



January 16, 2015

**Planning, Zoning and Inspections**

509 North McDonough Street

P.O. Box 220

Decatur, Georgia 30031

404-370-4104 ■ Fax 404-370-0691

info@decaturga.com ■ www.decaturga.com

TO: Peggy Merriss  
City Manager

FROM: Amanda Thompson  
Planning Director

SUBJECT: Proposed Ordinance O-15-Z-01

The purpose of this memo is to outline recommended amendments proposed in Ordinance O-15-Z-01. The City Commission adopted the Unified Development Ordinance (UDO) in November 2014 and that ordinance will become effective on February 1, 2015. The UDO is a consolidation and update of the city's numerous codes related to land development to facilitate the implementation of the 2010 Strategic Plan.

City Attorney Bryan Downs reviewed the sections of the UDO related to appeals of decisions by the Zoning Administrator and UDO Administrator to ensure that there was consistency and clarity throughout the ordinance. The attached memo from Mr. Downs outlines the proposed changes to sections related to the appeals process.

In addition, there are proposed amendments to Article 4 that relate to defining residential density standards in commercial zoning districts and amendments to Article 12 that relate to the definition of a subdivision.

It is recommended that language be added to explicitly state the maximum density allowed in commercial zoning districts. The proposed units per acre are identical to what is allowed today. Density is limited by the lot size and building height requirements; however additional language will be helpful in providing clarity to residents or developers reading the ordinance.

The proposed amendment to the definition of subdivision incorporates the current definition of subdivision in the city code. The amendment is necessary because the subdivision section was inadvertently removed from the version of the UDO that was adopted. In November and becomes effective on February 1, 2015.

I am happy to answer any questions about these recommendations.

## M E M O R A N D U M

**TO:** Members of the Planning Commission

**FROM:** Bryan A. Downs, City Attorney *BSD*

**DATE:** January 13, 2015

**RE:** Suggested changes to administrative appeals provisions within Articles 11 and 12 of the UDO

---

City staff and I are proposing that certain provisions within the UDO that address administrative appeals be amended prior to the effective date. The primary changes are to Sections 11.2.10 and 11.2.11, and seek and to improve upon the procedures for administrative appeals to the ZBA and for appeals from the ZBA to Superior Court. In addition, we are correcting some scrivener's errors and attempting to make all the various appeal provisions within the UDO more uniform.

The Planning Commission is conducting a public hearing tonight on the following specific amendments, which can be considered amendments to the text of the zoning portions of the UDO:

- **Article 11 – Administration**
  - Sec. 11.1.3.A.3. “Zoning Administrator” should be substituted for “UDO Administrator” (drafting error).
  - Sec. 11.2.4.F.7. The words “to the Superior Court” should be inserted after the word “taken” in order to provide clarity.
  - Sec. 11.2.7.C and Sec. 11.2.8.F. These sections should be deleted in order to better reflect the intent of the drafters and to avoid ambiguity. Section 11.2.10 expressly provides for a right to appeal to the ZBA from a written decision of the Zoning Administrator and section 11.1.2.A.2 specifically lists the types of decisions that may be appealed to the ZBA.

- Sec. 11.2.10. A revised section addressing administrative appeals is attached. This version provides more clarity to appellants and provides for notice requirements that are better tailored to an appeal, rather than a variance. This version also clarifies that the Zoning Administrator will provide the administrative support for appeals to the ZBA, regardless of the subject matter of the appeal.
  - Sec. 11.2.11. A revised section addressing appeals to the Superior Court is attached. This version expressly states that the appeal to the Superior Court shall be by “writ of certiorari” and removes provisions that are essentially a restatement of state procedural law, thereby removing potential confusion.
  - 11.2.10.A. The word “final” should be added before “written” in order to provide more clarity.
- **Article 12 – Definitions**
    - The definition of “appeal” should be deleted. There is no need to have a universal definition for the term “appeal” given that the various types of administrative appeals are addressed specifically in the respective sections of the UDO.

3. The Board shall elect a chairman and a vice-chairman, appoint a secretary, and adopt, subject to approval of the City Commission, rules governing the conduct of its affairs. Copies of the rules shall be made available to the public. The <sup>Zoning</sup>UDO Administrator shall be in attendance at all meetings as an advisor.

#### **B. Meetings, Procedure and Records**

1. Meetings of the Board shall be held at such times as the Board may determine or upon call of the chairman. Such chairman or, in his absence, the vice-chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public.
2. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such facts, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

#### **C. Powers and Duties**

The Board in appropriate cases and subject to appropriate criteria, conditions and safeguards set forth in this Article shall have the following powers and duties:

1. Appeals from administrative decisions;
2. Variances; and
3. Such other powers and duties set forth in this UDO.

### **11.1.4. Planning Commission**

#### **A. Established; Authority**

The City Planning Commission, hereinafter referred to in this article as the "Planning Commission," is hereby created and established.

