

<b>Article 7. Administration .....</b>	<b>3</b>
<b>27-7.1 DIVISION 1. GOVERNING BODIES AND AUTHORITY .....</b>	<b>3</b>
7.2.1. Purpose and intent; compliance with law. ....	3
7.2.2. Governing bodies. ....	3
<b>27-7.2 DIVISION 2. GENERAL PROCEDURES .....</b>	<b>8</b>
7.2.1. Applications and public hearing. ....	8
7.2.2. Applications. ....	8
7.2.3. Reserved. ....	10
7.2.4. Public hearings. ....	10
<b>27-7.3 DIVISION 3. ZONING AND COMPREHENSIVE PLAN AMENDMENTS AND PROCEDURES .....</b>	<b>11</b>
7.3.1. Initiation of proposals for text and map amendments. ....	11
7.3.2. Consistency with comprehensive plan character areas. ....	11
7.3.3. Staff analysis, findings of fact, and recommendations. ....	11
7.3.4. Standards and factors governing review of proposed amendments to the comprehensive plan map. ....	12
7.3.5. Standards and factors governing review of proposed amendments to the Official Zoning Map. ....	12
7.3.6. Community council review of proposed amendments. ....	13
7.3.7. Action by the planning commission. ....	13
7.3.8. Action by the board of commissioners. ....	13
7.3.9. Conditions of zoning. ....	14
7.3.10. Modifications and changes to approved conditions of zoning. ....	14
7.3.11. Reserved. ....	15
<b>27-7.4 DIVISION 4. SPECIAL LAND USE PERMITS .....</b>	<b>15</b>
7.4.1. Special land use permits generally. ....	15
7.4.2. Initiation of applications and public hearing requirements. ....	16
7.4.3. Initiation of ordinance for application for special land use permit. ....	16
7.4.4. Community council review of proposed applications. ....	16
7.4.5. Staff analysis, findings of fact, and recommendation on each application. ....	16
7.4.6. Special land use permit; criteria to be considered. ....	16
7.4.7. Additional criteria for specified uses. ....	17
7.4.8. Action by the planning commission. ....	18
7.4.9. Action by the board of commissioners. ....	19
7.4.10. Appeals of decisions of the board of commissioners. ....	19
7.4.11. Limitations of special land use permits. ....	19
7.4.12. Transfer of special land use permits. ....	20
7.4.13. Compliance upon denial. ....	20
7.4.14. Reserved. ....	20
<b>27-7.5 DIVISION 5. VARIANCES AND APPEALS to the zoning board of appeals .....</b>	<b>20</b>
7.5.1. Testimony and burden of proof. ....	20
7.5.2. Appeals of decisions of administrative officials. ....	21
7.5.3. Applications for variances; and criteria to be used by the zoning board of appeals in deciding applications for variances. ....	22
7.5.4. Applications for variances to reduce or waive off-street parking or loading space requirements. ....	23
7.5.5. Limitations of authority of the zoning board of appeals. ....	23
7.5.6. Decision by the zoning board of appeals. ....	24
7.5.7. Compliance with standards upon denial. ....	24
7.5.8. Appeals of decisions of the zoning board of appeals. ....	24
7.5.9. Fair Housing Act Accommodation Variance. ....	24
<b>27-7.6 DIVISION 6. SPECIAL ADMINISTRATIVE PERMITS; WAIVERS AND VARIANCES .....</b>	<b>25</b>

Administration

7.6.1.	Special administrative permits generally.....	25
7.6.2.	Standards for special administrative permits, criteria to be applied.....	25
7.6.3.	Time limitations.....	<b>Error! Bookmark not defined.</b>
7.6.4.	Reserved.....	<b>Error! Bookmark not defined.</b>
7.6.5.	Administrative variances, administrative waivers: authority.....	25
7.6.6.	Procedures for applications for administrative variances and administrative waivers.....	26
7.6.7.	Criteria used by the director of planning in deciding administrative variances and administrative waivers.....	26
7.6.8.	Persons entitled to appeal to the zoning board of appeals.....	27
<b>27-7.7</b>	<b>DIVISION 7. ENFORCEMENT, VIOLATIONS, AND PENALTIES .....</b>	<b>27</b>
7.7.1	Administration and enforcement; granting of permits.....	27
7.7.2	Development permits.....	27
7.7.3	Building permits and certificates of occupancy required.....	27
7.7.4	Applications for permits and certificates of occupancy.....	27
7.7.5	Development and building permits; plans required.....	27
7.7.6	Issuance of development permits.....	28
7.7.7	Duration of validity of development permits.....	28
7.7.8	Building inspection.....	29
7.7.9	Records.....	29
7.7.10	Inspection; right of entry.....	29
7.7.11	Inspection; warrants.....	29
7.7.12	Remedies.....	30
7.7.13	Notice in writing order to stop work; revocation of permits.....	30
7.7.14	Fees.....	30
7.7.15	Certificates of occupancy.....	30
7.7.16	Violations of this chapter.....	31
7.7.17	Penalties.....	31
7.7.18	Repeal of conflicting ordinances; validity of prior approvals and actions.....	31
7.7.19	Reserved.....	31

## **Article 7. Administration**

### **27-7.1 DIVISION 1. GOVERNING BODIES AND AUTHORITY**

#### **7.2.1. Purpose and intent; compliance with law.**

- A. This article is intended to provide certain procedures to govern:
  - 1. Processing of various applications for rezoning, variances, comprehensive plan text amendments, comprehensive plan map amendments, special land use permits, administrative variances, and major and minor modifications to conditions of zoning.
  - 2. The calling and conducting of public hearings pertaining to said applications.
  - 3. Establishing criteria for making decisions on such applications.
- B. The board of commissioners, planning commission, zoning board of appeals, and community councils shall comply with all applicable provisions of state law, now and as they may be amended hereafter, including, but not limited to, state law concerning open records, open meetings and records retention.

#### **7.2.2. Governing bodies.**

- A. *Director of planning.*
  - 1. The provisions of this Zoning Ordinance shall be administered by the director of planning, in conjunction with the planning commission, the zoning board of appeals and the board of commissioners of DeKalb County as set forth herein. The specific duties of the director of planning shall include, but not be limited to, the following:
    - a. Accepting and processing applications for zoning map amendments (rezonings), special land use permits, zoning certifications, continuances of nonconforming uses, text amendments to the Zoning Ordinance, modifications of zoning conditions, variances, residential lot divisions, amendments to the map and text of the comprehensive plan, or any other such business as may be scheduled for public hearing by the planning commission, zoning board of appeals, or board of commissioners.
    - b. Researching facts and preparing reports and recommendations for the planning commission and the board of commissioners for such applications. Such reports shall be in writing and shall be made a part of the public record.
    - c. Researching facts and preparing reports and recommendations regarding variances and appeals of error, or any other business as may be scheduled for public hearing by the zoning board of appeals.
    - d. Maintenance of permanent records concerning the administration of this Zoning Ordinance and comprehensive plan, including all maps, amendments, records of public hearings, and any other business of the planning commission and zoning board of appeals.
    - e. Review of applications for permits and licensing to ensure conformity with the requirements of this Zoning Ordinance and other relevant county ordinances.
    - f. Upon written request by the property owner or owner's authorized agent and payment of a fee established by the board of commissioners, the director of planning may issue a certificate verifying the current zoning of a parcel of land, or a letter confirming a legal nonconforming status.
    - g. Administratively correct the Official Zoning Map after a graphic or scrivener error has been identified.

- h. Other duties as authorized in this Zoning Ordinance, including but not limited to the rendering of administrative decisions authorized by Section 7.6.

B. *Community council.*

1. There is hereby established a separate volunteer community council for each commission district 1 through 5. Each community council shall consist of fifteen (15) members, each of whom shall be a resident of DeKalb County, shall reside in the same district for which the community council is established, and who shall be appointed as follows:
  - a. The district commissioner shall appoint eleven (11) members to the community council located in his or her district; and
  - b. Each superdistrict commissioner shall appoint four (4) members to each of the community councils located in his or her superdistrict.
2. Members of each community council shall serve at the pleasure of the commissioner making the appointment or until their successor is appointed and qualified, unless such term ends sooner in a manner set forth herein. If the community council member is still serving at the time the appointing county commissioner vacates his/her office, the community council member shall continue to serve until a successor is appointed and qualified by the incoming county commissioner. Community council members may be reappointed to successive terms without limitation. Any vacancy in the membership of the community council shall be filled in the same manner as the initial appointment. If a community council member moves outside the district for which the community council is established, that action shall constitute an immediate resignation from the council, effective immediately.
3. The Community Councils are created to review applications for rezonings, land use plan amendments, special land use permits and text amendments, and to report their recommendations to the planning commission. A community council may consider such ordinances and applications in relation to the applicable standards and criteria contained in this chapter, the adopted comprehensive plan and any of the community's quality of life issues.
4. No person shall serve or continue to serve as a community council member until they have been certified by the director as having completed a training session sponsored by the county.

C. *Historic preservation commission.* See chapter 13.5 of the Code for the establishment and authority of the historic preservation commission.

D. *DeKalb County Planning Commission.*

1. There is hereby established a DeKalb County Planning Commission which shall consist of nine (9) members, all residents of DeKalb County, who shall be appointed as follows:
  - a. Each member of the board of commissioners and the chief executive officer shall make one (1) appointment;
  - b. Members appointed by an individual commissioner must reside in the district of the appointing commissioner; and
  - c. One (1) appointment shall be made by the majority vote of the board of commissioners with the concurrence of the chief executive officer.
2. A planning commissioner may be removed by the board of commissioners at any time for failure to attend three (3) consecutive meetings or for failure to attend seventy-five (75) percent or more of the meetings within any calendar year or by the elected appointing member of the board of commissioners for any other good cause related to performance of duties. It shall be the duty of the secretary of the planning commission to keep a record of the attendance of members and to notify both the planning commissioner and the board of commissioners when any planning commissioner is removed pursuant to the failure to attend meetings requirement of this section. No hearing before

the board of commissioners is allowed for a removal for a violation of the failure to attend meetings requirement. Such removal shall be effective ten (10) days following notification by the secretary of the planning commission to the board of commissioners. The appointing elected member of the board of commissioners shall have the authority to remove his or her planning commissioner appointee for cause, other than for failure to attend meetings, by providing written notice of such cause to the secretary and the planning commissioner proposed to be removed. Upon request of the planning commissioner proposed for removal for cause other than for a failure to attend meetings, the board of commissioners shall hold a hearing on the removal before it becomes effective. A planning commissioner appointed pursuant to subsection 1.c. above shall be subject to the removal requirements of this section, but a removal for cause other than for a failure to attend meetings shall require a majority vote of the board of commissioners with the concurrence of the chief executive officer. If a planning commissioner is still serving at the time his/her appointing elected official vacates his/her office, that planning commissioner shall only continue to serve until a successor is appointed and qualified by the incoming elected official. Planning commissioners may be reappointed to successive terms without limitation. Any vacancy in the membership of the planning commission shall be filled for the unexpired term in the same manner as the initial appointment. Members of the planning commission shall hold no other county office or county compensated position. If a planning commission member appointed by an individual elected official moves outside the district of the appointing elected official, or if a planning commissioner appointed pursuant to subsection 1c. moves outside unincorporated DeKalb County, that action shall constitute a resignation from the planning commission, effective immediately.

