
MEMORANDUM

To: City of Dunwoody Mayor & City Council
From: Community Development Staff
Date: September 21, 2009
Subject: Discussion of Public Noticing Requirements for Zoning Actions

Based upon continuing discussions begun in June among the City Council membership and the community development staff, it is agreed that at this time it would be prudent for the City of Dunwoody to examine and potentially amend its previously approved procedure for noticing requirements regarding zoning actions for both the Mayor & City Council meetings and for Zoning Board of Appeals meetings.

Staff has examined current policy for public notice and its relationship to both the Zoning Ordinance and the State of Georgia Zoning Procedures Act.

Zoning Procedures Law, O.C.G.A. §36-66-4, which reads in part: “A local government taking action resulting in a zoning decision shall provide for a hearing on the proposed action. At least 15 but not more than 45 days prior to the date of the hearing, the local government shall cause to be published within a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.”

This state statute is the source of City of Dunwoody’s Ch. 27, §5A-18(a) and §5D-16(c), which are portions of the binding codes related to the public hearing notification process for Zoning Map amendments (commonly referred to as ‘rezonings’), Zoning Ordinance text amendments, Comprehensive Plan Land Use Map amendments, Special Land Use Permits, Variances, Special Exceptions, Appeals of Administrative Decisions and Annexations.

The later sub-parts of those Zoning Code sections (§5A-18(b) §5D-16(a & b) entail the posting of Public Hearing signs on site and staff mailings informing adjoining property owners of a proposed action. Signage content requirements are based on select portions of §36-66-4.

These two codes, §5A & §5D, are the guide currently used by staff for the noticing of zoning actions. In the interim between submission and the hearing, staff completes or observes opportunities for:

- a preliminary review
- the applicant to submit revised and/or amended plans if necessary (pursuant to §5A-6)
- newspaper advertisements
- property owner mailings
- on-site signage
- a substantive, multi-departmental review
- a staff memo to be written and delivered to the Board assigned to hear the application seven days in advance of the Hearing.

The schedule for these reviews and actions was developed by staff and approved by the City Council, pursuant to §5A-6(a). The most-recent discussions about the process and procedures center around the time at which the applications are made public, the frequency of the notices, and the size of the signs posted on site when required.

The items specifically addressed by the City Council that need to be addressed by this Public Hearing process are:

- Amend current code language to create a size requirement of on-site signage of 12sqft (§5A-18(b)(2)(b) and §5D-16B). *Staff is currently researching the price for these new signs, both materials and labor. Staff further recommends that the applicant pay for the installation of these signs and show evidence that the sign was successfully and properly erected on site.*
- Amend the requirement to increase the size of the text on signs to 4 inches (§5A-18(b)(2)(b) and §5D-16B).
- Amend the verbiage related to adjoining property owner mailings to increase the distance to 500 feet from 250 feet. (§5A-18(b)(1) and §5D-16A).
- Require the posting of the agenda and board packages to the website for all boards. *This is currently department policy, but not specifically codified in the zoning ordinance. Staff has been cautioned on more than one occasion by the City Attorney against codifying more stringent requirements than required by State Law with regard to noticing and the dissemination of information in a public manner.*
- Require that the posting to the city website of agenda with backup information be made at the time that signs are posted/letters mailed/Crier ads run (essentially no less than 15 days prior to the Public Hearing). *It is not anticipated that this would be a challenge to implement as a policy change, but staff cautions against implementing the procedure as a code requirement.*
- Signs for the ZBA and signs for the Mayor & City Council process should be different colors for viewer clarity. *Again, it is not anticipated that this would be a challenge to implement as a policy change, but staff cautions against implementing the procedure as a code requirement.*

Community Council

At their regular August 2009 meeting, the Community Council deliberated the above conversation points. The initial free-formed discussion began with an explanation by staff of the purpose of the amendment, and that the side effect of codifying many of the above items will be the lengthening of the process. It was generally agreed upon by the Community Council that more noticing of the Community Council meetings is a good thing, but the lengthening of the process was a negative consequence of that additional noticing.