#### **B. Composition, Appointment and Term of Members**

The Planning Commission shall consist of 7 members, who shall be residents of the City, appointed by the City Commission. The terms of the members shall be 3 years, and until their successors are appointed and qualify; except that all members serving at the time of the adoption of the ordinance from which this section derives shall complete the term for which they were appointed and their successors shall be appointed for 3-year terms.

#### **C. Filling Vacancies; Removal of Members**

Any vacancy in membership in the Planning Commission shall be filled for the unexpired term by the City Commission who shall also have the authority to remove any member for cause, on written charges, after a public hearing.

#### **D. Organization; Rules of Procedure; Meetings; Records**

The Planning Commission shall elect its chairman and a vice-chairman from among its members. The term of the chairman shall be 1 year with eligibility for reelection. The Planning Commission shall appoint a secretary, who may be an officer or employee of the municipality. The Planning Commission shall make its own rules of procedure and determine its time of meeting; provided, that such Commission shall meet at least once per month. All meetings of the Planning Commission at which official action is taken shall be open to the public and all records of the Planning Commission shall be public records.

11.2.4. Special Exceptions

regularly scheduled meeting of the Commission.

- b. The decision of the City Commission on each application for special exception shall be based on whether or not the applicant has met the criteria contained in Sec. 11.2.4.E, the standards contained in the UDO, the requirements of the zoning district in which such use is proposed to be located, and any additional conditions deemed necessary to ensure the compatibility of the surrounding properties.

**6. Conditions to Approval**

- a. In approving an application, the City Commission may impose special conditions which it deems necessary in order to mitigate negative impacts upon surrounding properties which may be expected without the imposition of those conditions. Such conditions may consist of a variety of requirements, including, but not limited to:
  - i. Setbacks from any lot line if such setback is a proper part of the application under review;
  - ii. Specified or prohibited locations for buildings, parking, loading or storage areas or other structures;
  - iii. Restrictions in the location of driveways and curb cuts;
  - iv. Maximum building heights and other dimensions;
  - v. Landscaping requirements which may include location, type and maintenance of plant materials, fences, walls, earth berms or other buffer provisions; screening or other protective measures;
  - vi. Preservation of existing trees and other vegetation;

- vii. Special measures to alleviate undesirable views, light, glare, noise, dust or odor;

- viii. Permitted hours of operation;

- ix. Requiring that an existing building be retained;

- x. Requiring that development take place according to a site plan, development plan and/or building plan;

- xi. Limitation on exterior modifications to existing buildings;

- xii. Public facility improvements by the owner;

- xiii. A time limit within which the property must either be used as allowed by the variance, special exception or other appeal; or

- xiv. Any other requirement deemed appropriate and necessary as a condition of approval.

- b. Requirements imposed as a condition of approval shall be required of the property owner and all subsequent owners as a condition of the use of the property and interpreted and continuously enforced by the UDO Administrator.

**7. Appeals**

Appeals by an aggrieved party from a final decision of the City Commission on such Special Exceptions shall be taken in accordance with Sec. 11.2.11.

*to the Superior Court*

### 11.2.6. Certificate of Zoning Compliance

- A. No building permit shall be issued for any construction, reconstruction or alteration of a structure unless the Zoning Administrator has issued a certificate of zoning compliance for such construction, reconstruction or alteration. Such certificate shall be issued only when such use complies with all provisions of this UDO.
- B. No existing structure or land may be used or occupied for any purpose or use for which it is not presently being used unless a certificate of compliance shall have been applied for and issued by the Zoning Administrator. Such certificate shall be issued only when such proposed change of use complies with all provisions of this UDO.
- C. No fee shall be charged for an original certificate of zoning compliance as required herein. Fees for copies of certificates of zoning compliance are contained in the City's adopted fee schedule.

### 11.2.7. Administrative Adjustment

#### A. Applicability

The Zoning Administrator may modify the following standards during development review. Any other modification beyond those listed below must be considered by the Board of Zoning Appeals as a variance.

1. Setbacks. A reduction of up to 10% of the numeric standard for a minimum building setback.
2. Lot Coverage. An increase of up to 1% beyond the numeric standard for lot coverage.
3. Parking. A reduction in the minimum required vehicle parking spaces by up to 10%.

#### B. Criteria for Approval

The applicant shall demonstrate, and the Zoning Administrator shall find that all of the following criteria are present when approving a request for an adjustment:

1. There are clear and compelling reasons that are not purely financial demonstrating that the required standard cannot be met;
2. The modification is the minimum amount necessary to meet the objectives identified above; and
3. The requested adjustment will not contravene the public interests or negatively impact adjoining properties.

