months, subject to the qualifying conditions listed in this Section. To request an extension by the Director, the property owner must submit an application to the Department at least thirty (30) days prior to the expiration of the use permit.

No more than one (1) twelve (12) month extension per use permit may be granted by the Director for any of the qualifying conditions listed in this Section (except a court action delay).

An extension may not be sought for less than the total acreage of the underlying use permit.

- b. Extension by the City Council. Any additional requests for extension of a use permit beyond the twelve (12) month extension granted by the Director may be considered by the City Council, subject to the qualifying conditions listed in this Section.

Use permits initiated by the City Council to implement the adopted City Comprehensive Plan are exempt from the provisions of this Section.

To request an extension by the City Council, the property owner must submit an application to the Department at least thirty (30) days prior to the expiration of the twelve (12) month extension period granted by the Director pursuant this Section.

The Department shall prepare an analysis and recommendation as to whether the documentation in the application is sufficient based on one (1) of the four (4) qualifying conditions which may validate an extension request by the City Council.

The Department shall submit its recommendation to the City Council.

An extension may not be sought for less than the total acreage of the underlying approved use permit request.

- c. Qualifying conditions. In every application for an extension of a use permit, the property owner(s) shall provide an affidavit documenting at least one (1) of the following:
1. A delay resulting from court action involving the use permit or a previous extension on the subject property for which an extension is sought. Extensions approved in connection with court action shall remain valid for one (1) year beyond the granting of an order or the expiration of an appeal period before any court with jurisdiction.
 2. Non-availability of utilities or facilities resulting from government inaction. In those instances where wastewater facilities are available for a fraction of the desired capacity, or when capacity was available at some time during the one (1) year period, but not during the sixty (60) days prior to expiration, the Director or the City Council, as applicable, shall evaluate such case's qualifications for an extension on its individual merits considering any evidence that might indicate a diligent effort to proceed with development.
 3. A delay in development resulting from wetlands regulatory procedures requires the petitioner to provide a copy of the application acknowledgment letter from the Savannah Regulatory Branch of the Corps of Engineers as documented evidence. Said application should have been filed at least six (6) months before the expiration of the use permit approval.
 4. An inability to obtain financing, despite documentation of the property owner's efforts during the three (3) months prior to the petitioner seeking an extension and continuing until one (1) week prior to consideration of the extension request by the Director or the City Council, as applicable. Documentation shall consist of two (2) official denials signed by officers of two (2) different lending institutions who have final jurisdiction over such financing transactions.

28.11.3. NOTICE OF EXPIRATION. At least ninety (90) days prior to the expiration of a use permit, the Director shall send by certified mail a notice of expiration to each owner of record as shown in the tax records.

2.

All ordinances, parts of ordinances, or regulations in conflict herewith are repealed.

3.

Severability. Should any court of competent jurisdiction declare any section of this Ordinance invalid or unconstitutional, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof, which is not specifically declared to be invalid or unconstitutional.

4.

Repeal of Conflicting Provisions. It is the intention of the Mayor and City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of

Ordinances, City of Sandy Springs, Georgia and the sections of this Ordinance may be renumbered to accomplish such intention.

5.

This Ordinance is effective October 20, 2009; and

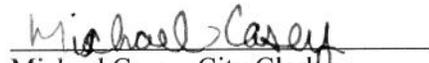
ORDAINED this the 20th day of October, 2009.

Approved:



Eva Galambos, Mayor

Attest:


Michael Casey, City Clerk
(Seal)