

ARTICLE J. REZONING AND OTHER AMENDMENT PROCEDURES

Sec.10-2212. GENERAL AMENDMENTS

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

In amending the Zoning Maps, the City Council may approve a use permit and/or zoning district applied for by the applicant or a more restrictive zoning district based on the ranking of East Point zoning district intensities. The City Council may consider a variance filed concurrently with a request for a rezoning and/or use permit.

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

Rezoning and/or use permit requests are referred to in this text as land use petitions. All land use petitions approved by the City Council are subject to conditions approved by the City Council.

Sec. 10-2213. LAND USE PETITIONS

Land use petitions may be initiated by the property owner or the City Council on forms available from the Department.

No final action shall be taken on a land use petition affecting the same parcel more often than once every 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-month waiting period from the date of final City Council action is required when a rezoning and/or use permit request was previously denied.

If a petition was previously denied, the owner must demonstrate that the proposed land use petition is significantly different from the previous denial 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.

Sec. 10-2214. APPEALS TO SUPERIOR COURT

Any appeal of, or other legal challenge to a City Council final decision regarding a land use

petition/and or use permit shall be pursued by direct appeal and filed with the Superior Court of Fulton County within 30 days of the date of the City Council's decision.

Sec.10-2215. FILING DEADLINES

A complete land use petition shall be submitted in accordance with the advertised filing deadlines. The Director may extend the filing deadline by two days with a letter of explanation from the applicant justifying the delay of submittal. An incomplete petition shall not be accepted.

Sec.10-2216. WITHDRAWAL PRIOR TO ADVERTISING

If a land use petition or rezoning has not been advertised for public hearing, a written request for withdrawal with the reason for the request shall be made to and accepted by the Director. No refunds of petition fees will be made.

Sec.10-2217. WITHDRAWAL AFTER ADVERTISING

After a land use petition or rezoning has been advertised for public hearing, it may only be withdrawn by the City Council and Planning and Zoning Commission at the public hearing. A withdrawal shall not be deemed final action and shall not bar submission of a new petition. A written request for withdrawal with the reason for the request shall be made to the Director.

Sec.10-2218. PETITION REQUIREMENTS

All petitions shall include the following with twenty-three (23) copies of each as prescribed by the Director:

1. Signed and notarized petition with original signatures;
2. Legal Description;
3. Letter of Intent;
4. Site plan which meets the requirements specified in 10-2226;
5. Site plan checklist which indicates compliance with site plan requirements specified in 10-2226;
6. Environmental Site Analysis;
7. 8 W' x 11" transparency of site plan;
8. Impact Analysis for rezoning petitions;

9. Disclosure Form;
10. Community Zoning Information Meeting;
11. Traffic Study, if applicable;
12. Development of Regional Impact Review Form, if applicable;
13. Noise Study Report, if applicable;
14. Other documents as identified in the pre-application review; and
15. Non-refundable filing fee
16. Copy of deed(s)

Sec.10-2219. PUBLIC HEARING AND NOTICE REQUIREMENTS

1. *Public Hearing Procedures.* Before adopting any change to the Zoning Maps or text of the Zoning Ordinance, the City Council shall hold a public hearing following the public hearing by the Planning and Zoning Commission where a recommendation was made on the petition.

Public hearings before the City Council shall be conducted as follows:

- a. The presiding officer will call for a motion to open and close the hearing.
- b. The presiding officer or his/her designee will introduce the proposed zoning amendment before the City Council. Staff will then be called upon to present the Planning Commission's recommendation and summarize the staff's written report.
- c. Persons both favoring and opposing the proposed amendment will then be provided an opportunity to address the Council. The applicant for the proposed amendment (or applicant's designated representative), if any, will be entitled to speak first, followed by other speakers in favor of the proposal, for a total of fifteen (15) minutes. Those who oppose the proposed zoning amendment will then be permitted to speak for a total of fifteen (15) minutes. By majority vote the Council may increase the total time for speakers provided that each side is given the same amount of time. If there is more than one speaker for a side, the presiding officer may limit the time allotted to each individual speaker, other than the zoning applicant. The zoning applicant may reserve a portion of his allotted time for rebuttal.
- d. Speakers must adhere to rules of decorum. Prior to speaking, each speaker shall identify himself/herself and state his/her current address. Each speaker shall speak only to the merits of the proposed zoning decision under consideration, shall address remarks only to the Council, and shall refrain from making personal attacks on any other speaker. The

presiding officer may refuse a speaker the right to continue if, after first being cautioned, the speaker continues to violate the rules of decorum.