Following the early discussion, a number of motions were made relating to the above bullet points:

1. A motion to amend §5A-18(b)(2)(b) and §5D-16B, increasing the size of Public Hearing signage to 12 square feet: **Motion opposed (7-0)**, as 12sqft was viewed as too big. The size of sign should only be large enough to accommodate #2, below.
2. A motion increasing the text size of Public Hearing signage: the Community Council believes 4 inches is too big. 2 ½ inches maximum is fine. However lettering should be printed, never hand written. **(Motion approved 7-0)**
3. A motion to increase the mailing notification distance from the subject property: Yes, an increase of an additional 250 feet for a total of 500 feet **(Motion approved 5-2** with Crean and Dwyer opposed).
4. A motion to address requiring staff to post the agenda with backup info to the city website at the time that signs are posted/letters mailed/Crier ads run, as well as codifying the color of Public Hearing signs in code itself: **Motion opposed on all counts.** The Community Council embraces the idea and supports making those changes as a matter of staff internal policy, but is opposed to the idea of putting that specific language in the Zoning Ordinance.

Further recommendations about the Community Council process were made at the same meeting:

1. Some on the Community Council feel that they need to be able to table applications for a month. Mr. Cosgrove and Mr. Dwyer were opposed to this idea.
2. The Community Council doesn't feel they need to get packets when the notices are posted. They prefer the system that is in place today.
3. It was noted at the meeting that the size of the legal ads published in *The Crier* is acceptable. However, staff is to ensure that the ads don't get smaller. *It should be noted that staff has no editorial authority to mandate the size of Public Hearing advertisements in The Crier.*

Planning Commission

At their September 8, 2009 Public Hearing, the Planning Commission considered the input from the Community Council as well as conducted their own panel discussion on the proposed text amendment. The motion put forward and approved 4-0 was to change the code language appropriately to affect the following changes:

1. On-site signage, when required, shall expand to 12 square feet.
2. All text on signage shall be printed (not hand-lettered) and no smaller than 3 inches tall.
3. Increase the distance for Adjoining Property Owners mailings to 500 feet.
4. Signage displayed shall be different colors for different actions, as determined by staff, e.g. blue for variance items, red for special land use permits, yellow for rezonings, etc.
5. Specifically reference, either in code or on application documents, that the cost of signage is specifically an add-on to the applicant.

The Commissioners do not wish to accelerate the timeline for when staff memos are disseminated, nor do they seek to specifically codify the process for when memos are generated and distributed. The policy for those actions should remain staff policy and not appear as a more stringent standard in the text of the Zoning Ordinance.

Recommendation

Staff is able to implement these changes as a policy change whenever necessary. Were it the City Council's pleasure, the changes noted could instead be codified in the City Zoning Ordinance and a scheduled date of implementation could be established as a beginning date. Staff is not opposed to implementing the text amendments to bulk standards, such as sign square footage, text height and mailing distances. However, following the advice of the City Attorney, staff opposes codifying more stringent requirements than required by State Law with regard to noticing, and the dissemination of information in a public manner, such as staff reports and on-site signage.

Attachments

1. O.C.G.A. §36-66-4
2. Dunwoody schedule of application deadlines

TITLE 36. LOCAL GOVERNMENT
PROVISIONS APPLICABLE TO COUNTIES AND MUNICIPAL CORPORATIONS
CHAPTER 66. ZONING PROCEDURES

O.C.G.A. § 36-66-4 (2009)

§ 36-66-4. Hearings on proposed zoning decisions; notice of hearing; nongovernmental initiated actions; reconsideration of defeated actions; procedure on zoning for property annexed into municipality

(a) A local government taking action resulting in a zoning decision shall provide for a hearing on the proposed action. At least 15 but not more than 45 days prior to the date of the hearing, the local government shall cause to be published within a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing. The notice shall state the time, place, and purpose of the hearing.

(b) If a zoning decision of a local government is for the rezoning of property and the rezoning is initiated by a party other than the local government then:

(1) The notice, in addition to the requirements of subsection (a) of this Code section, shall include the location of the property, the present zoning classification of the property, and the proposed zoning classification of the property; and

(2) A sign containing information required by local ordinance or resolution shall be placed in a conspicuous location on the property not less than 15 days prior to the date of the hearing.

(c) If the zoning decision of a local government is for the rezoning of property and the amendment to the zoning ordinance to accomplish the rezoning is defeated by the local government, then the same property may not again be considered for rezoning until the expiration of at least six months immediately following the defeat of the rezoning by the local government.

