

# Agenda Item

File ID: 2021-3159

Substitute

3/22/2022

Public Hearing: YES  NO

Department: Planning and Sustainability

COMMISSION DISTRICT(S): All Districts

## SUBJECT:

Application of the Director of Planning & Sustainability to amend Section 7.4.6 of the *DeKalb County Zoning Ordinance* to modify criteria to be considered in evaluating and deciding an application for a Special Land Use Permit (SLUP).

PETITION NO: TA-21-1244986 (2021-3159)

PROPOSED USE: N/A

LOCATION: N/A

PARCEL NO. : N/A

INFO. CONTACT: John Reid, Sr. Planner

PHONE NUMBER: 404-371-4950

## PURPOSE:

Application of the Director of Planning & Sustainability to amend Section 7.4.6 of the *DeKalb County Zoning Ordinance* to modify criteria to be considered in evaluating and deciding an application for a Special Land Use Permit (SLUP).

## RECOMMENDATION:

**COMMUNITY COUNCIL:** (December 2021) CC-1: Approval; CC-2 Deferral; CC-3 Approval; CC-4: Approval with Conditions; CC-5: Approval. (October 2021) CC-1: No Quorum; CC-2: Denial; CC-3: Approval; CC-4: Denial; CC-5: Approval.

**PLANNING COMMISSION:** (Jan. 6, 2022) Denial. (Nov. 4, 2021) Full Cycle Deferral.

**PLANNING STAFF:** Approval.

**STAFF ANALYSIS:** The Zoning Ordinance currently prescribes nineteen (19) criteria to be considered by the planning department, planning commission, and board of commissioners regarding review of Special Land Use Permits (SLUPs). In addition to the standard nineteen, there are certain uses (e.g., mining, quarry, child day care, telecommunication towers, landfills, etc.) that are subject to independent, specialized sets of SLUP criteria. While understanding the need for thorough consideration of these applications because of their potential adverse impacts on the community, the number of prescribed criteria is excessive, redundant, and inefficient. The goal of this proposed text amendment is to reduce the number of criteria from 19 to 14 and retain a desired wide range of community considerations.

The SLUP criteria are designed to illuminate adverse impacts related to certain land uses that may be acceptable, generally, but due to the nature of the use may produce adverse impacts on the surrounding community. The required public participation process fosters community discussion and determines if such impacts can be mitigated, tolerated, or whether they are simply too harmful to the

community to permit.

On its face, the current criteria appear to reflect the desire to enumerate a general list of land use factors. It is the opinion of Staff that a number of criteria could be consolidated and/or eliminated while simultaneously not detracting from the intent of special land use permit consideration.

Many jurisdictions within metropolitan Atlanta (and beyond) evaluate conditional use permits, special land use permits, or special exceptions similarly to DeKalb County, however, with fewer criteria. The table below contains a cursory review of metropolitan

jurisdictions:

Jurisdiction	Application Type	Number of Criteria
DeKalb County	Special Land Use Permit	19
Cobb County	Special Land Use Permit	15
City of Atlanta	Special Land Use Permit	7
Gwinnett County	Special Land Use Permit	6
City of Decatur	Conditional Use Permit	6

DeKalb County has the most criteria among the listed jurisdictions. Although each jurisdiction has its own rationale for evaluation, it is common for such applications to be evaluated upon fewer than ten (10) criteria. Additionally, if one considers other land use related decisions, they also include fewer criteria than SLUPs. Zoning changes (i.e., rezonings) are evaluated based on eight (8) criteria. The Zoning Board of Appeals, a quasi-judicial body, reviews variances from the *Zoning Ordinance* based on evaluation of five (5) criteria. While it is impossible to account for every possible circumstance, many land use decisions are derived regularly with fewer criteria and little to no redundancy.

Moreover, the SLUP criteria are duplicative and redundant. For example, Criterion A, which requires consideration of the size of the site to the degree that compliance with “all other applicable requirements” may be achieved. This is later followed by Criterion L which assesses whether required transitional buffers are provided.

The transitional buffer, where applicable, is a requirement of the *Zoning Ordinance* to which adequate land area is important. A number of other criteria hints at varying degrees of similar impacts (e.g., transportation/traffic, operation/land use, compatibility/consistency, etc.).

The text amendment proposes the following consolidations:

1. Eliminate Criteria “L” regarding transitional buffer compliance and consolidate with Criteria “A” relating to adequacy of the site.
2. Eliminate Criteria “G” regarding adverse impacts on adjacent properties and consolidate with Criteria “B” relating to compatibility with adjacent and surrounding properties.
3. Eliminate Criteria “E” regarding regarding whether existing land uses along access routes to the site will be adversely affected by volume of traffic of proposed use. This issue should be sufficiently addressed by Criteria “B” which deals with compatibility of use with adjacent and surrounding properties.
4. Eliminate Criteria “I” regarding whether proposed use will create adverse impacts upon adjoining land uses by reason of manner of operation and consolidate with Criteria H which relates to adverse impacts by hours of operation.
5. Eliminate Criteria “R” regarding creating a negative shadow impact on adjoining lots with Criteria “O” which relates to appropriateness of size, scale, and massing of proposed buildings with the size, scale, and massing of adjoining buildings.