2. *Notice Requirements.* Notice of the Planning and Zoning Commission and City Council hearings shall be given simultaneously at least fifteen (15) days but no more than forty-five (45) days prior to date of the City Councils' public hearing and shall be published in a newspaper of general circulation by the City Clerk or his/her designee. Re-notification is not required when petition is deferred by the Planning and Zoning Commission or City Council. (Ord. No. 022-11, 09-19-2011)

- a. The applicant or agent shall post a sign as issued by the Department of Planning and Zoning in a conspicuous location on each public street frontage of the subject property no later than 8:30 a.m. on the 20th day prior to the Planning and Zoning Commission meeting.
- b. The sign shall be mounted and posted as specified by the Department of Planning and Zoning. Property that is not posted on the 20th day before the scheduled first hearing date will be administratively removed from the agenda.
- c. When the Planning and Zoning Commission or the City Council defers a petition, the applicant is required to post an updated sign with new hearing dates 20 days prior to the next scheduled hearing date. When a petition is deferred by the City Council for less than 20 days, posting an updated sign is not required.
- d. The Department shall require that the applicant give notice by regular mail to all property owners within 500 feet radius of the boundaries of the subject property who appear on the tax records of East Point as retrieved by the City's Geographic Information System. Applications seeking a rezoning, special use permit, or variance to or from B-P, I-1, and I-2 notification shall be given to all property owners within 1000 feet of the boundaries of the property owner who appear on the current tax records as retrieved by City's Geographic Information System. The notices shall be mailed a minimum of 15 days prior to the hearing date. Re-notification by mail is not required when a petition is deferred by the City Council. (Ord. No. 019-12, 12-17-12, Ord. No. 055-016, 05-16-2016)
- e. The published and mailed notices shall contain the time, place, and purpose of the hearing, the location of the property, and the present and proposed zoning classifications and/or requested use permit. The posted sign shall include all 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.

(Ord. No. 007-09, § 1, 4-20-09)

Sec.10-2220. SECRETARY

The Director or his/her appointee shall serve as Secretary to the Planning and Zoning Commission. 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.

Sec. 10-2221. TECHNICAL EVALUATIONS AND REPORTS

Proposed land use petitions shall be considered by the Planning and Zoning Commission only after the evaluations and reports required below have been completed and the Planning and Zoning Commission has made a recommendation. Such reports shall be public record.

Sec. 10-2222. ZONING IMPACT ANALYSIS BY THE PLANNING AND ZONING COMMISSION AND THE DEPARTMENT

For each rezoning petition, the Planning and Zoning Commission and the Department shall investigate and make a recommendation with respect to the factors listed below. 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 members.

The Planning and Zoning Commission shall make a recommendation which the Department shall transmit in writing to the City Council.

The zoning impact analysis factors are as follows:

- A. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property;
- B. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;
- C. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
- D. Whether the zoning proposal will result in a use which will or could cause an excessive burdensome use on existing streets, transportation facilities, utilities, or schools;
- E. Whether the zoning proposal is in conformity with the policies and intent of the land use 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 zoning proposal; and
- G. Whether the zoning proposal will permit a use which can be considered environmentally adverse to the natural resources, environment and citizens of East Point.

Sec. 10-2223. ZONING IMPACT ANALYSIS BY APPLICANT

If a rezoning is initiated by the property owner, a written documented analysis of the impact of the proposed zoning with respect to each of the matters enumerated in 10-2224 is required at the time of filing the land use petition.

Sec. 10-2224. ENVIRONMENTAL REPORTS

If a rezoning and/or 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 per the following:

Sec. 10-2224.1. ENVIRONMENTAL SITE ANALYSIS (ESA)

All rezoning and/or land use petitions shall include an Environmental Site Analysis to identify environmental conditions on the site to determine if the proposed use may be considered environmentally adverse.

