

Chapter 22

LAND USE*

Article 14. Administration

Sec. 22-4-1. Authority

The Elberton Mayor and Council may from time to time amend the boundaries of the districts established on the Official Zoning Map and/or the provisions set forth in this Ordinance. Any proposed amendment shall first be submitted to Elberton Planning Commission for its recommendation. The Elberton Planning Commission has thirty (30) days following the public hearing within which to render a decision on the application. If the Elberton Planning Commission fails to render a decision within the thirty (30) day period, it is deemed to have approved the proposed amendments unless the application is withdrawn or tabled.

Sec. 22-14-2. Application for Amendment (Rezoning Application)

An application for amendment must be filed with the City Clerk at least twenty-one (21) days prior the Elberton Planning Commission meeting at which the request will be heard. An application for amendment must contain the following information:

- 1) A survey of the property prepared by a licensed surveyor showing existing and proposed structures and uses, access drives, easements, utilities, buffers, existing zoning, and any other supporting documentation required by the City Clerk to assist the Elberton Planning Commission in determining its recommendation and Mayor and Council in rendering a decision, including concept plans;
- 2) A list of adjoining property owners as shown on the tax rolls;
- 3) Any additional information the applicant or the City Clerk believes to be pertinent;
- 4) Additionally, the applicant, if other than the local government, must pay the required application fee, as determined by the Governing Authority, to cover the administrative and advertising costs of the application and sign a statement certifying he/she or the owner represented by the applicant has at least a fifty-one percent (51%) ownership interest in the property;
- 5) Once the application is submitted it cannot be amended. Incomplete applications will not be processed;
- 6) The (Name of Jurisdiction) Zoning Compliance Officer shall present the application and all its supporting documents, along with a written analysis of the requested zoning's impact, to the Elberton Planning Commission at its regular business meeting the month in which the public hearing on the application is scheduled. The written analysis shall show that the Zoning Compliance Officer has considered the proposed change in relation to the following, where applicable.
 - a) What is the existing land use pattern in the area?

- b) Would approval create an isolated district designation unrelated to adjacent and nearby district designations?
- c) Would approval significantly increase or possibly overtax available infrastructure including, but not limited to schools, streets, and public safety services?
- d) Are the existing boundaries illogically drawn in relation to existing conditions on the property proposed for change?
- e) Would changed or changing conditions make the passage of the proposed amendment necessary?
- f) Will the proposed change adversely influence living conditions in the neighborhood?
- g) Will the proposed change create or excessively increase traffic congestion or otherwise affect public safety?
- h) Will the proposed change seriously reduce light and air to adjacent areas?
- i) Will the proposed change adversely affect property values in the adjacent area?
- j) Will the proposed change be a deterrent to the improvement or development of adjacent property in accordance with existing regulations?
- k) Will the proposed change constitute a grant of special privilege to an individual owner as contrasted with the public welfare?
- l) Are there substantial reasons why the property cannot be used in accordance with its existing zoning?
- m) To what extent is the proposed change consistent with the city's Comprehensive Plan?
- n) What other factors, if any, should be considered in balancing the interest in promoting the public health, safety morality or general welfare against the right to unrestricted use of the property?

Sec. 22-14-3. Public Hearings, Procedures, and Rezoning Standards

- 1) **Public Hearing Required.** Before enacting an amendment to this Ordinance, one (1) public hearing must be held by the Elberton Planning Commission.
- 2) **Applicant Notification.** The Zoning Compliance Officer must notify the applicant of the date, time, and place of the required public hearing.
- 3) **Publication of Notice.** Not less than fifteen (15) days, and not more than forty-five (45) days prior to the date of the public hearing, the Zoning Compliance Officer shall advertise the date, time, place and purpose of the public hearing in a newspaper of general circulation in Elberton, GA. The notice shall also include the location of the property, the present zoning classification of the property, and the proposed zoning classification of the property. The notice shall further include a statement that "Any opponent of a rezoning action that has

made within two years immediately proceeding the filing of the rezoning action, campaign contributions aggregating two hundred fifty dollars (\$250.00) or more to a local government official that will consider the application, must file a disclosure with the Elberton Planning Commission showing:

