



## Legislation Text

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File #: 2021-3159, Version: 1

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Substitute

Public Hearing: YES  NO

Department: Planning & Sustainability

**SUBJECT:**

**COMMISSION DISTRICT(S): All Districts**

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**

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**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: 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.