The Environmental Site Analysis shall detail the following:

1. How the project conforms to the Comprehensive Land Use Plan;
2. The presence or absence of the following and does the project encroach or adversely affect any of the following:
 - a. Wetlands;
 - b. Floodplains;
 - c. Streams/stream buffers;
 - d. Slopes exceeding 25 percent over a 10 foot rise in elevation;
 - e. Vegetation (including endangered species; areas of confirmed Georgia Department of Natural Resources listed endangered species shall comply with the Federal Endangered Species Act);
 - f. Wildlife species (including fish and endangered species; areas of confirmed Georgia Department of Natural Resources listed endangered species shall comply with the Federal Endangered Species Act);
 - g. Archeological/historical sites;
3. How the project implements the following:

- a) Protection of environmentally sensitive areas (floodplains, slopes exceeding 25 percent, river corridors);
- b) Protection of water quality;
- c) Minimization of negative impacts on existing infrastructure;
- d) Minimization of negative impacts on archeological/historically significant areas;
- e) Minimization of negative impacts on environmentally stressed communities;
- f) Creation and preservation of green space and open space;
- g) Protection of citizens from the negative impacts of noise and lighting;
- h) Protection of parks and recreational green space; and
- i) Minimization of impacts to wildlife habitats.

Sec.10-2224.2. ENVIRONMENTAL IMPACT REPORT (EIR)

Any petition for an industrial rezoning and/or land use petition shall include an Environmental Impact Report to determine if the proposed use is environmentally adverse.

The Environmental Impact Report shall detail the following:

1. Conformance to the Comprehensive Plan.
2. Impacts on noise levels of the surrounding area;
3. Impacts on air quality of the surrounding area;
4. Impacts on water quality/resources including surface water, ground water, flood plains, and wetlands;
5. Impacts on vegetation, fish, and wildlife species and habitats;
6. Impacts of thermal and explosive hazards on the surrounding area;
7. Impacts of hazardous wastes on the surrounding area; the report shall cite all uses and quantities of any agents listed on the Federal Environmental Protection Agency Lists of Hazardous Wastes.

The Environmental Impact Report shall detail strategies to mitigate or avoid impacts listed above as applicable.

Sec.10-2224.3. REVIEW CRITERIA FOR ESA AND/OR EIR

Environmental Site Analysis and/or Environmental Impact Reports shall be reviewed based upon the following:

1. Whether the petition is consistent with the policies of the Comprehensive Land Use Plan;
2. The detail provided for ESAs and EIRs as outlined in Sections 10-2224.1 and 10-2224.2 above.

The Department shall review the ESAs and EIRs submitted with petitions for rezoning and/or land use petitions and make recommendations to the City Council with respect to the proposed use. The anticipated impact of the proposed use on an environmentally stressed community will be included in the Department's recommendation.

As determined by the Director or his/her designee, Environmental Impact Reports may also be required with applications for land disturbance permits, building permits, permanent certificates of occupancy, or any other permits issued by the Department of Planning and Zoning.

Sec.10-2224.4. TRAFFIC IMPACT STUDY

A Traffic Impact Study is required when a land use petition equals or exceeds the thresholds indicated in the Department's Rezoning, Use Permit & Concurrent Variance Application Package. The study shall be prepared by a certified traffic engineer or transportation planner in accordance with professional practices and must be submitted at the time of the filing of the land use petition.

Sec.10-2224.5. DEVELOPMENT OF REGIONAL IMPACT STUDY (DRI)

A Development of Regional Impact Study is required when a land use petition meets or exceeds the thresholds indicated in the Department's Rezoning, Use Permit & Concurrent Variance Application Package. Form 1: Initial DRI Information must be submitted at the time of the filing of the land use petition.

Sec. 10-2224.6. NOISE STUDY REPORT

A noise study shall be performed, by a state registered professional engineer or noise professional, if a proposed site is located within 1,000 feet of an expressway, within 3,000 feet of an active rail line. An expressway is defined as a highway facility usually having two or more lanes for the exclusive use of traffic in each direction and partial control of access (i.e. 1-85, 1-285 and GA-400).