- a) The name and official position of the City Official to whom the contribution was made; and,
- b) The dollar amount and description of each campaign contribution made to the city official.
- c) The disclosure shall be filed at least five calendar days prior to the public hearing on the zoning application."
- d) **Sign.** In addition to the newspaper notice and not less than fifteen (15) days prior to the public hearing, the Zoning Compliance Officer shall cause the applicant to have posted in a conspicuous place on the lot or parcel to be rezoned, one (1) or more signs, which shall provide adequate notice of the zoning action. Each sign shall be approximately 32" in height and 24" in width and shall provide adequate notice of the zoning action. At a minimum the sign must contain the following information: date, time, and location of the hearing, current zoning classification and proposed zoning classification, and a telephone number interested persons can call for additional information.
- e) If, because of circumstances peculiar to the location of the property to be posted, the sign will either be inconspicuous or invisible from any well-traveled right-of-way, the sign(s) shall be posted on the property to be rezoned and on other property in such a location that it is likely to be seen by persons potentially interested in the decision.
- f) **Elberton Planning Commission Action.** The Elberton Planning Commission shall hold a public hearing on the application. The Planning Commission may recommend approval, approval with conditions, or denial of the application. The Planning Commission must transmit its recommendation to the Mayor and Council within thirty (30) days. If the Planning Commission fails to submit its recommendations within the thirty (30) day period, it is deemed to have recommended approval of the proposed amendment.
- g) **Elberton Mayor and Council Action.** The Elberton Mayor and Council shall review the record and vote on the proposed amendment to the zoning ordinance or the zoning map. The Council may approve, approve with conditions, or deny the application. Within seven (7) days of its decision, the Zoning Compliance Officer shall so notify the applicant. If the Elberton Mayor and Council fail to act on the application within sixty (60) days of its submission or by the next regularly scheduled Elberton Mayor and Council meeting (whichever is later) the application is deemed to have been approved unless the application or the matter is tabled, postponed, or withdrawn.
- h) **Withdrawal.** If an application for an amendment to the Zoning Ordinance or Official Zoning Map is withdrawn in writing by the applicant at any time after the publication of the newspaper notice and posting of the required sign, but prior to the public hearing, then the same property may not be considered for zoning by the Elberton Mayor and Council until the expiration of at least sixty (60) days immediately following the

withdrawal of the rezoning application. The withdrawal must be in writing and signed by the applicant.

- i) The application will be considered to have been withdrawn if the applicant, his/her authorized agent or his/her attorney fails to appear at the Elberton Mayor and Council hearing. By withdrawing in this manner, the same property may not be considered for rezoning by the Elberton Mayor and Council until the expiration of at least sixty (60) days from the date of the scheduled public hearing for which the applicant failed to appear.
- j) **Denial.** If the zoning ordinance amendment or Official Zoning Map amendment is denied by the Elberton Mayor and Council, then the same property may not be considered for rezoning until the expiration of at least six (6) months immediately following the denial of the rezoning by the Elberton Mayor and Council. A tie vote with no further action during said sixty (60) day period shall be deemed a denial of the rezoning by the Elberton Mayor and Council.

Sec. 22-14-4. Zoning Amendment Criteria

In the adoption of a zoning ordinance, an amendment to an existing zoning ordinance or amendment to the Official Zoning Map, the Elberton Mayor and Council shall consider factors relevant in balancing the interest in promoting the public health, safety, morals or general welfare against the right of the individual to the unrestricted use of property and must specifically consider the following factors as they may be relevant to the application:

- 1) The existing land use pattern;
- 2) The possible creation of an isolated district unrelated to adjacent and nearby districts;
- 3) The population density pattern and possible increase or overtaxing of the load on public facilities including, but not limited to, schools, utilities, and streets;
- 4) The cost to the City and other governmental entities in providing, improving, increasing or maintaining public utilities, schools, streets and other public safety measures;
- 5) The possible impact on the environment, including but not limited to, drainage, soil erosion and sedimentation, flooding, air quality and water quality;
- 6) Whether the proposed zoning map amendment will be a deterrent to the value or improvement or development of adjacent property in accordance with existing regulations;
- 7) Whether there are substantial reasons why the property cannot be used in accordance with existing regulations;
- 8) The aesthetic effect of existing and future use of the property as it relates to the surrounding area;
- 9) The extent to which the proposed zoning map amendment is consistent with the comprehensive plan;
- 10) The possible effect of the proposed zoning map amendment on the character of a zoning district, a particular piece of property, neighborhood, a particular area, or the community;

- 11) The relation that the proposed zoning map amendment bears to the purpose of the overall zoning scheme, with due consideration given to whether or not the proposed change will help carry out the purposes of these zoning regulations;
- 12) The consideration of the preservation of the integrity of residential neighborhoods shall be considered to carry great weight;
- 13) In those instances in which property fronts on a major thoroughfare and also adjoins an established residential neighborhood, the factor of preservation of the residential area shall be considered to carry great weight. After hearing evidence at the zoning hearing, the Elberton Planning Commission shall apply the evidence of the Standards of Review (Zoning Amendment Criteria) in making their recommendation and the Mayor and Council in making its decision. It will not be required that every criterion contained in the Standards of Review be considered. It shall be the duty of the applicant to carry the burden of proof that the proposed zoning map amendment promotes the public health, safety, morality or general welfare.