(d) If the zoning is for property to be annexed into a municipality, then:

(1) Such municipal local government shall complete the procedures required by this chapter for such zoning, except for the final vote of the municipal governing authority, prior to adoption of the annexation ordinance or resolution or the effective date of any local Act but no sooner than the date the notice of the proposed annexation is provided to the governing authority of the county as required under Code Section 36-36-6;

(2) The hearing required by subsection (a) of this Code section shall be conducted prior to the annexation of the subject property into the municipality;

(3) In addition to the other notice requirements of this Code section, the municipality shall cause to be published within a newspaper of general circulation within the territorial boundaries of the county wherein the property to be annexed is located a notice of the hearing as required under the provisions of subsection (a) or (b), as applicable, of this Code

section and shall place a sign on the property when required by subsection (b) of this Code section; and

(4) The zoning classification approved by the municipality following the hearing required by this Code section shall become effective on the later of:

(A) The date the zoning is approved by the municipality;

(B) The date that the annexation becomes effective pursuant to Code Section 36-36-2; or

(C) Where a county has interposed an objection pursuant to Code Section 36-36-11, the date provided for in paragraph (8) of subsection (b) of said Code section.

(e) A qualified municipality into which property has been annexed may provide, by the adoption of a zoning ordinance, that all annexed property shall be zoned by the municipality, without further action, for the same use for which that property was zoned immediately prior to such annexation. A qualified county which includes property which has been deannexed by a municipality may provide, by the adoption of a zoning ordinance, that all deannexed property shall be zoned by the county, without further action, for the same use for which that property was zoned immediately prior to such deannexation. A municipality shall be a qualified municipality only if the municipality and the county in which is located the property annexed into such municipality have a common zoning ordinance with respect to zoning classifications. A county shall be a qualified county only if that county and the municipality in which was located the property deannexed have a common zoning ordinance with respect to zoning classifications. A zoning ordinance authorized by this subsection shall be adopted in compliance with the other provisions of this chapter. The operation of such ordinance to zone property which is annexed or deannexed shall not require any further action by the adopting municipality, adopting county, or owner of the property annexed or deannexed. Property which is zoned pursuant to this subsection may have such zoning classification changed upon compliance with the other provisions of this chapter.

(f) When a proposed zoning decision relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency, a public hearing shall be held on the proposed action. Such public hearing shall be held at least six months and not more than nine months prior to the date of final action on the zoning decision. The hearing required by this subsection shall be in addition to any hearing required under subsection (a) of this Code section. The local government shall give notice of such hearing by:

(1) Posting notice on the affected premises in the manner prescribed by subsection (b) of this Code section; and

(2) Publishing in a newspaper of general circulation within the territorial boundaries of the local government a notice of the hearing at least 15 days and not more than 45 days prior to the date of the hearing. Both the posted notice and the published notice shall include a prominent statement that the proposed zoning decision relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of

drug dependency. The published notice shall be at least six column inches in size and shall not be located in the classified advertising section of the newspaper.

HISTORY: Code 1981, § 36-66-4, enacted by Ga. L. 1985, p. 1139, § 1; Ga. L. 1996, p. 1009, § 2; Ga. L. 1998, p. 856, § 3; Ga. L. 1998, p. 1392, § 1; Ga. L. 2004, p. 69, § 19.

August 2009

August 2009							September 2009						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
2	3	4	5	6	7	1	6	7	1	2	3	4	5
9	10	11	12	13	14	8	13	14	15	16	17	18	19
16	17	18	19	20	21	15	20	21	22	23	24	25	26
23	24	25	26	27	28	22	27	28	29	30			
30	31					29							

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Jul 26	27	28	29	30	31	Aug 1
7/26 - 31							
	2	3	4	5	6	7	8
8/2 - 7			Packets Delivered; Ste		CC Packets Due; Stepl ZBA App Filing Deadl		
	9	10	11	12	13	14	15
8/9 - 14		7:00pm Meeting (Vot	Notice of Apps/Amer 7:00pm Meeting; Ste		ZBA Amendment Dea 7:00pm Comm Coun	Complete & Complia 11:30am Ads to Crier; !	
	16	17	18	19	20	21	22
8/16 - 21		4:00pm Open House 7:00pm Meeting (Wo	PC Application Deadl	News Ads run; Stepha News Ads Run; Stephi			
	23	24	25	26	27	28	29
8/23 - 28		Signs & Letters Deadl 7:00pm Meeting (Vot	PC Amendment Day;	Complete & Complia	ZBA Packets; Stephan		
	30	31	Sep 1	2	3	4	5
8/30 - 9/4							