3. No person shall serve or continue to serve as a member of the planning commission until they have been certified by the director as having completed a training session sponsored by the county.
4. The governing authority shall determine the amount of compensation, if any, to be paid to the members of the planning commission.
5. *Planning commission to hold public hearing and make recommendation on all proposed amendments.* No amendment to the text of this chapter, the Official Zoning Map, or the comprehensive plan text or maps shall become effective unless the subject matter of the amendment has been submitted to the planning commission for public hearing and recommendation pursuant to the requirements of this chapter.
6. *Planning commission to adopt rules of procedure.* The planning commission shall conduct its meetings in accordance with the procedures contained in this chapter. The planning commission shall further adopt rules of procedure governing the conduct of its meetings; which rules shall be supplemental to and not conflict with this chapter. In any case where the rules do not address a procedural issue which arises before the planning commission, the most recent edition of Robert's Rules of Order shall govern. The planning commission may from time to time amend its rules by majority vote. A copy of the adopted rules of procedure and any subsequent amendment thereto shall be filed by the secretary of the planning commission with the clerk to the chief executive officer and the board of commissioners, and copies of the rules shall be made available to the public by the secretary of the planning commission and the clerk to the chief executive officer and the board of commissioners.
7. *Quorum, voting, and actions by board.* A quorum of the planning commission shall consist of at least five (5) members of the commission. , except that a lesser amount shall be sufficient to recess or adjourn any meeting; but no official action shall be taken except upon the affirmative vote of at least five (5) members of the planning commission. A roll call vote shall be taken upon the request of any member. If there is not a quorum present, all items shall be rescheduled and re-advertised for the next regular meeting.
8. *Annual organizational meeting.* At its first regular meeting of each January, the planning commission shall, by majority vote of its membership elect one (1) of its members to serve as chairperson to preside over the commission's meetings and one (1) member to serve as vice chairperson. The persons so elected shall serve in these capacities for terms of one (1) year or until a replacement is elected. Vacancies may be filled for the unexpired terms only by majority vote

of the planning commission membership. The chairperson and vice chairperson may take part in all deliberations and vote on all issues. The chairperson and the vice-chairperson may each be elected to successive terms without limitation.

9. *Secretary of planning commission; staff support.* The director of planning or his/her designee shall serve as secretary of the planning commission. The planning department staff shall provide support to the planning commission as reasonable and necessary to accomplish said commission's duties. The planning department staff shall provide the members of the planning commission with all information submitted to, or generated by, county staff on each proposed amendment the planning commission considers, including but not limited to a copy of the application and the proposed amendment. The planning department staff shall make audio or video recordings and keep minutes of the proceedings of the planning commission, showing the vote of each member upon each item, or, if a member is absent or fails to vote, indicating such fact, and shall keep records of the planning commission official actions and evidence submitted, all of which shall be filed in the office of the planning department and shall be a public record.

E. *Zoning board of appeals.*

1. There is hereby established a zoning board of appeals which shall consist of seven (7) members, each of whom shall be a resident of the county. Each member of the board of commissioners shall make one (1) appointment to the zoning board of appeals of an individual who shall reside in the appointing commissioner's district. A member of the zoning board of appeals may be removed by the board of commissioners at any time for failure to attend three (3) consecutive meetings or for failure to attend seventy-five (75) percent or more of the meetings within any calendar year or by the elected appointing member of the board of commissioners for any other good cause related to performance of duties. It shall be the duty of the secretary of the zoning board of appeals to keep a record of the attendance of members and to notify both the zoning board of appeals member and the board of commissioners when any zoning board of appeals member is removed pursuant to the failure to attend meetings requirement of this section. No hearing before the board of commissioners is allowed for a removal for a violation of the failure to attend meetings requirement. Such removal shall be effective ten (10) days following notification by the secretary of the zoning board of appeals to the board of commissioners. The appointing elected member of the board of commissioners shall have the authority to remove his/ her zoning board of appeals appointee for cause, other than for failure to attend meetings, by providing written notice to the secretary and the zoning board of appeals member proposed to be removed. Upon request of the zoning board of appeals member proposed for removal for cause other than for a failure to attend meetings, the board of commissioners shall hold a hearing on the removal before it becomes effective. If a member of the zoning board of appeals is still serving at the time his/her appointing elected official vacates his/her office, that member of the zoning board of appeals shall only continue to serve until a successor is appointed and qualified by the incoming elected official. Members of the zoning board of appeals may be reappointed to successive terms without limitation. Any vacancy in the membership of the zoning board of appeals shall be filled for the unexpired term in the same manner as the initial appointment. Members of the zoning board of appeals shall hold no other county office or county compensated position. If a member of the zoning board of appeals appointed by an individual elected official moves outside the district of the appointing elected official, that action shall constitute a resignation from the zoning board of appeals, effective immediately.
2. No person shall serve or continue to serve as a member of the zoning board of appeals until they have been certified by the director as having completed a training session sponsored by the county.

3. The governing authority shall determine the amount of compensation, if any, to be paid to the members of the zoning board of appeals.
4. *Meetings of the zoning board of appeals.* The zoning board of appeals shall meet each month at a standard day and time to be determined by the board. The chairperson may, when necessary, call for special meetings of the board. A meeting may be canceled by the chairperson if there are no matters to be acted upon by the board.
5. *Rules of procedure.* The zoning board of appeals shall conduct its meetings in accordance with the procedures contained in this chapter. The board shall further adopt rules of procedure governing the conduct of its meetings, which rules shall be supplemental to and not conflict with this chapter. In any case where the rules do not address a procedural issue which arises before the board, the most recent edition of Robert's Rules of Order shall govern. The board may from time to time amend its rules by majority vote. A copy of the adopted rules of procedure and any subsequent amendment thereto shall be filed by the secretary of the zoning board of appeals with the clerk to the chief executive officer and the board of commissioners, and copies of the rules shall be made available to the public by the secretary of the zoning board of appeals and the clerk to the chief executive officer and the board of commissioners.
6. *Hearings open to public.* All meetings of the zoning board of appeals shall be open to the public, and the agenda for each board meeting shall be made available to the public at least fifteen (15) days prior to any meeting of the board. Notice of all meetings of the county zoning board of appeals shall be given in accordance with section 7.2.4.
7. *Quorum, voting, and actions by board.* A quorum of the zoning board of appeals shall consist of at least four (4) members of the board, except that a lesser amount shall be sufficient to recess or adjourn any meeting; but no official action shall be taken except upon the affirmative vote of at least four members of the zoning board of appeals. A roll call vote shall be taken upon the request of any member. If there is not a quorum present, all items shall be rescheduled and re-advertised for the next regular meeting.
8. *Annual organizational meeting.* At its first regular meeting of each January, the zoning board of appeals shall, by majority vote of its membership elect one (1) of its members to serve as chairperson to preside over the board's meetings and one (1) member to serve as vice chairperson. The persons so elected shall serve in these capacities for terms of one (1) year or until a replacement is elected. Vacancies may be filled for the unexpired terms only by majority vote of the board membership. The chairperson and vice chairperson may take part in all deliberations and vote on all issues. The chairperson and the vice-chairperson may each be elected to successive terms without limitation.
9. *Staff support.* The director of planning or his/her designee shall serve as secretary to the zoning board of appeals. The planning department staff shall make audio or video recordings and keep minutes of the proceedings of the board, showing the vote of each member upon each item, or if absent or failing to vote, indicating such fact, and shall keep records of its official actions and evidence submitted, all of which shall be filed in the office of the planning department and shall be a public record.
10. *Staff analysis, findings of fact, and recommendation on each application for a variance.* The staff of the planning department shall conduct a site inspection of and shall prepare an analysis of each application for a variance applying the applicable criteria and standards set forth in this chapter to each such application. Staff shall present its findings and recommendations in written form to the zoning board of appeals at least seven (7) days prior to the public hearing thereon. Notwithstanding staff's obligations to present its findings and a recommendation, the failure to

timely do so shall not nullify the board's action on the item, constitute a ground for denial, or constitute grounds for appeal of a decision by the zoning board of appeals.

## **27-7.2 DIVISION 2. GENERAL PROCEDURES**

### **7.2.1. Applications and public hearing.**

This division establishes procedures that apply to all application submittals and procedures for public hearings required by this Zoning Ordinance. Prior to the processing of any application for an amendment to the Official Zoning Map, commonly referred to as a rezoning, variance, comprehensive plan text amendment, comprehensive plan map amendment, special land use permit, or modification to conditions of zoning, the applicant shall be required to file documentation and follow certain procedures as set forth in this article. Additional regulations that apply to specific application types may be found in subsequent sections of this chapter.