It is important to ensure that any public review process is fair, efficient, and somewhat predictable for all involved. As stated earlier, on its face, nineteen criteria are beyond the norm for this type of application. However, each SLUP application requires thorough evaluation or consideration of applicable factors in play in addition to those not captured by the existing list; the complexity of which is proportional to the complexity of the proposal. While these criteria address a vast array of worthy considerations, nineteen elements can be cumbersome to review with relatively simple applications (e.g., alcohol outlets, personal care homes, etc.) and laborious with more complex requests. Consolidation of some criteria may produce more targeted responses, which should aid the evaluation process.

In conclusion, the proposal does not change the SLUP process. It does not alter opportunities for public participation, nor does it limit the range of topics that are open to consideration during the public participation

process. Moreover, the text amendment does not change the purpose of SLUPs as a zoning tool. This text amendment does seek to reduce the number of criteria, reduce duplication, and improve administrative efficiency. This is not designed to make comprehensive modifications to SLUPs, as that degree of consideration is beyond the scope of this proposal and better reserved for a major rewrite of the *Zoning Ordinance* following the adoption of the next *Comprehensive Plan*. With the changes recommended by the community, Planning Commission, Legal staff, and the Board of Commissioners, Staff recommends approval of the text amendment.

**PLANNING COMMISSION VOTE:** (Jan. 6, 2022) **Denial 9-0-0.** Jana Johnson moved, Jon West seconded for Denial. (Nov. 4, 2021) **Full Cycle Deferral 8-0-0.** Jon West moved, April Atkins seconded for Full Cycle Deferral to the Jan. 2022 zoning agenda.

**COMMUNITY COUNCIL VOTE/RECOMMENDATION: (December 2021) CC-1: Approval 4-0-0; CC-2: Deferral 7-0-1.** Defer until the Board of Commissioners updates the criteria and sends it through the zoning process; **CC-3: Approval 8-0-1; CC-4: Approval with Conditions 11-1-0.** Approval with the following conditions: 1. Relating to Criteria A, after the words "open space, off-street parking", insert "both required and transitional buffer zones"; and 2. Relating to Criteria C, after the words "public (or private) facilities, utilities, public (or private) streets", insert "to serve the proposed use and whether or not there is sufficient traffic carrying capacity for the use proposed so as to not unduly increase traffic and create congestion in the area". The required buffer zone can be distinct from a transitional buffer zone so it should be noted in the proposed language, and traffic congestion should be considered as well as capacity; **CC-5: Approval 9-0-0.** (October 2021) CC-1: No Quorum. Regarding the proposed changes to criteria, the Council members present recommended the following changes/edits: Criteria G - Must have the word "surrounding", not just "adjacent"; Criteria D - Must state "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"; Criteria E - Removing "E" and adding to "B" does not have the same effect. Must have the word "surrounding"; Criteria S - Leave as-is; do not remove. The other points were okay.; CC-2: Denial 7-0-0; CC-3: Approval 6-2-0; CC-4: Denial 10-0-0. The Council recommended denial indicating that reducing the amount of SLUP criteria is not appropriate, and that it would be more appropriate to increase the amount of SLUP criteria instead of reducing it to make sure that all potential impacts were addressed and reviewed. Discussion included the potential for the proposed amendment to make it easier for developers and applicants to get their projects approved if there was less criteria; CC-5: Approval 8-0-0.

**AN ORDINANCE**

**AN ORDINANCE TO AMEND SECTION 27-7.4.6 OF THE DEKALB COUNTY ZONING ORDINANCE TO MODIFY CRITERIA TO BE CONSIDERED IN EVALUATING AND DECIDING AN APPLICATION FOR A SPECIAL LAND USE PERMIT, AND FOR OTHER PURPOSES.**

**WHEREAS**, the Zoning Ordinance currently prescribes nineteen (19) criteria to be considered by the planning department, planning commission, board of commissioners, applicants, and affected citizens regarding review of Special Land Use Permits (SLUPs);

**WHEREAS**, the large number of criteria can be cumbersome to review by commissioners, applicants, and affected citizens if there are a large number of items for consideration on the agenda;

**WHEREAS**, some of the SLUP criteria appear to be duplicative and could be consolidated with other criteria for more efficient review by commissioners and affected citizens as well as a less cumbersome process for applicants submitting SLUP applications; and

**WHEREAS**, revising the SLUP criteria as proposed will make DeKalb County's provisions more consistent with other metro-Atlanta jurisdictions.