#### ~~C. Appeals~~

~~Appeals by an aggrieved party from a decision of the Zoning Administrator granting or denying a request for an administrative adjustment shall be as provided for in Sec. 11.2.10.~~

## 11.2.8. Demolition Permit

### A. Applicability

1. A demolition permit is required prior to demolition of any residential structure in the City.
2. Within a designated Historic District, the Historic Preservation Commission has the authority for review of a demolition permit.
3. Outside a designated Historic District, the UDO Administrator shall have the authority to delay demolition for a period not to exceed 15 days in order to provide notice to the community, allowing investigation into alternative opportunities for the preservation of the residential structure.

### B. Pre-Application Conference

Before submitting an application for residential demolition, an applicant must schedule a pre-application conference with the UDO Administrator to discuss the procedures, standards and regulations required for approval. This requirement may be waived at the discretion of the UDO Administrator.

### C. Public Notice

Within 7 days of the submittal of a complete application for demolition of a residential structure, a sign giving notice shall be placed in a conspicuous location on the property. The sign shall state the location of the proposed demolition, and the deadline for comments on the demolition application.

### D. Application

#### 1. Post-demolition Plan

The UDO Administrator shall not grant a permit for demolition without reviewing at the same time the post-demolition plan for the site.

### E. Approval Process

#### 1. UDO Administrator Action

- a. The UDO Administrator shall review the application for demolition.
- b. Where demolition is deemed necessary by the Building Official for public health or safety reasons, a demolition permit shall be issued without any demolition delay.
- c. In all other cases, the UDO Administrator shall set a demolition delay period of not to exceed 15 days from the acceptance of a complete application. Upon expiration of the established demolition delay period, the UDO Administrator shall issue the demolition permit.

### F. Appeals

~~A demolition permit may be appealed as provided in Sec. 11.2.10.~~

## 11.2.10. Appeal of Administrator's Decision

### A. ~~A.~~ Who may appeal.

An appeal from a written decision of the UDO Administrator or Zoning Administrator regarding this UDO may be taken to the Zoning Board of Appeals (Board) by any person aggrieved by such decision, or by any officer, department, board or agency of the City affected by such decision.

### B. ~~B.~~ Time for filing appeal; contents of notice.

Such appeal shall be taken within 10 calendar days from the date of a written decision of the UDO Administrator or Zoning Administrator by filing with the ~~UDO Administrator or Zoning Administrator~~ and with the ~~Board~~ a written notice of appeal specifying the grounds thereof. The notice of appeal shall be submitted on forms available from the Zoning Administrator.

### C. ~~C.~~ Transmission of record to Board.

Upon receipt of a complete notice of appeal, ~~t~~The ~~UDO Administrator or Zoning Administrator~~ shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

### D. Stay of Proceedings.

An appeal stays all proceedings in furtherance of the action appealed from unless the UDO Administrator or Zoning Administrator certifies to the Board, after the notice of appeal shall have been filed with the ~~UDO Administrator or Zoning Administrator~~, that by reason of facts stated in the certificate a stay would, in the UDO Administrator's or Zoning Administrator's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application with notice to the UDO Administrator or Zoning Administrator and on due cause shown.

E. Fee

Each ~~application for an~~ notice of appeal shall be accompanied by a fee as set forth in the schedule of fees and charges to partially cover the cost of advertising, field investigation and other expenses involved in processing the ~~application~~ appeal.

F. Notice and Hearing

~~Notice and hearing requirements shall be the same as those set forth for variances in Sec. 11.2.7.H.~~

1. The Zoning Administrator shall fix a date for the hearing of an appeal from a decision of the UDO Administrator or Zoning Administrator within 30 days from the date a complete notice of appeal is filed unless said time period is mutually extended by the appealing party and the Zoning Administrator in writing. The Zoning Administrator shall give written notice of the hearing to the appealing party at least 10 days prior to the date of the hearing. The Board shall decide the appeal in accordance with the procedures set forth herein and in its rules. It shall be the duty of the Zoning Administrator to post notices of the time and place of the hearing by placard on or within 300 feet of the property as measured along the street right-of-way line.

2. At the hearing, any party may appear in person, or by agent or attorney. The appealing party shall be allowed no less than 10 minutes for presentation of data, evidence and opinion concerning the appeal. Any remaining time may be reserved for rebuttal. Those in opposition to the appeal shall also be allowed no less than 10 minutes for presentation of data, evidence and opinion. The presentation times may not be reduced but may be extended, provided they are expanded equally for each side.