1. The noise study shall include an analysis of the proposed use with respect to existing ambient noise, that is, business and industry noise, aircraft noise, roadway noise, and construction noise.
2. If the noise study results in a day-night average sound level greater than 65 dBA, the applicant shall provide a sound attenuation plan specifying the type of noise buffering measures/materials to be employed during construction that will reduce the interior residential noise levels to 50 dBA or less.
3. The sound level readings shall be measured at a distance from the site to the noise source. The measurement should be from the source to the nearest points on the site where structures having noise sensitive uses are located. These points shall be labeled as the NAL (noise assessment locations). The measurement location for structures is a point 6.5 feet from the facade. In the event that the location of the structures has not yet been specified at the time of the noise study, then the distance used in the noise study should be measured as 6.5 feet less than the distance from the structure setback line to the major source(s) of noise. (Reference: Title 24, Housing & Urban Development, Part 51 – Environmental Criteria and Standards, Subpart B – Noise Abatement and Control, Section 51.103) Criteria and Standards (c) Exterior standards.

Sec.10-2224.7. COMMUNITY ZONING INFORMATION MEETING (CZIM)

All applications regarding re-zonings, zoning modifications, variances, special use permits, subdivisions (minor and preliminary plats), and other related land use petitions must comply with the requirements of the Community Zoning Information Meeting process as set out in Article L, Sections 10-2234 through 10-2238 of this Chapter. (Ord. No. 005-10, § 03-15-2010)

CONDITIONAL DEVELOPMENT

Sec.10-2225. DESIGNATION

Each zoning district shall have a designation there under to be known as Conditional for that district.

Sec.10-2226. PLANS

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

1. Key and/or legend and site location map with North arrow;
2. Boundary survey of subject property which includes dimensions along property lines that match the metes and bounds of the property's written legal description and clearly indicates the point of beginning;

3. Acreage of subject property;
4. Location of land lot lines and identification of land lots;
5. Existing, proposed new dedicated and future reserved rights-of-way of all streets, roads, and railroads adjacent to and on the subject property;
6. Proposed streets on the subject site;
7. Posted speed limits on all adjoining roads;
8. Current zoning of the subject site and adjoining properties;
9. Existing buildings with square footages and heights (stories), wells, driveways, fences, cell towers, and any other structures or improvements on the subject property;
10. Existing buildings with square footages and heights (stories), wells, driveways, fences, cell towers, and any other structures or improvements on adjacent properties within 400 feet of the subject site based on the County's aerial photography or an acceptable substitute as approved by the Director;
11. Location of proposed buildings (except single family residential lots) with total square footage;
12. Layout and minimum lot size of proposed single family residential lots;
13. Topography (surveyed or County) on subject site and adjacent property within 200 feet as required to assess runoff effects;
14. Location of overhead and underground electrical and pipeline transmission/conveyance lines;
15. Required and/or proposed setbacks;
16. 100 year flood plain horizontal limits and flood zone designations as shown on survey or FEMA FIRM maps;
17. Required landscape strips, undisturbed buffers, and any other natural areas as required or proposed;
18. Required and proposed parking spaces; Loading and unloading facilities;
19. Lakes, streams, and waters on the state and associated buffers;
20. Proposed stormwater management facilities;

21. Community wastewater facilities including preliminary areas reserved for septic drain fields and points of access;
22. Availability of water system and sanitary sewer system;
23. Tree lines, woodlands and open fields on subject site;
24. Entrance site distance profile assuming the driver's eye at a height of 3.5 feet (See East Point Subdivision Regulations);
25. Wetlands shown on the County's GIS maps or survey; and
26. Airport noise contours on those properties within the FAR Part 150 Airport Noise Contour Map.

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.

Sec. 10-2227. ZONING MAPS

The official Zoning Map will be amended to reflect the land use petition approvals.

Sec. 10-2228. APPLICABLE REGULATIONS

Zoning regulations that applied at the time of acceptance of an application for a Land Disturbance Permit shall prevail.

Sec. 10-2229. PETITIONFEES

Prior to accepting a petition for rezoning, use permit, concurrent variance, or extension of zoning and/or use permit, the Director shall collect nonrefundable fees as established by the City Council.