**WHEREAS**, the proposed revisions shall take effect and apply to all complete SLUP applications submitted on or after April 8, 2022; and

**NOW, THEREFORE, BE IT RESOLVED AND IT IS DECLARED BY THE GOVERNING AUTHORITY OF DEKALB COUNTY, GEORGIA, AS FOLLOWS:**

1. To consolidate and reduce the number of criteria from nineteen (19) to twelve (14) to address these issues as follows:
  - a. Eliminate Criteria "L" regarding transitional buffer compliance and consolidate with Criteria "A" relating to adequacy of the site.
  - b. Eliminate Criteria "G" regarding adverse impacts on adjacent properties and consolidate with Criteria "B" relating to compatibility with adjacent and surrounding properties.

c. Eliminate Criteria “E” regarding whether existing land uses along access routes to the site will be adversely affected by volume of traffic of proposed use. This issue should be sufficiently addressed by Criteria “B” which deals with compatibility of use with adjacent and surrounding properties.

d. Eliminate Criteria “I” regarding whether proposed use will create adverse impacts upon adjoining land uses by reason of manner of operation and consolidate with Criteria H which relates to adverse impacts by hours of operation.

e. Eliminate Criteria “R” regarding creating a negative shadow impact on adjoining lots with Criteria “O” which relates to appropriateness of size, scale, and massing of proposed buildings with the size, scale, and massing of adjoining buildings.

### **Sec. 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. The board of commissioners shall use the following criteria in making a decision regarding approval or disapproval of a special land use permit application:

- 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, transitional buffer zones, 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, and whether the proposed use will create adverse impacts upon any adjoining land use by reason of traffic volume/congestion, noise, smoke, odor, dust, or vibration generated by the proposed use.
- C. Adequacy of public services, public (or private) 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 insufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area.
- E. 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.
- F. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the manner and hours of operation of the proposed use.
- G. Whether the proposed use is otherwise consistent with the requirements of the zoning district classification in which the use is proposed to be located.
- H. Whether the proposed use is consistent with, advances, conflicts, or detracts from the policies of the comprehensive plan.
- I. Whether there is adequate provision of refuse and service areas.
- J. Whether the length of time for which the special land use permit is granted should be limited in duration.
- K. Whether 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; and whether the proposed use will create any shadow impact on any adjoining lot or building as a result of the proposed building height.
- L. Whether the proposed use will adversely affect historic buildings, sites, districts, or archaeological resources.
- M. Whether the proposed use satisfies the requirements contained within the supplemental regulations for such special land use permit.
- N. Whether the proposed use would be consistent with the needs of the neighborhood or the community as a whole, as expressed and evidenced during the review process.

**ADOPTED** by the DeKalb County Board of Commissioners, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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**ROBERT J. PATRICK**

Presiding Officer

Board of Commissioners

DeKalb County, Georgia

**APPROVED** by the Chief Executive Officer of DeKalb County, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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**MICHAEL L. THURMOND**

Chief Executive Officer

DeKalb County, Georgia

**ATTEST:**

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**BARBARA H. SANDERS-NORWOOD, CCC**

Clerk to the Board of Commissioners and

Chief Executive Officer

DeKalb County, Georgia

**APPROVED AS TO SUBSTANCE:**

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**ANDREW A. BAKER**

Director of Planning and Sustainability

**APPROVED AS TO FORM:**

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**VIVIANE H. ERNSTES**

County Attorney



**AN ORDINANCE**

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**WHEREAS**, revising the SLUP criteria as proposed will make DeKalb County's provisions more consistent with other metro-Atlanta jurisdictions.

**WHEREAS**, the proposed revisions shall take effect and apply to all complete SLUP applications submitted on or after April 8, 2022; and

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## Sec. 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 of this Code~~ shall use the following criteria in making a decision regarding approval or disapproval of a special land use permit application:

- 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, transitional buffer zones, 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, and whether the proposed use will create adverse impacts upon any adjoining land use by reason of traffic volume/congestion, noise, smoke, odor, dust, or vibration generated by the proposed use.
- C. Adequacy of public services, public ~~(or private)~~ 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 insufficient traffic-carrying capacity for the use proposed so as not to unduly increase traffic and create congestion in the area.
- E. ~~Whether 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 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 the proposed use will create adverse impacts upon any adjoining land use by reason of the manner and hours of operation of the proposed use.
- I. ~~Whether 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 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 the proposed use is consistent with advances, conflicts, or detracts from the policies of the comprehensive plan.
- L. ~~Whether 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 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 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; and whether the proposed use will create any shadow impact on any adjoining lot or building as a result of the proposed building height.

- 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 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 be consistent with the needs of the neighborhood or the community as a whole, as expressed and evidenced during the review process. ~~be compatible with the neighborhood, would not be in conflict with the overall objective of the comprehensive plan.~~

DRAFT

**ADOPTED** by the DeKalb County Board of Commissioners, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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**ROBERT J. PATRICK**

Presiding Officer

Board of Commissioners

DeKalb County, Georgia

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