### **7.2.2. Applications.**

- A. Applications for county action that require a public hearing shall be filed with the director of planning, along with a fee as set by the board of commissioners. Applications and procedures shall be made available to the public in the offices of the planning department.
- B. The processing of said applications shall be based upon an annual calendar and resolution prepared by the director of planning and adopted by the board of commissioners. This calendar shall be made available to the public in the offices of the planning department.
  1. The director of planning shall be authorized to establish application submittal requirements necessary to obtain sufficient information to allow for a compliance review of the application as well as forms and instructions for each application type or petition. No application shall be processed by the director of planning unless it complies with the procedural requirements of this chapter and is found to be a Complete Application.
  2. Any application that is found to be incomplete during the review for completeness shall be rejected from processing and returned to the applicant. Return of the rejected application shall constitute notice of the rejection to the applicant.
  3. No major change to an application may be accepted later than the required deadline for advertising in the legal organ or a newspaper of general circulation within the county. There shall be no refund of application fees after the planning department has accepted an application.
  4. The following shall constitute a major change to an application that shall result in deferral and/or re-advertising of the application:
    - a. The movement of any building or structure adjacent to an exterior boundary line, closer to the boundary line of the property;
    - b. Any increase in the number of dwelling units or any increase in the total amount of floor space of any nonresidential building;
    - c. Any decrease in the size of residential units;
    - d. Any increase in the number of curb cuts;
    - e. Any decrease in the buffer requirements;
    - f. Any increase in the height of any building or structure;
    - g. Any change in the proportion of floor space devoted to different authorized uses;
    - h. Any change in the zoning classification requested; or

- i. Any change in the land use plan classification that increases the density of the proposed use.
5. A change to a site plan or proposed condition of zoning associated with an application, which change has been accepted and allowed to be part of the application, may be deferred by the board of commissioners for a full-cycle review if the board of commissioners determines such review is reasonably necessary as a result of the change. The amended application shall be treated as if it were a new application, for the purposes of publication, review, notice and hearings, as required under this article, including review by the community council and planning commission. An amendment to an application shall not change the original filing date of that application. An amended application shall not require a new application fee. However, in the case of a deferral requested by the applicant, the applicant shall pay a required re-advertising fee.
- C. *Application fees.* The application fees for special land use permits, amendments to the Official Zoning Map and comprehensive plan map amendments shall be as established by the board of commissioners.
  - D. *Site plan preparation.* The director of planning shall publish a checklist of requirements for site plans submitted pursuant to this Zoning Ordinance. All site plans submitted pursuant to this Zoning Ordinance shall be submitted with the applications to which they apply and shall comply with the checklist requirements.
  - E. *Notice of applications filed.* The secretary of the planning commission shall, no later than twenty-one (21) days following each closing date for receipt of applications, provide the board of commissioners with a list of all applications and amendments filed. The listing of applications shall be reasonably made available to the public.
  - F. *Withdrawal of application by applicant.* Applications may not be withdrawn without permission after they have been filed for advertising for public hearing, except as otherwise provided herein.
  - G. *Clerk to the chief executive officer and the board of commissioners to provide signed copy of final actions taken by the board of commissioners to director of planning to be noted on Official Zoning Maps.* The clerk to the chief executive officer and the board of commissioners shall, after any final action taken by the board of commissioners, provide to the director of planning a signed, certified copy of each such action. The director of planning shall cause all relevant documents to be amended accordingly to reflect the final action approved by the board of commissioners.
  - H. *Resubmittal of rejected or denied applications.*
    1. *Rezoning.*
      - a. If an application for rezoning is denied or assigned a zoning classification other than the classification requested in the application, then no portion of the same property may again be considered for rezoning for a period of twenty-four (24) months from the date of the board of commissioners' final decision.
      - b. Notwithstanding paragraph (a) above, the board of commissioners may by resolution reduce the twenty-four (24) month time restriction between applications to a period no less than the minimum required by the O.C.G.A. Section 36-66-1 et seq., as it now exists and may be amended hereafter, which currently is six (6) months as of the date of adoption of this ordinance.
      - c. An applicant may request that the board of commissioners allow withdrawal of an application without prejudice, in which case, if approved, no minimum time period need expire before a subsequent application for rezoning of the property may be accepted by the director of planning.

2. *Variance.*

- d. An application for a variance affecting all or a portion of the same property for which an application for variance for the same regulation was denied shall not be submitted before twenty-four (24) months have passed from the date of final decision by the zoning board of appeals on the previous variance.
- e. The zoning board of appeals may reduce this twenty-four (24) month time restriction by resolution, provided that the time restriction between the date of said denial and any subsequent application affecting the same property shall be no less than six (6) months.

3. *Special land use permit.*

- a. An application for a special land use permit affecting all or a portion of the same property for which an application for the same special land use was denied shall not be submitted before twenty-four (24) months have passed from the date of final decision by the board of commissioners on the previous special land use permit.
- b. Notwithstanding paragraph (a) above, the board of commissioners may by resolution reduce the twenty-four (24) month time restriction between applications to a period no less than the minimum required by the Zoning Procedures Law, O.C.G.A. Section 36-66-1 et seq., which is six (6) months as of the date of adoption of this ordinance.

**7.2.3. Reserved.**

**7.2.4. Public hearings.**

- A. *Zoning decisions.* The term “zoning decision” is defined in article 9 by reference to the definition of “zoning decision” set forth in state law, O.C.G.A. §36-66-3, as it now exists and may be amended hereafter.
- B. *Zoning decisions initiated by the county.* For any zoning decision initiated by the county at least fifteen (15) but not more than forty-five (45) days prior to the date of the public hearing before the board of commissioners, the county shall cause to be published within a newspaper of general circulation within the territorial boundaries of the county, a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.
- C. *Zoning decisions, appeals to the zoning board of appeals, variances, extensions of special land use permits, and major modifications of conditions initiated by a party other than the county.* For any zoning decision, appeal to the zoning board of appeals, variance, extension of special land use permits, or major modification of conditions initiated by a party other than the county, notice of the public hearing shall be provided as follows:
  - 1. Written notice of each public hearing shall state the nature of the proposed change, and the date, time, and place of the public hearing before either the planning commission, zoning board of appeals or the board of commissioners and shall be mailed by first class mail by the director of planning to all owners of property within two-hundred-fifty (250) feet of the boundaries adjoining the subject property, as such property owners are listed on the records of DeKalb County tax commissioner, at least fifteen (15) days and not more than forty-five (45) days prior to said public hearing.
  - 2. Signs shall be posted on the subject property at least fifteen (15) days and not more than forty-five (45) days prior to the public hearing before the board of commissioners, the planning commission or the zoning board of appeals. The required information on each sign shall be as provided in O.C.G.A Section 36-66-1, et seq., as it now exists and may be amended hereafter. At least one (1) sign shall be posted on each street on which the subject property has frontage in a conspicuous location within ten (10) feet of the right-of-way. One (1) additional sign shall be posted for each additional five hundred (500) feet of frontage or fraction thereof in excess of five hundred (500) feet

of frontage on each street on which the subject property has frontage. Signs shall be double-faced and posted so that the face of the sign may be read by the traveling public in both directions, and the applicant shall pay a sign fee, in an amount to be established by the board of commissioners, to the planning department.

3. One (1) notice sign may serve both the application for an amendment to the Official Zoning Map and/or the application for a special land use permit, as long as the sign states the relevant information for all hearings relating to those actions.
  4. A dated photograph of each sign shall be submitted by the applicant to the director of planning as evidence of its proper posting.
  5. The county shall cause a notice of each public hearing regarding a proposed zoning decision to be published in a newspaper of general circulation within the county at least fifteen (15) days and not more than forty-five (45) days prior to the public hearing. The notice shall include the date, time and place of the hearing before the planning commission, the board of commissioners, and/or the zoning board of appeals, the address of the property, the present zoning classification of the property, the proposed zoning classification of the property, the nature of the variance sought, and the proposed special land use, as applicable.
- E. Staff's analysis and written recommendations shall be available in the planning department and on the departmental website within six business days prior to any public meeting held by the zoning board of appeals, the planning commission or the board of commissioners.

### **27-7.3 DIVISION 3. ZONING AND COMPREHENSIVE PLAN AMENDMENTS AND PROCEDURES**

#### **7.3.1. Initiation of proposals for text and map amendments.**

A proposed amendment to the text of this chapter, the Official Zoning Map, or the comprehensive plan may be introduced by the director of planning, one (1) or more members of the board of commissioners or by the planning commission. In addition, amendments to the Official Zoning Map (rezoning) and the comprehensive plan may be initiated upon application by the owner(s) of the subject property or the authorized agent of the owner(s). Before enacting any amendment to this ordinance, the Official Zoning Map, or the comprehensive plan maps, the board of commissioners shall provide for the public notice and public hearings required by section 7.2.4 of this article.

#### **7.3.2. Consistency with comprehensive plan character areas.**

Any applicant seeking to rezone property to a classification that is inconsistent with the comprehensive plan maps, as established in Article 1 of this Zoning Ordinance, must first obtain approval of an amendment to the comprehensive plan maps from the board of commissioners. The comprehensive plan maps shall be amended according to a schedule approved by the board of commissioners. However, exceptions may be granted by the board of commissioners in between the regular review cycle in cases of demonstrated hardship, or in cases of large-scale developments that may provide special economic benefits to the community. Requests for exceptions shall be subject to approval by the board of commissioners during a board of commissioners meeting.

#### **7.3.3. Staff analysis, findings of fact, and recommendations.**

- A. The staff of the planning department shall conduct a site inspection on all applications for zoning map and comprehensive plan map amendments and shall investigate and prepare an analysis of each proposed text amendment to this chapter or to the comprehensive plan.
- B. The findings and recommendations of the planning department staff shall be made based on each of the standards and factors contained in section 7.3.4 or section 7.3.5, below, as applicable. In an application for rezoning, the planning staff may recommend the imposition of conditions in accordance with section 7.3.9. The staff shall present its findings and recommendations in written form to the

planning commission and the board of commissioners. Copies of the written findings and recommendations of the staff shall be reasonably made available to the public.

- C. Within a reasonable amount of time after acceptance of a Complete Application, the director of planning shall submit the application for review by county departments and external agencies, as may be appropriate. Such county departments may include, but not be limited to, land development, watershed management, fire and rescue, transportation, and public works. External agencies may include, but are not limited to, DeKalb County School Board, Georgia Regional Transportation Authority, Georgia Department of Transportation, Metropolitan Atlanta Rapid Transit Authority (MARTA), and the Atlanta Regional Commission (ARC), and any municipality that abuts the property that is the subject of the application. Any written comments received prior to submittal of the report shall be submitted to the review bodies for consideration and such comments shall become an official public record.
- D. Before preparing the staff recommendation regarding a proposed comprehensive land use plan amendment, zoning text amendment, rezoning or special land use permit for property located within an historic district identified in Chapter 13.5, the director of planning shall submit such proposal or application to the Historic Preservation Commission for their comments regarding the proposed action.