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Sec. 22-14-5. Procedure for Conducting a Public Hearing

All public hearings held pursuant to this ordinance shall be conducted as follows:

- 1) The presiding officer shall allow the Zoning Compliance Officer to present an overview of the application. Following this presentation, the applicant or the applicant's agent or attorney shall be allowed to present the applicant's case and then shall be afforded an opportunity, prior to the closing of the public hearing, to answer questions and respond to objections of others in attendance. A minimum of ten (10) minutes is allowed for presentation of data, evidence, and opinion by proponents of each zoning decision and a minimum of ten (10) minutes for presentation by opponents of each proposed zoning decision.
- 2) Others desiring to speak or make a statement shall be given reasonable opportunity do so but must first be recognized by the presiding officer. Upon rising to speak, the person recognized will state his/her name. The presiding officer may also request that the person furnish a home or business street address, as may be appropriate.
- 3) Groups, affiliations, and associations shall designate a spokesperson who shall speak for the group.
- 4) Both proponents and opponents of the matter under consideration shall be given comparable time and opportunity by the presiding officer to speak.
- 5) Questions shall be directed only to the presiding officer who shall respond or designate another person for the response.

- 6) The presiding officer may limit or terminate the discussion, statements or comments because of time, repetitiveness or irrelevancy.
- 7) After all discussion concerning the zoning application is concluded, the presiding officer shall close the public hearing for that particular zoning application, and shall address each zoning criteria listed in Section 14.4.

Sec. 22-14-6. Meeting Format

- 1) Minutes of the meeting will be taken by the City Clerk. Should a complete transcript of the meeting be requested it will be provided at the expense of the person making the request.
- 2) No set time will be set for each person to talk but it is suggested remarks be kept short and to the point.
- 3) Following is an outline of how the meeting will be held:
 - a) Hearing called to order.
 - b) Proposal or ordinance summarized.
 - c) Applicant or proponent states his case.
 - d) Persons in favor testify.
 - e) Rebuttal and cross examination.
 - f) Hearing closed.
 - g) Recommendations submitted by Zoning Compliance Officer to official body.

Sec. 22-14-7. Publication of Standards

The criteria of Section **22-194** shall be available to the public to aid in the preparation for a change in the Zoning Ordinance or the Official Zoning Map of Elberton, Georgia.

Sec. 22-14-8. Conditional Use

- 1) **Conditional Use Procedure.** All petitions for conditional use approval shall be submitted to the Zoning Compliance Officer at least thirty (30) days prior to a regularly scheduled Elberton Planning Commission meeting on application forms supplied by the Zoning Compliance Officer along with a fee as determined by Elberton Mayor and Council. Incomplete applications will not be reviewed. Applications for all conditional uses must be accompanied by the following information.
 - a) Three (3) copies of a written description of the proposal designed to inform the City, in detail, about all aspects of the proposed use and its anticipated impact on the community. The description should include, when pertinent, information on the hours of operation, number of employees, number of dwelling units, vehicle trip ends, noise, water usage, sanitary waste treatment and any other relevant concerns identified by the City or applicant.

- b) Three (3) copies of preliminary building and site plans drawn to scale.
- c) Three (3) copies of surveyed plat signed by a registered surveyor.
- d) Project Name.
- e) Project Owner.
- f) Date, Scale, and North Arrow.
- g) Vicinity Map.
- h) Use of Adjacent Property.
- i) Exterior Dimensions of the Site.
- j) Total Project Acreage.
- k) Location, Name and Width of All Existing or Proposed Streets.
- l) Location of All Proposed Structures.
- m) Location of All Off-street Parking and Driveway Serving the Project.
- n) Proposed Buffers and/or Screening.
- o) Location, Height, Fixture Type and Wattage of Site Lighting.
- p) Dumpster Locations.
- q) Rough Floor Plans, Including Gross Floor Area.
- r) Building Height.
- s) The submittal of inaccurate or incomplete information may be cause for denial of the request, or, if said discrepancies are realized after approval of the petition or issuance of the relevant local permits, cause for the revocation of the approval and any related permits by the Elberton Mayor and Council.
- t) The Zoning Compliance Officer shall prepare a recommendation regarding the petition for consideration by the Elberton Planning Commission at its regularly scheduled meeting.
- u) The Elberton Planning Commission shall hold a public hearing on the proposed use in accordance with the notice and hearing provisions for zoning amendment. The Elberton Planning Commission shall then review the inspectors report and conduct a comprehensive review of the proposed use and recommend approval, approved with condition(s), or denial.