September 2009

September 2009							October 2009						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
		1	2	3	4	5			1	2	3		
6	7	8	9	10	11	12	4	5	6	7	8	9	10
13	14	15	16	17	18	19	11	12	13	14	15	16	17
20	21	22	23	24	25	26	18	19	20	21	22	23	24
27	28	29	30				25	26	27	28	29	30	31

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Aug 30 - Sep 5	Aug 30	31	Sep 1	2	3	4	5
			Packets Delivered; Ste		CC Packets Due; Stepl ZBA App Filing Deadl 7:00pm ZBA Meeting.		
Sep 6 - 12	6	7	8	9	10	11	12
			Notice of Apps/Amer 7:00pm Meeting; Ste		ZBA Amendment Dea 7:00pm Comm Coun	Complete & Compliai 11:30am Ads to Crier; !	
Sep 13 - 19	13	14	15	16	17	18	19
		7:00pm Meeting (Vot		News Ads run; Stepha Signs & Letters; Stepl		11:30am Newspaper D	
Sep 20 - 26	20	21	22	23	24	25	26
		7:00pm Meeting (Wo	PC Application Deadl	News Ads Run; Steph; 11:30am M&C Memos	Packets Delivered; Ste		
Sep 27 - Oct 3	27	28	29	30	Oct 1	2	3
		Signs & Letters Deadl 7:00pm Meeting (Vot	PC Amendment Day;	Complete & Compliai			

October 2009

October 2009							November 2009						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
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11	12	13	14	15	16	17	15	16	17	18	19	20	21
18	19	20	21	22	23	24	22	23	24	25	26	27	28
25	26	27	28	29	30	31	29	30					

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Sep 27 - Oct 3	Sep 27	28	29	30	Oct 1	2	3
					CC Packets Due; Step ZBA App Filing Deadl 7:00pm ZBA Meeting		
Oct 4 - 10	4	5	6	7	8	9	10
			Packets Delivered; Ste		ZBA Amendment Dea 7:00pm Comm Coun		
Oct 11 - 17	11	12	13	14	15	16	17
		7:00pm Meeting (Vot	Notice of Apps/Amer 7:00pm Meeting; Ste		Complete & Compliai	11:30am Ads to Crier; ! 11:30am Newspaper D	
Oct 18 - 24	18	19	20	21	22	23	24
		7:00pm Meeting (Wo	PC Application Deadl	News Ads run; Stepha News Ads Run; Steph Signs & Letters; Step			
Oct 25 - 31	25	26	27	28	29	30	31
		Signs & Letters Deadl 7:00pm Meeting (Vot	PC Amendment Day;	Complete & Compliai	Packets Delivered; Ste		

November 2009

November 2009							December 2009						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
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8	9	10	11	12	13	14	6	7	8	9	10	11	12
15	16	17	18	19	20	21	13	14	15	16	17	18	19
22	23	24	25	26	27	28	20	21	22	23	24	25	26
29	30						27	28	29	30	31		

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Nov 1 - 7	Nov 1	2	3	4	5	6	7
			Packets Delivered; Ste		CC Packets Due; Stepl ZBA App Filing Deadl 7:00pm ZBA Meeting		
Nov 8 - 14	8	9	10	11	12	13	14
		7:00pm Meeting (Vot	Notice of Apps/Amer 7:00pm Meeting; Ste		ZBA Amendment Dea 7:00pm Comm Coun	Complete & Compliai 11:30am Ads to Crier; : 11:30am Newspaper D	
Nov 15 - 21	15	16	17	18	19	20	21
		7:00pm Meeting (Wo	PC Application Deadl	News Ads Run; Steph; News Ads run; Stephe Signs & Letters; Stepl			
Nov 22 - 28	22	23	24	25	26	27	28
		PC Signs & Letters; St 7:00pm Meeting (Vot	PC Amendment Day;	Complete & Compliai Packets Delivered; Ste			
Nov 29 - Dec 5	29	30	Dec 1	2	3	4	5