**7.3.4. Standards and factors governing review of proposed amendments to the comprehensive plan map.**

The following standards and factors are found to be relevant for evaluating applications for amendments to the comprehensive plan map and shall govern the review of all proposed amendments to the comprehensive plan map:

- A. Whether the proposed land use change will permit uses that are suitable in consideration of the use and development of adjacent and nearby property or properties.
- B. Whether the proposed land use change will adversely affect the existing use or usability of adjacent or nearby property or properties.
- C. Whether the proposed land use change will result in uses which will or could cause excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
- D. Whether the amendment is consistent with the written policies in the comprehensive plan text and any applicable small areas studies.
- E. Whether there are potential impacts on property or properties in an adjoining governmental jurisdiction, in cases of proposed changes near county or municipal boundary lines.
- F. Whether there are other existing or changing conditions affecting the use and development of the affected land areas which support either approval or denial of the proposed land use change.
- G. Whether there will be an impact on historic buildings, sites, districts or archaeological resources resulting from the proposed change.

**7.3.5. Standards and factors governing review of proposed amendments to the Official Zoning Map.**

The following standards and factors are found to be relevant to the exercise of the county's zoning powers and shall govern the review of all proposed amendments to the Official Zoning Map:

- A. Whether the zoning proposal is in conformity with the policy and intent of the comprehensive plan.
- B. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property or properties.
- 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 adversely affect the existing use or usability of adjacent or nearby property or properties.
- E. 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.
- F. Whether the zoning proposal will adversely affect historic buildings, sites, districts, or archaeological resources.
- G. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.
- H. Whether the zoning proposal adversely impacts the environment or surrounding natural resources.

**7.3.6. Community council review of proposed amendments.**

- A. Following the monthly closing date for the introduction or filing of an application to amend the Official Zoning Map, to amend the text of this chapter, to amend the comprehensive plan land use maps, for a special land use permit, or for a major modification to zoning conditions, a copy of all such applications shall be made available by the director of planning to the appropriate community council for consideration.
- B. Applicants are required to attend community council meetings to present their applications. The presentation shall take place prior to the formulation of any final written recommendations by the director of planning. At the discretion of planning department staff, the applicant may be required to make a formal presentation to explain the application, but at a minimum the applicant shall be available to answer questions about the application. Community councils shall consider such applications in relation to the applicable standards and criteria contained in this chapter, the adopted comprehensive plan, and any of the community's quality of life issues.
- C. The recommendation of the community council shall be presented at the subsequent planning commission meeting where the application is considered. The failure of any community council to timely comply with the provisions of this subsection shall not constitute grounds for deferral or denial of any proposed amendment by the planning commission or the board of commissioners.

**7.3.7. Action by the planning commission.**

The secretary of the planning commission shall provide the members of the planning commission complete information on each proposed application requiring a public hearing by the planning commission, including a copy of the application and all supporting materials. The planning commission, after conducting a public hearing with prior public notice as required by this article, shall consider the proposal and vote on its recommendation to the board of commissioners. Deferral of an application by the planning commission shall not be binding on the board of commissioners. The planning commission may recommend approval of the application, approval to a less intense zoning district or land use category than that requested by the applicant, approval of the application with conditions, denial of the application, deferral of the application, or, upon request of the applicant, withdrawal of the application without prejudice. In its recommendation of any application, the planning commission may recommend the imposition of conditions in accordance with section 7.3.9. All findings and recommendations of the planning commission relating to amendments to the Official Zoning Map shall be made based on each of the standards and factors contained in section 7.3.5. All recommendations of the planning commission relating to amendments to the comprehensive plan maps shall be made based on each of the standards and factors contained in section 7.3.4. The secretary of the planning commission shall make and maintain a written record of the planning commission's consideration and recommendations, which shall be public record.

**7.3.8. Action by the board of commissioners.**

At the next scheduled board of commissioners meeting pursuant to the applicant zoning calendar following appearance of the matter on the planning commission agenda, the board of commissioners, after conduct of

a public hearing with public notice as required by this article, shall vote to approve the proposed amendment pursuant to this division, approve with conditions, approve to a less intense zoning district or land use category than that requested by the applicant, deny the proposed amendment, defer the proposed amendment, or, upon request of the applicant, permit withdrawal without prejudice. No proposed amendment pursuant to this division shall be approved except by the affirmative vote of four (4) members of the board of commissioners. No zoning decision shall become law unless approved by either the member of the commission representing the district or the super district in which the subject property is located. In the approval of any proposed amendment to the Official Zoning Map, the board of commissioners may impose conditions in accordance with section 7.3.9. For each proposed zoning decision, the analysis submitted by the applicant, if any, the analysis prepared by the planning department, and the record prepared by the planning commission shall be presented in written form to each member of the board of commissioners. A limited supply of said findings shall be available at the public hearing and available upon request to the public. All decisions of the board of commissioners relating to each proposed amendment to the Official Zoning Map shall be made based on each of the standards and factors contained in sections 7.3.4 and 7.5.3 or 7.5.4, as appropriate. All decisions of the board of commissioners relating to amendments to the comprehensive plan maps shall be made based on each of the standards and factors contained in section 7.3.4. Any proposed amendment or any proposed substitute ordinance considered by the board of commissioners shall be presented in written form prior to being voted on by the board, or made a part of the motion.

#### **7.3.9. Conditions of zoning.**

Conditions of zoning may be requested by an applicant, recommended by the planning department or planning commission, or imposed by the board of commissioners, as a part of any proposed change to the Official Zoning Map, in accordance with the following requirements:

- A. Conditions of zoning may be imposed so as to ameliorate the effect(s) of the proposed developmental change for the protection or benefit of neighboring persons or properties consistent with the purpose and intent of the zoning district(s) involved, and the goals and objectives of the comprehensive plan and state law. No condition shall be imposed which reduces the requirements of the zoning district(s) involved, except as stipulated in Section 8.1.12 of this chapter. All conditions shall be of sufficient specificity to allow lawful and consistent application and enforcement. All conditions shall be supported by a record that evidences the relationship between the condition and the impact of the developmental change. No condition in the form of a development exaction for other than a project improvement shall be imposed within the meaning of the Georgia Development Impact Fee Act, as amended.
- B. Once imposed, conditions of zoning shall become an integral part of the approved amendment and shall be enforced as such. Changes to approved conditions shall be authorized only pursuant to section 7.3.10.
- C. Site plans referenced in the conditions of zoning are conceptual only unless specific aspects of the site plan or the site plan itself are approved as a separate zoning condition. Development shall meet or exceed the imposed zoning conditions and all other applicable law, standards and regulations of DeKalb County. Compliance with the conditions of zoning shall be demonstrated prior to the issuance of a land disturbance permit or building permit and conditional improvements shall be in place prior to the issuance of the first certificate of occupancy.

#### **7.3.10. Modifications and changes to approved conditions of zoning.**

- A. The director of planning shall have sole authority to approve minor changes to conditions attached to an approved zoning amendment. Minor changes are those that implement only slight alterations to the approved conditions made necessary by actual field conditions at the time of development, and that do not alter the impact of the development on nearby properties nor the intent or integrity of the conditions as originally imposed. Any request for minor changes to conditions shall be filed with the director of planning or his/her designee on a written form which shall include a full description of the documents

and/or information necessary for the application to be considered complete. At a minimum, if an approved site plan exists, the request for minor changes shall be accompanied by four copies of the proposed revised site plan. The director of planning shall decide whether to grant or deny the request for minor changes to conditions within thirty (30) calendar days of receipt of a Complete Application for such minor changes. If the director of planning does not decide within thirty (30) days the request for minor change shall be deemed denied as of the thirty-first (31<sup>st</sup>) day after receipt of a Complete Application. After making a decision, the director of planning shall have ten (10) calendar days to post a sign on the subject property which reflects the decision of the director and includes the deadline for taking an appeal of the decision. Person(s) identified in section 7.5.2 B. shall have fifteen (15) calendar days from the posting of the sign to appeal the director of planning's decision by filing an application for appeal with the secretary of the zoning board of appeals. Any major changes to conditions attached to an approved zoning amendment shall require an application and public hearings before the planning commission and the board of commissioners, as required in Section 7.2.4 of this article for amendments to the Official Zoning Map. Without limiting the meaning of the phrase, the following shall be deemed to constitute "major changes":

1. The movement of any building or structure adjacent to an exterior boundary line, closer to the boundary line of the property;
2. Any increase in the number of dwelling units or any increase in the total amount of floor space of any nonresidential building;
3. Any decrease in the size of residential units imposed in the original conditional zoning amendment;
4. Any change in any buffer requirement(s) imposed in the original conditional zoning amendment;
5. Any increase in the height of any building or structure;
6. Any change in the proportion of floor space devoted to different authorized uses; or
7. Any change to conditions, except minor changes, as defined in subsection 7.3.10(A), imposed by the board of commissioners when approving any change to the Official Zoning Map, commonly referred to as a rezoning or a zoning amendment.

#### **7.3.11. Reserved.**

### **27-7.4 DIVISION 4. SPECIAL LAND USE PERMITS**

#### **7.4.1. Special land use permits generally.**

- A. A special land use permit is a means by which the board of commissioners gives special consideration, pursuant to a clear set of standards and criteria, to those types of uses which may or may not be compatible with uses and structures authorized as a matter of right within a particular zoning district. Special land use permits are required for uses that have operational characteristics and/or impacts that are significantly different from the zoning district's principal authorized uses and therefore require individual review pursuant to the standards and criteria set forth in this division and article.
- B. Special land use permit applications shall be authorized only for those uses specifically listed in the applicable zoning district regulations, as permitted by special land use permit, and in compliance with any applicable supplemental regulations, according to Article 4 or Section 7.4.7.
- C. An applicant desiring to apply for a special land use permit authorized within a zoning district described in this chapter shall file an application with the planning department in accordance with this division. The board of commissioners, following consideration by the planning commission, shall determine whether the proposed use, in the particular location contemplated, meets the standards and criteria set forth in this division and chapter.