- v) The Elberton Planning Commission shall issue its findings within forty (40) days of the receipt of the public hearing. If the Elberton Planning Commission fails to submit its recommendation within the thirty (30) day period, it is deemed to have recommended approval of the Conditional Use.
- w) In determining the compatibility of a use with adjacent properties and the overall community, the Elberton Planning Commission and the Elberton Mayor and Council must make the following findings if the use is to be approved or approved with conditions:
 - i) Adequate provision is made by the applicant to reduce any adverse environmental impacts of the proposed use to an acceptable level;
 - ii) Vehicular traffic and pedestrian movement on adjacent streets will not be substantially hindered or endangered;
 - iii) Off-street parking and loading, and the entrance to and exit from such parking and loading, will be adequate in terms of location, amount and design to service the use;
 - iv) Public facilities and utilities are capable of adequately serving the proposed use;
 - v) Granting the request would not be an illogical extension of a use which would intrude a damaging volume of (1) agricultural or (2) commercial use into a stable neighborhood of well maintained single-family homes, and likely lead to decreasing surrounding property values, neighborhood deterioration, spreading of blight, and additional requests of a similar nature which would expand the problem;
 - vi) Granting the request would not lead to congestion, noise and traffic hazards or overload public facilities current or planned;
 - vii) Granting this request would conform to the general expectations for the area population growth and distribution according to the Comprehensive Land Use Plan;
 - viii) Granting this request would not lead to a major negative change in existing (1) levels of public service, (2) government employees or (3) fiscal stability; and
 - ix) Granting this request would not have a "domino effect," in that it becomes the opening wedge for further rapid growth, urbanization or other land-use change beyond what is indicated in the Comprehensive Land Use Plan.
- x) Unless otherwise noted, the site plan submitted in support of an approved conditional use shall be considered part of the approval and must be followed.
- y) Approval of a proposed use by the Mayor and Council does not constitute an approval for future expansion of or additions or changes to the initially approved operation. Any future phases or changes that are not included in the original approval are subject to the provisions of this Chapter and the review of new detailed plans and reports for said alterations by the governing authority. All uses, construction or building approved in the Conditional Use must begin within 60 days of Mayor and Council's approval and be fully completed within one (1) year of approval.

Sec. 22-14-9. Variance

- 1) Were the owner of a plot of land consisting of one (1) or more adjacent lots or record at the time of the enactment of this ordinance, does not own sufficient contiguous land to enable him/her to conform to the minimum lot size requirements of this ordinance; or if the topography, physical shape, or other unique features of such lots or record, prevent reasonable compliance with the setback if used as a building site upon approval of the Zoning Board of Appeals; the yard and other space requirements of the Zoning District in

which the property is located may be reduced by the smallest amount that will permit reasonable use of the property as a building site. Such reduction of these space requirements shall constitute a variance. However, in no case shall the Zoning Board of Appeals permit any lot in a residential Zoning District to be used as a building site which is less than seventy-five percent of the Zoning District's minimum area and yard requirements as set forth in Article VIII. Further, the Zoning Board of Appeals may grant variances only upon finding that all of the following conditions exist:

- a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; and
 - b) The application of this Ordinance to the particular piece of property would create an unnecessary hardship; and
 - c) Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this Ordinance; and
 - d) Such conditions are peculiar to the particular piece of property involved; and
 - e) The special circumstances surrounding the request for a variance are not the result of acts by the applicants; and
 - f) The variance is not a request to permit a use of land, buildings, or structures which is not permitted by right or by conditional use permit in the Zoning District involved.
- 2) Public hearings on variances shall be conducted pursuant to Section 14.3 of this ordinance.
 - 3) If the variance request is denied, then the same property may not be considered for a variance for at least six (6) months immediately following the denial of the variance by the Zoning Board of Appeals.