- D. Such uses may further require, and the board of commissioners shall be authorized to impose, special conditions in order to assure their compatibility with surrounding uses and to minimize adverse impacts on the use of surrounding property.

**7.4.2. Initiation of applications and public hearing requirements.**

- A. Procedures for applications shall comply with section 7.2.2.
- B. Applications for special land use permits require a public hearing, as provided for in section 7.2.4.

**7.4.3. Initiation of ordinance for application for special land use permit.**

Upon receipt of a Complete Application for a special land use permit, the secretary of the planning commission shall prepare a proposed ordinance to grant the proposed special land use permit, and said proposed ordinance shall be referred to the planning commission for public hearing and consideration pursuant to the requirements of this chapter and presented to the board of commissioners at their next scheduled zoning meeting after appearance on the planning commission agenda.

**7.4.4. Community council review of proposed applications.**

Special land use permit applications shall be reviewed by the community council, according to the procedures in section 7.3.6. Prior to presentation to the community council, each application for a special land use permit shall be made available to the appropriate community council in accordance with the provisions of section 7.3.6 for consideration.

**7.4.5. Staff analysis, findings of fact, and recommendation on each application.**

An application for a special land use permit shall be filed on forms provided by the planning department and shall not be considered an authorized application unless complete in all respects. Upon receipt of a Complete Application, the staff of the planning department shall conduct a site inspection and shall prepare an analysis of each application for a special land use permit and shall present its findings and recommendations in written form to the planning commission. No application shall be amended later than the required deadline for advertising in the legal organ of the county which falls immediately prior to the scheduled hearing before the planning commission. Staff analysis and recommendations on each application for special land use permit shall be based on the criteria contained in section 7.4.6 and, in addition, where applicable to the use proposed, on the criteria contained in section 7.4.7.

**7.4.6. Special land use permit; criteria to be considered.**

The following criteria shall be considered by the planning department, the planning commission, and the board of commissioners in evaluating and deciding any application for a special land use permit. No application for a special land use permit shall be granted by the board of commissioners unless satisfactory provisions and arrangements have been made concerning each of the following factors, all of which are applicable to each application, and the application is in compliance with all applicable regulations in Article 4:

- A. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.
- B. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.
- C. Adequacy of public services, public facilities, and utilities to serve the proposed use.
- D. Adequacy of the public street on which the use is proposed to be located and whether or not there is sufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area.

- E. Whether or not existing land uses located along access routes to the site will be adversely affected by the character of the vehicles or the volume of traffic generated by the proposed use.
- F. Adequacy of ingress and egress to the subject property and to all proposed buildings, structures, and uses thereon, with particular reference to pedestrian and automotive safety and convenience, traffic flow and control, and access in the event of fire or other emergency.
- G. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust, or vibration generated by the proposed use.
- H. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use.
- I. Whether or not the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use.
- J. Whether or not the proposed use is otherwise consistent with the requirements of the zoning district classification in which the use is proposed to be located.
- K. Whether or not the proposed use is consistent with the policies of the comprehensive plan.
- L. Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.
- M. Whether or not there is adequate provision of refuse and service areas.
- N. Whether the length of time for which the special land use permit is granted should be limited in duration.
- O. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.
- P. Whether the proposed use will adversely affect historic buildings, sites, districts, or archaeological resources.
- Q. Whether the proposed use satisfies the requirements contained within the supplemental regulations for such special land use permit.
- R. Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.
- S. Whether the proposed use would result in a disproportionate proliferation of that or similar uses in the subject character area;
- T. Whether the proposed use would be consistent with the needs of the neighborhood or the community as a whole, be compatible with the neighborhood, and would not be in conflict with the overall objective of the comprehensive plan.

**7.4.7. Additional criteria for specified uses.**

In addition to the criteria contained in section 7.4.6 above, for which each applicant for a special land use permit is required to provide information, the following additional criteria shall apply to specific uses as specified below. No application for a special land use permit for the uses specified below shall be granted by the board of commissioners unless it is determined that, in addition to meeting the requirements contained within the zoning district in which such property is located and the criteria contained in section 7.4.6 above, and complying with applicable regulations in Article 4, satisfactory provisions and arrangements have been made concerning each of the following criteria:

- A. *Telecommunications towers and antennas.* In determining whether to authorize a special land use permit for a telecommunication tower or antenna, the board of commissioners shall comply with and apply the requirements of section 4.2.57.

- B. *Mine, mining operation, gravel pit, quarry, or sand pit.* In determining whether to authorize a special land use permit for a mine, mining operation, gravel pit, quarry, or sand pit, the board of commissioners shall also consider each of the following criteria:
1. Whether the type and volume of traffic associated with such use will cause congestion in the streets and will create noise and vibration along streets used for residential purposes or adjacent to activity centers.
  2. Whether the applicant has provided a soil erosion control plan and a reuse or reclamation plan which meets the requirements of DeKalb County and of the Georgia Surface Mining Act, O.C.G.A. § 12-4-70, et seq., as amended, and the Rules of Department of Natural Resources, Chapter 391-3-3, as amended.
  3. Whether or not the applicant meets the requirements of the county's noise ordinance.
- C. *Child day care facility.* In determining whether to authorize a special land use permit for a child day care facility, the board of commissioners shall also consider each of the following criteria:
1. Whether there is adequate off-street parking for all staff members and for visitors to the child day care facility.
  2. Whether the proposed off-street parking areas and the proposed outdoor play areas can be adequately screened from adjoining properties so as not to adversely impact any adjoining land use.
  3. Whether there is an adequate and safe location for the dropping off and picking up of children at the child day care facility.
  4. Whether the character of the exterior of the proposed structure will be compatible with the residential character of the buildings in the zoning district in which the child day care facility is proposed to be located, if proposed for a residential zoned district.
- D. *Biomedical waste disposal facilities, disposal facilities, landfills, county solid waste disposal facilities, county solid waste landfills, private industry solid waste disposal facilities, solid waste handling facilities, solid waste thermal treatment technology facilities, and disposal facilities for hazardous and/or toxic materials including radioactive materials.*
1. In determining whether to authorize a special land use permit for a biomedical waste disposal facility, disposal facility, landfill, county solid waste disposal facility, county solid waste landfill, private industry solid waste disposal facility, solid waste handling facility, solid waste thermal treatment technology facility, or disposal facility for hazardous and/or toxic materials including radioactive materials, the board of commissioners shall also consider each of the following criteria:
    - a. Whether the proposed use does not pose any potential negative impact resulting from air pollution, degradation of soil and/or water quality, noise, odor, or other negative environmental effects.
    - b. Whether the proposed use will not have a significant deleterious effect on use of land and value of existing housing in adjacent and nearby neighborhoods.
    - c. Whether the proposed use will not create a negative traffic impact on any adjacent or nearby residential street(s) resulting from truck and other vehicular traffic associated with the facility.
    - d. Whether the proposed use does not represent an over-concentration of such uses in the area.
  2. An assessment shall be prepared by the DeKalb County sanitation division regarding item 1. d. above.

**7.4.8. Action by the planning commission.**

- A. Planning staff shall provide the members of the planning commission complete information on each proposed application for a special land use permit that the commission considers, including a copy of the application and all supporting materials. The planning commission, after conducting a public hearing with public notice, as required by this article, shall vote on its recommendation to be provided to the board of commissioners.
- B. The planning commission may recommend approval of the application, approval of the application with conditions, denial of the application, or deferral of the application.
- C. The planning commission may recommend the imposition of conditions based upon the facts of a particular application in accordance with section 7.3.9.
- D. The planning commission recommendation on each application shall be based on a determination as to whether or not the applicant has met the criteria contained in section 7.4.6, the criteria contained in section 7.4.7 where applicable to the use proposed, and the requirements of the zoning district in which such use is proposed to be located.

**7.4.9. Action by the board of commissioners.**

- A. The board of commissioners, after conducting the public hearing with public notice as required by this chapter, shall vote to approve the application, approve the application with conditions, deny the application, defer the application, or, upon request of the applicant, to permit withdrawal of the application without prejudice.
- B. The board of commissioners may impose conditions based upon the facts of a particular application in accordance with section 7.3.9.
- C. The decision of the board of commissioners on each application for special land use permit shall be based on a determination as to whether or not the application satisfies the criteria contained in section 7.4.6, the criteria contained in section 7.4.7 where applicable to the use proposed, and the requirements of the zoning district in which such use is proposed to be located.
- D. The board of commissioners may specify the duration of each such special land use permit approved.

**7.4.10. Appeals of decisions of the board of commissioners.**

All appeals of all final decisions of the board of commissioners under the provisions of this division shall be as follows:

- A. Any person aggrieved by a final decision of the board on an amendment to the zoning ordinance which rezones property from one zoning classification to another or which changes zoning conditions, or which denies any such ordinances may seek review of such decision by petitioning the Superior Court of DeKalb County via direct appeal, setting forth plainly the alleged errors. Such petition shall be filed within thirty (30) days after the final decision of the board is rendered.
- B. Any person aggrieved by a final decision of the board on a special land use permit may seek review of such decision by petitioning the Superior Court of DeKalb County via a writ of mandamus plainly setting forth the alleged errors. Such petition shall be filed within thirty (30) days after the final decision of the board is rendered.

**7.4.11. Limitations of special land use permits.**

- A. *Development of an approved special use.* The issuance of a special land use permit shall only constitute approval of the proposed use, and development of the use shall not be carried out until the applicant has secured all other permits and approvals required by any applicable law or regulation.
- B. *Expiration of a special land use permit.* Unless a building permit or other required approval(s) is applied for within twelve (12) months of the board of commissioners' approval, and construction pursuant to such building permit is promptly begun and diligently pursued thereafter, the special land use permit

shall expire automatically, unless the permit is extended upon application to the board of commissioners in accordance with subsection (C) of this section.

- C. *Time extension of a special land use permit.* A time limitation imposed on special land use permits by the board of commissioners and the expiration date established pursuant to subsection (B) of this section may be extended once for twelve consecutive months upon written request by the applicant and approval by the planning director. Any further time extensions shall be by the board of commissioners upon written request by the applicant and approval of the board of commissioners after compliance with the public notice provisions of section 7.2.4.C. In considering a request to extend, the planning director and the board shall consider the criteria described in section 7.4.6.
- D. *Limitations on approvals for special land use permits.* A special land use permit shall expire automatically and cease to be of any force or effect if such use shall, for any reason, be discontinued for a period of twelve (12) consecutive months.
- E. *Modifications to a special land use permit.* Changes to an approved special land use permit, including changes to approved conditions, expansion of the approved use, or expansion of building square footage, shall be subject to the same application, review and approval process as a new application, including the payment of relevant fees.

#### **7.4.12. Transfer of special land use permits.**

A special land use permit, including the site plan and any conditions imposed at the time of the grant of the special land use permit by the board of commissioners, is granted to the person, corporation or other legal entity that applied for the permit. A special land use permit expires automatically upon change in ownership of the subject property, unless the special land use permit is transferred as authorized in this paragraph. A special land use permit may only be transferred from one person, corporation, or other legal entity to another person, corporation, or other legal entity upon application to the director of planning. Any such application by any person, corporation, or other legal entity to transfer a special land use permit shall be accompanied by an affidavit of the proposed transferee certifying that the new owner or operator is familiar with and will abide by the approved site plan and all of the conditions, if any, imposed by the board of commissioners at the time of the grant of the special land use permit. At the time a special land use permit transfer is requested, the district and superdistrict commissioner shall be notified by the director of planning.

#### **7.4.13. Compliance upon denial.**

If an application to the board of commissioners for a special land use permit is submitted due to an existing violation of this chapter and such application for special land use permit is denied, the violation shall be required to be corrected within thirty (30) days of such denial. Notwithstanding the foregoing, the director of planning may extend the deadline for correction of the violation for a period up to ninety (90) days following the denial of the special land use permit application upon a showing that the violation cannot reasonably be corrected within thirty (30) days.

#### **7.4.14. Reserved.**

### **27-7.5 DIVISION 5. VARIANCES AND APPEALS TO THE ZONING BOARD OF APPEALS**

#### **7.5.1 Testimony and burden of proof.**

The chairperson of the zoning board of appeals, or in his or her absence the acting chairperson, may administer oaths and compel the attendance of witnesses by subpoena.

- A. *Requirements.* The standards and requirements of this Zoning Ordinance and decisions made by public officials are presumed to be valid and just. It shall be the responsibility of an applicant seeking relief to assume the burden of proof and rebut this presumption by presenting sufficient facts and

evidence to explain how the proposed appeal or variance is consistent with the general spirit and intent of this Zoning Ordinance and the comprehensive plan.

- B. *Review.* It is the duty of the zoning board of appeals to review such facts and evidence in light of the intent of the Zoning Ordinance to balance the public health, safety and general welfare against the injury to a specific applicant that would result from the strict application of the provisions of this Zoning Ordinance to the applicant's property.

### **7.5.2 Appeals of decisions of administrative officials.**

- A. *General Power.* The zoning board of appeals shall have the power and duty to hear and decide appeals where it is alleged by the appellant that there is error in any final order, requirement, or decision made by an administrative official based on or made in the enforcement of this Zoning Ordinance or as otherwise authorized by local law or the Code of DeKalb County as Revised 1988. Administrative officials must make final decisions covered by this section within one hundred and eighty (180) days of receipt of all necessary information to make such decision. A failure to act prior to the passage of one hundred and eighty (180) days shall not be construed to be a final order, requirement or decision within the meaning of this division. If a decision is not made by the 181<sup>st</sup> day, the requested decision is deemed denied, and becomes appealable. All such appeals shall be heard and decided following the notice requirements of section 7.2.4, and pursuant to the following criteria and procedural requirements.
- B. *Appeals of decisions of administrative officials.* Appeals of decisions of administrative officials may be filed by (1) any person aggrieved by; (2) any elected member of the DeKalb County Governing Authority affected by; or (3) an owner of property within two hundred and fifty (250) feet of the nearest property line of the property that is the subject of any final order, requirement, or decision of an administrative official, based on or made in the enforcement of this Zoning Ordinance, or as otherwise authorized by local law or the Code of DeKalb County as Revised 1988. by filing with the secretary of the zoning board of appeals an application for appeal, specifying the grounds thereof, within fifteen (15) days after the action was taken by the official that is the subject of the appeal.
- C. *Appeal stays all legal proceedings.* An appeal of a decision of an administrative official stays all legal proceedings in furtherance of the action or decision appealed from unless the official from whom the appeal is taken certifies to the zoning board of appeals, after notice of appeal has been filed, that by reason of facts stated in the certificate, a stay would, in that official's opinion, cause imminent peril to life or property. In such a case, legal proceedings shall be stayed only pursuant to a restraining order granted by a court of competent jurisdiction directed to the officer from whom the appeal is taken and on due cause shown.
- D. *Appeal stays land disturbance or construction activity in certain situations.* If the action or decision appealed from permits land disturbance or construction activity to commence or continue on residentially zoned property, the appeal stays the land disturbance or construction activity until the zoning board of appeals issues a decision on the appeal. Thereafter, land disturbance or construction activity in such cases shall only be stayed by an order from a court of competent jurisdiction. In all cases involving non-residentially zoned property, the appeal to the zoning board of appeals does not stay land disturbance or construction activity; such activity shall only be stayed by an order from a court of competent jurisdiction.
- E. Thereafter, in such situations land disturbance or construction activity shall only be stayed by an order granted by a court of competent jurisdiction.
- F. *Time of hearing.* The zoning board of appeals shall fix a reasonable time for the hearing of the appeal and give notice thereof pursuant to the requirements of section 7.2.4 as well as written notice to the appellant. Any party may appear at the hearing in person, by an agent, by an attorney, or by the submission of written documentation.
- G. *Decision of the zoning board of appeals.* Following the consideration of all testimony, documentary evidence, and matters of record, the zoning board of appeals shall make a determination on each

appeal and shall issue a written decision explaining the reasons for its decision. The zoning board of appeals shall decide the appeal within a reasonable time, but in no event more than sixty (60) days from the date of the hearing. An appeal shall be sustained only upon an expressed finding by the zoning board of appeals that the administrative official's action was based on an erroneous finding of a material fact, erroneously applied the Zoning Ordinance to the facts, or that the administrative official acted in an arbitrary manner. In exercising its powers, the zoning board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and to that end shall have all the powers of the administrative official from whom the appeal was taken and may issue or direct the issuance of a permit, provided all requirements imposed by any applicable laws are met.

### **7.5.3 Applications for variances; and criteria to be used by the zoning board of appeals in deciding applications for variances.**

The zoning board of appeals shall hear and decide applications for variances from the strict application of the regulations of this chapter and chapter 21 where the strict application of any regulation enacted under said chapters would result in exceptional and undue hardship upon the owner of such property. In determining whether or not to grant a variance, the board shall apply the criteria specified in this section to the facts of each case. The board may attach reasonable conditions to any approved variance in accordance with section 7.3.9. Once imposed, conditions shall become an integral part of the approved variance and shall be enforced as such. No changes to an approved condition attached to a variance shall be authorized except by re-application to the zoning board of appeals in full compliance with the applicable provisions of this division. No relief may be granted or action taken under the terms of this division unless such relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of this chapter and the comprehensive plan. The zoning board of appeals shall apply the following criteria to the types of applications specified below as follows:

- A. Variances from the provisions or requirements of this chapter other than variances described in section 7.5.4 shall be authorized only upon making all of the following findings in writing:
  - 1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district.
  - 2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.
  - 3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.
  - 4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship.
  - 5. The requested variance would be consistent with the spirit and purpose of this chapter and the DeKalb County Comprehensive Plan text.
- B. Appeals of decisions regarding building architectural design standards shall be evaluated using the same criteria as section 7.6.7(B).
- C. Appeals to the height standards, but not to add stories, shall be evaluated using the criteria as follows:
  - 1. Adequacy of the size of the site for the use contemplated and whether or not adequate land area is available for the proposed use including provision of all required yards, open space, off-street parking, and all other applicable requirements of the zoning district in which the use is proposed to be located.

2. Compatibility of the proposed use with adjacent properties and land uses and with other properties and land uses in the district.
3. Adequacy of public services, public facilities, and utilities to serve the proposed use.
4. Whether or not the proposed use provides for all required buffer zones and transitional buffer zones where required by the regulations of the zoning district in which the use is proposed to be located.
5. Whether or not the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings.
6. Whether or not the proposed use will create a negative shadow impact on any adjoining lot or building as a result of the proposed building height.

**7.5.4 Applications for variances to reduce or waive off-street parking or loading space requirements.**

The zoning board of appeals shall hear and decide applications for variances to reduce or waive required off-street parking or loading spaces in accordance with the provisions and standards of this section. All such applications shall be heard and decided based on the notice requirements of section 7.2.4. The zoning board of appeals may waive or reduce the required number of parking or loading spaces in any district only upon an expressed finding that:

- A. The character of the use of the building(s) is such as to make unnecessary the full provision of parking or loading spaces;
- B. The lot upon which the building(s) is located is within one thousand (1,000) feet of the boundary of a MARTA Rapid Transit Station;
- C. The provision of the full number of parking spaces would have a deleterious effect on a historic building, site, district or archaeological resource;
- D. The use has a characteristic that differentiates it from the typical use example used in the formulation of this Zoning Ordinance;
- E. The location of the proposed development is relatively isolated where the opportunity for diversity of use, pedestrian access, and alternative modes is not available; or
- F. The developer is providing the additional spaces for general public parking (for hourly or daily parking charges) to serve surrounding development.

**7.5.5 Limitations of authority of the zoning board of appeals.**

No variance shall be granted by the zoning board of appeals to:

- A. Allow a structure or use not listed as a permitted use or a special use in the applicable zoning district or a density of development that is not authorized within such district. This prohibition does not apply to any variance from the supplemental regulations of Article 4 of this Zoning Ordinance or from any other accessory feature or characteristic of a permitted or special use, unless said variance is otherwise prohibited by the regulations of this chapter.
- B. Allow any variance which conflicts with or changes any requirement enacted as a condition of zoning or of a special land use permit by the board of commissioners.
- C. Reduce, waive or modify in any manner the minimum lot width unless the purpose is to reverse a lot merger.
- D. Reduce, waive or modify in any manner the minimum lot area established by this chapter.
- E. Extend the time period for a temporary outdoor social, religious, entertainment or recreation activity approved by the director of planning.

- F. Permit the expansion or enlargement of any nonconforming use of land, nonconforming use of land and buildings in combination, nonconforming use of land and structures in combination, or nonconforming use requiring special land use permit.
- G. Permit the reestablishment of any nonconforming use of land, nonconforming use of land and buildings in combination, nonconforming use of land and structures in combination, or nonconforming use requiring special land use permit where such use has lapsed pursuant to the requirements and limitations of Article 8 of this chapter.
- H. Permit customer contact for a home occupation authorized by this chapter.
- I. Allow any variance to increase the height of a building which will result in adding a story.

#### **7.5.6 Decision by the zoning board of appeals.**

Each application presented to the zoning board of appeals regarding a variance shall be scheduled for a public hearing within sixty (60) days of the filing of a Complete Application and shall be supported by findings and conclusions which shall be a part of the record established by the zoning board of appeals for each application. The zoning board of appeals shall grant or deny the variance in writing. In its written variance decision, the zoning board of appeals must include findings of fact citing evidence of compliance with all applicable criteria imposed by this chapter or other applicable provisions of law. The zoning board of appeals may adopt the findings of fact of the staff or the applicant, they may adopt the findings of fact of the staff or applicant with modifications, or they may adopt a separate set of facts developed by the zoning board of appeals.

#### **7.5.7 Compliance with standards upon denial.**

In such case that an application to the zoning board of appeals is initiated due to an existing violation of this chapter and such application is denied, the violation shall be required to be corrected within thirty (30) days of such denial or as specified by the zoning board of appeals if a greater time period is required. The maximum extension of time the board may grant for correction shall be ninety (90) days.

#### **7.5.8 Appeals of decisions of the zoning board of appeals.**

All appeals of all final decisions of the zoning board of appeals under the provisions of this chapter shall be as follows:

- A. Only persons aggrieved by a final decision of the zoning board of appeals may seek review of such decision by petitioning the Superior Court of DeKalb County by writ of mandamus, setting forth plainly the alleged errors. Such petition shall be filed within thirty (30) days after the final decision of the zoning board of appeals is rendered.

#### **7.5.9 Fair Housing Act Accommodation Variance.**

Notwithstanding any other provisions in this chapter to the contrary, the Zoning Board of Appeals may grant a variance to the limitations of this chapter that might have a discriminatory impact on a handicapped person, as that term is defined in the Federal Fair Housing Act, including but not limited to Sections 4.2.41 and 4.2.48 as well as the terms defined therein. A Fair Housing Act Accommodation Variance shall be issued if the applicant for such a variance shows a documented need for accommodation based on medical or scientific studies, that the requested accommodation is the minimum necessary variance from the restrictions of the Code, that the requested accommodation does not impose an undue burden or expense on the County or its citizens, and that the requested accommodation does not effectively create a fundamental alteration of the existing zoning scheme. An application for a Fair Housing Act Accommodation Variance shall comply with all other procedural requirements for consideration and approval of variances in this division.

## **27-7.6 DIVISION 6. SPECIAL ADMINISTRATIVE PERMITS; WAIVERS AND VARIANCES**

### **7.6.1. Special administrative permits generally.**

The director of planning is hereby authorized to consider and decide requests for special administrative permits specifically authorized in this Zoning Ordinance. All such requests for special administrative permits shall be filed in writing on forms promulgated by the director of planning.

### **7.6.2. Standards for special administrative permits, criteria to be applied.**

All applications filed for special administrative permit with the director of planning shall be considered and decided pursuant to the standards contained in sections 7.4.6 and 7.4.7 of this chapter, and any supplemental regulations, as applicable, in Article 4. All special administrative permits approved by the director of planning shall specify the length of time of the duration of each such special administrative permit

### **7.6.3. Time limitations.**

All applications for special administrative permits shall be considered and decided by the director of planning no later than thirty (30) days from the receipt of a Complete Application for such special administrative permit, unless an extension of time is agreed to by the applicant and the director of planning. If the director of planning does not render a decision on the application within thirty (30) days the application shall be deemed denied as of the thirty-first (31<sup>st</sup>) day after receipt of a Complete Application.

### **7.6.4. Reserved.**

### **7.6.5. Administrative variances, administrative waivers: authority.**

- A. The director of planning is hereby authorized to consider and grant or deny, pursuant to the procedures and standards contained in this division, an administrative variance or an administrative waiver from the following regulations and subject to the standard limitations:
1. Reduce by variance any front, side or rear yard setback by an amount not to exceed ten (10) percent of the district requirement, but not including any transitional buffer zone or any setback which is a condition of zoning or special land use permit, pursuant to the standards specified in section 7.5.3.
  2. Reduce by variance the required spacing between buildings in districts where multiple buildings are authorized on a single lot in an amount not to exceed ten (10) percent of the requirement, pursuant to the standards specified in section 7.5.3.
  3. Reduce by variance the off-street parking or loading requirements imposed by this chapter in an amount not to exceed ten (10) percent of the district requirement, pursuant to the standards specified in section 7.5.4.
  4. Reduce by variance the off-street parking requirements imposed by this chapter for any lot which is located within one thousand (1,000) feet of the boundary of a MARTA Rapid Transit Station in an amount not to exceed twenty-five (25) percent of the district requirement, pursuant to the standards specified in section 7.5.4.
  5. Increase by variance the retaining wall height as set forth in Article 5, Division 4 by an amount not to exceed two (2) feet, but no such variance is allowed for property located in a historic district.
  6. Increase by variance the distancing requirements for retaining walls set forth in Article 5, Division 4 by an amount not to exceed two (2) feet.
  7. Increase by variance the elevation of residential thresholds as set forth in Article 5, Division 2 by two (2) feet.

8. Reduce by variance, as follows, if necessary to allow reasonable use following a public road right-of-way donation or acquisition:
  - a. To reduce required minimum lot size by up to fifty (50) percent only to maintain the pre-determined yield.
  - b. To reduce required setbacks for a permitted or existing structure on a lot in the event of public road right-of-way donations or acquisition that would otherwise cause the lot to be non-conforming with respect to the minimum setback standards.
  - c. To reduce the number of parking spaces for any existing or permitted structure below the minimum required parking spaces applicable to the use.
9. Waive architectural building standards and designs provided in Article 5, Building Form Standards. The planning director shall notify the board of commissioners in writing within ten (10) days of granting said waiver.
10. No administrative variance or waiver shall be authorized to delete, modify, or change in any manner any condition imposed by the board of commissioners or the zoning board of appeals.

**7.6.6. Procedures for applications for administrative variances and administrative waivers.**

- A. An application for administrative variance or administrative waiver shall be submitted to the director of planning on forms approved by the director of planning, along with any such fees as may be established by the board of commissioners.
  1. The director of planning shall review and decide upon each Complete Application pursuant to the applicable standards referred to in section 7.6.7. A written decision on each such application shall be issued no later than thirty (30) days from the date a Complete Application was filed, unless an extension is agreed to by the applicant and director of planning. If the director of planning does not render a decision on the application within thirty (30) days the application shall be deemed denied as of the thirty-first (31<sup>st</sup>) day after receipt of a Complete Application.
  2. The application for an administrative variance or administrative waiver shall state the specific regulation from which exception is sought and the reasons the exception is needed. The application shall contain such information as the director of planning deems necessary to evaluate the request.
  3. It shall be the applicant's burden to provide sufficient justification for granting the variance or waiver.
  4. The director of planning and staff shall prepare an evaluation statement concerning each application showing the impact of the applicable criteria as set forth in this division.
  5. No later than 10 calendar days after making a decision, the director of planning shall post a sign on the subject property and on the County's website which reflects the decision of the director of planning and the deadline for taking an appeal of the decision to the zoning board of appeals.

**7.6.7. Criteria used by the director of planning in deciding administrative variances and administrative waivers.**

- A. The director of planning shall grant or deny applications for administrative variances from the strict application of the regulations identified in section 7.6.5(A), where the strict application of the associated regulations would result in exceptional and undue hardship upon the owner of such property. In determining whether or not to grant a variance, the director shall apply the criteria specified in sections 7.5.3 and 7.5.4 to the facts of each application.

- B. The director of planning shall consider administrative waivers to amend, reduce, or waive architectural, design, or building material standards found in Article 5: Building Form Standards using the following criteria:
  - 1. Whether the proposed change(s) in appearance will have a substantial adverse effect on the design standards set out in Article 5.
  - 2. The extent to which the proposed project complies with the design standard in terms of architectural style, general design arrangement, texture and color (non-painted surfaces) material of architectural features, and other site features.
  - 3. The extent to which the proposal is compatible with other structures in the area.
- C. When issuing a written decision on an administrative waiver request, the director of planning may make a decision to approve the waiver, approve with conditions, or deny the waiver, and shall cite the grounds relied upon in reaching the decision.

**7.6.8 Persons entitled to appeal to the zoning board of appeals.**

Any person identified in section 7.5.2 B shall have the right to appeal by a decision of the director of planning related to administrative permits, variances or waivers to the zoning board of appeals. Such petition shall be filed within thirty (30) days after the decision of the director is rendered.

**27-7.7 DIVISION 7. ENFORCEMENT, VIOLATIONS, AND PENALTIES**

**7.7.1 Administration and enforcement; granting of permits.**

The director of planning shall be responsible for the interpretation, administration and enforcement of the provisions of this chapter. The director of planning shall have the duty to issue development permits as required with respect to this chapter.

**7.7.2 Development permits.**

Unless otherwise exempted by this article, a development permit shall be required for any proposed use of land or buildings in order to assure compliance with all provisions of this chapter and all other county ordinances and regulations before any building permit is issued or any improvement, grading, or alteration of land or buildings commences.

**7.7.3 Building permits and certificates of occupancy required.**

A building permit and a certificate of occupancy shall be obtained from the director of planning prior to occupancy of any building or structure. Such permit and certificate of occupancy shall be approved by the director of planning.

**7.7.4 Applications for permits and certificates of occupancy.**

- A. All applications for development permits shall be made to the director of planning.
- B. All applications for building permits and certificates of occupancy shall be made to the director of planning.
- C. Prior to the release of a development permit, compliance with zoning shall be reviewed and verified by the director of planning.
- D. All applications for development permits, building permits and development permits shall require a certificate of appropriateness from the DeKalb County Historic Preservation Commission if the project is located in a historic district or on a historic property.

**7.7.5 Development and building permits; plans required.**

- A. *Plans required.* All applications for development permits shall be accompanied by complete plans, which shall be drawn to scale, filed in duplicate, and which shall contain the following information:
  - 1. The name and signature of the author, and the author's address and telephone number;
  - 2. Plans shall show the actual shape and dimensions of the lot to be built upon, based on an actual survey by a professional engineer or land surveyor registered in the State of Georgia;
  - 3. Plans shall show all required building setback lines, buffer zones, and open space required by this chapter;
  - 4. Plans shall show the exact sizes and locations on the lot of the buildings and accessory buildings then existing and the lines within which the proposed building or structure shall be erected or altered;
  - 5. Plans shall show the current zoning classification of the property including zoning conditions and zoning variances, if any;
  - 6. Plans shall show the existing or intended use of each building or part of building, and the number of families or housekeeping units the building is designed to accommodate;
  - 7. Plans shall show such other information as may be required by the director of planning with regard to the lot and neighboring lots as may be necessary to determine and provide for the application of and enforcement of the requirements of this chapter.
- B. Plans shall be returned to the owner when the plans have been approved by the director of planning.
- C. Approval of the preliminary subdivision plat and compliance with all applicable provisions of the subdivision regulations contained in Chapter 14 and in this chapter shall constitute approval of the development permit for a subdivision.
- D. Development permits for individual structures within approved residential subdivisions or developments shall not be required.

#### **7.7.6 Issuance of development permits.**

All development permits shall be issued by the director of planning, which shall in no case grant any development permit for the use, construction or alteration of any land or building if the land or building as proposed to be used, constructed or altered would be in violation of any of the provisions of this chapter or any other ordinances and laws of the county or the state, except as provided herein. Development permits issued on properties for which any variance or special exception has been approved by the board of zoning appeals shall be in compliance with all of the terms and conditions of such approval. Development permits issued on properties for which any special land use permit has been approved by the board of commissioners shall be in compliance with all of the terms, conditions, and site plans related to such approval. Development permits issued on properties in an R-SM, MR-1, MR-2, HR-1, HR-2, HR-3, MU-1, MU-2, MU-3, MU-4 or MU-5 district (or prior classifications of retired districts of CH, TND, or any PC District) shall be in compliance with the final plans approved by the director of planning. Development permits issued on properties for which conditional zoning is approved shall be in compliance with the approved statement of zoning conditions for such application. Minor alterations of conditions shall be authorized only in accordance with the provisions of this chapter.

#### **7.7.7 Duration of validity of development permits.**

- A development permit shall be valid for two (2) years from its issuance subject to the following provisions:
- A. If the work authorized in any development permit has not begun within six (6) months from the date of issuance thereof, the permit shall expire.
  - B. If the work described in any development permit has not been substantially completed within two (2) years of the date of issuance thereof, the permit shall expire.

- C. Written notice of the expiration shall be given to the applicant for the permit, together with notice that further work as described in the canceled permit shall not proceed until a new development permit has been obtained.

#### **7.7.8 Building inspection.**

The building inspection duties of the director of planning with respect to this chapter shall include, but not be limited to:

- A. Issuance of building permits in accordance with all provisions of this chapter and only after the director of planning has issued a development permit.
- B. Making field inspections to determine that the building or structure being constructed, reconstructed or structurally altered or used is being constructed or modified in accordance with the site plan for which a development permit and building permit have been issued. When a violation is found to exist, the director of planning shall immediately initiate appropriate legal action to ensure compliance.
- C. Ensuring that all construction has been completed in accordance with all applicable requirements of the Code of DeKalb County prior to allowing occupancy.

#### **7.7.9 Records.**

The director of planning shall maintain records of all official administrative actions taken by their department pursuant to their duties as set forth in this division. The director of planning shall further maintain records of all complaints filed with their department pursuant to the requirements of this chapter and of all actions taken with regard to such complaints, and of all violations discovered by whatever means, with remedial action taken and disposition of cases. All such records shall be public records and shall be retained in accord with Georgia's Records Act, O.C.G.A. § 50-18-90, et seq., and pertinent record retention schedules.

#### **7.7.10 Inspection; right of entry.**

Upon presentation of county identification to the developer, contractor, owner, owner's agent, operator or occupant, county employees authorized by the director of planning may enter during all reasonable hours any property for the purpose of making inspections to determine compliance with the provisions of this chapter. Should access to the property be denied, an inspection warrant may be obtained as authorized in Section 7.7.11 below.

#### **7.7.11 Inspection; warrants.**

The director of planning, in addition to other procedures provided, may obtain an inspection warrant under the conditions specified in this division. The warrant shall authorize the director of planning or the director of public works to conduct a search or inspection of property, either with or without the consent of the person whose property is to be searched or inspected, under the conditions set out in this section.

- A. Inspection warrants may be issued by the recorder's court when the issuing judge is satisfied that all of the following conditions are met:
  - 1. The person seeking the warrant must establish under oath or affirmation that the property to be inspected is to be inspected as a part of a legally authorized program of inspection which includes that property or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection of that property.
  - 2. The issuing judge determines that the issuance of the warrant is authorized by this section and applicable state and federal law.
- B. An inspection warrant shall be validly issued only if it meets all of the following requirements:
  - 1. The warrant is attached to the affidavit required to be made in order to obtain the warrant.

2. The warrant describes, either directly or by reference to the affidavit, the property upon which the inspection is to occur and is sufficiently accurate that the executor of the warrant and the owner or possessor of the property can reasonably determine from it the property for which the warrant authorizes an inspection.
3. The warrant indicates the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal.
4. The warrant refers, in general terms, to the ordinance provisions sought to be enforced.

#### **7.7.12 Remedies.**

In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used in violation of any provision of this chapter, the county may, in addition to other remedies, and after due notice to the owner of the violation, issue a citation for violation of this chapter requiring the presence of the violator in the recorder's court. The county may also in such cases institute injunction or other appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use or to correct or abate the violation or to prevent the occupancy of the building, structure or land. Where a violation of this chapter exists with respect to a structure or land, the director of planning may, in addition to other remedies, require that public utility service be withheld therefrom until such time as the structure or premises is no longer in violation of this chapter.

#### **7.7.13 Notice in writing order to stop work; revocation of permits.**

Whenever any building or premises is being constructed, used, or occupied contrary to the provisions of this chapter or Chapter 7, the director of planning may order the work stopped in accordance with the provisions of Chapter 7. The director of planning may revoke any building permit or certificate of occupancy for any land, building or this chapter in order to protect the health, safety and general structure being constructed, used or occupied in violation of welfare of the residents of the county.

#### **7.7.14 Fees.**

Fees and charges for permits and inspections shall be as established by official action of the governing authority.

#### **7.7.15 Certificates of occupancy.**

Certificates of occupancy are required as follows and shall be issued by the director of planning only after all requirements of this chapter and other applicable parts of the Code of DeKalb County have been met:

- A. *For new or altered structures and uses.* No person shall use or permit the use of any building, structure, or premises or part thereof hereafter created, erected, changed, converted, enlarged or moved, wholly or partly, in use or structure, until a certificate of occupancy reflecting the extent and location of the use shall have been issued to the owner or tenant by the director of planning. Where a building permit is involved, such certificate of occupancy shall show that the structure or use, or both, to the affected part thereof, is in conformance with the requirements of this chapter. It shall be the duty of the director of planning to issue such certificate of occupancy if the director of planning finds that all of the requirements of this chapter have been met, and to withhold such certificate of occupancy if the director finds that all of the requirements of this chapter have not been met.
- B. *Temporary certificates of occupancy.* A temporary certificate of occupancy for a part of a building or premises may be issued in accordance with the requirements of section 7-33 of Chapter 7 of the Code of DeKalb County, as Revised 1988, and the director of planning may impose such additional conditions and safeguards as are necessary in the circumstances of the case to protect the safety of the occupants and of the general public.

- C. *Certificates of occupancy for existing uses or structures.* An owner may request a new certificate of occupancy for existing uses or structures. Said requests shall be in the form required by the director of planning and shall require all professional surveys or certifications required by the director of planning to adequately comply with said request. The director of planning shall require as a part of said request, fees to process said requests as are established by the board of commissioners. Upon review of the application and other relevant investigation by the director of planning, if in conformance with the requirements of this chapter, the director of planning shall issue a certificate of occupancy for any buildings, premises or use, certifying that the building, premises or use is in conformance with the requirements of this chapter.

#### **7.7.16 Violations of this chapter.**

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or use any land in the county, or cause the same to be done, contrary to or in violation of any of the provisions of this chapter.

#### **7.7.17 Penalties.**

Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of an offense and upon conviction in recorder's court shall be punished as is provided in section 1-10 of the Code of DeKalb County. Where any violation continues, each day's continuance of a violation shall be considered a separate offense. The owner of any buildings or premises or parts thereof, where anything in violation of this chapter exists, and any architect, builder, contractor or any other agent of the owner, or any tenant, who commits or assists in the commission of any violation, shall be guilty of a separate offense. In addition, the county may revoke the DeKalb County business license of any entity found guilty of violating this chapter in accordance with the procedures of this subsection for a period of time not to exceed five years, except to the extent prohibited by law.

#### **7.7.18 Repeal of conflicting ordinances; validity of prior approvals and actions.**

Nothing herein shall be construed as repealing the conditions of use, operation, or site development accompanying zoning approval(s) or permits issued under previous zoning ordinances or resolutions, provided further that modification or repeal of these past conditions of approval may be accomplished as authorized and provided by this chapter. All variances and exceptions heretofore granted by the zoning board of appeals shall remain in full force and effect, and all terms, conditions and obligations imposed by the zoning board of appeals shall remain in effect insofar as required for the initiation of any proceedings against these violations and for the prosecution of any violations heretofore commenced.

#### **7.7.19 Reserved.**