G. Decisions

Following the consideration of all testimony, documentary evidence, and matters of record, the ~~Zoning Board of Appeals~~ shall make a determination on each appeal. The Board shall decide the appeal within a reasonable time

but in no event more than 45 days from the date of the filing of the complete notice of appeal unless an extension of time is agreed to by the appealing party. The Board shall reverse, defer, affirm, or modify any order, requirement, decision or determination made by the UDO Administrator or Zoning Administrator and to that end shall have all the powers of the UDO Administrator or Zoning Administrator from whom the appeal was taken. An appeal shall be sustained or the decision below modified only upon an expressed finding by the Board that the UDO Administrator's or Zoning Administrator's action below was based on an erroneous finding of a material fact, or that said official's action was arbitrary. The action of the Board on an administrative appeal shall be final.

## 11.2.11. Appeals from Final Decisions of the Board

### A. Appeal to Superior Court

Any person aggrieved by a final decision of the Zoning Board of Appeals (Board), or any officer, department or agency of the City affected by such decision, may appeal from such decision to the Superior Court of DeKalb County by writ of certiorari. ~~by filing with the clerk of said Court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law.~~ Such appeal shall be filed within 30 days after decision of the Board is rendered.

### B. ~~Notice to Board~~ Transmitting Record

~~Upon such filing, the clerk of the Superior Court shall give immediate notice thereof to the secretary of the Board.~~ Within the time prescribed by and pursuant to applicable state law, the Board Zoning Administrator shall cause to be filed with ~~said the~~ clerk of Superior Court a ~~duly~~ certified copy of the proceedings had before the Board, including a transcript of the evidence heard before it, if any, and the decision of the Board.

### C. ~~Judicial Procedure, Superior Court~~

~~Thereafter at the next term of the Superior Court, or in vacation upon 10 days' notice to the parties, the judge of such Court shall proceed to hear and pass upon the appeal. In determining the questions presented by the appeal, the Court shall determine whether the decision of the Board is correct as a matter of law.~~

### D. ~~Supersedeas May Be Granted~~

~~The filing of an appeal in the Superior Court from any final decision of the Board shall not ipso facto act as a supersedeas, but a supersedeas may be granted by the Court upon such terms and conditions as may seem reasonable and proper.~~

- j. Requiring that development take place according to a site plan, development plan and/or building plan;
  - k. Limitation on exterior modifications to existing buildings;
  - l. Public facility improvements by the owner;
  - m. A time limit within which the property must either be used as allowed by the variance, special exception or other appeal; or
  - n. Any other requirement deemed appropriate and necessary as a condition of approval.
2. Requirements imposed as a condition of approval shall be required of the property owner and all subsequent owners as a condition of the use of the property and interpreted and continuously enforced by the Zoning Administrator.

### 11.2.10. Appeal of Administrator's Decision

- A. An appeal from a <sup>final</sup> written decision of the UDO Administrator or Zoning Administrator regarding this UDO may be taken to the Zoning Board of Appeals by any person aggrieved by such decision, or by any officer, department, board or agency of the City affected by such decision.
- B. Such appeal shall be taken within 10 calendar days from the date of a written decision of the UDO Administrator or Zoning Administrator by filing with the UDO Administrator or Zoning Administrator and with the Board a notice of appeal specifying the grounds thereof.
- C. The UDO Administrator or Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- D. An appeal stays all proceedings in furtherance of the action appealed from unless the UDO Administrator or Zoning Administrator certifies to the Board, after the notice of appeal shall have been filed with the UDO Administrator or Zoning Administrator, that by reason of facts stated in the certificate a stay would, in the UDO Administrator's or Zoning Administrator's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application with notice to the UDO Administrator or Zoning Administrator and on due cause shown.
- E. **Fee**

Each application for an appeal shall be accompanied by a fee as set forth in the schedule of fees and charges to partially cover the cost of advertising, field investigation and other expenses involved in processing the application.

**Administrative standards.** A set of standards for administering the tree ordinance that are a part of the tree ordinance by reference.

**Administrator, UDO.** The City Manager or his/her designee.

**Administrator, Zoning.** The City Manager or his/her designee.

**Adult day care center.** A facility, whether operated for profit or not, that undertakes through its ownership or management to provide for less than 24-hour per day, basic adult day care or adult day health services to 3 or more adults, not related by blood or marriage, who require basic services. Includes any establishment that regularly provides adult custodial services.

**Adult entertainment.** Any performance, act, show or contest, either live or electronically reproduced, where any person appears unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola, or any portion of a person's pubic hair, anus, cleft of buttocks, vulva or genitals.

**Adult entertainment establishment.** A business or establishment where employees or patrons expose specified anatomical areas or engage in specified sexual activities including, but not limited to: adult bookstores, adult businesses, adult motion picture theaters, adult mini-motion picture theaters, adult motion picture arcades, adult video stores, erotic entertainment/dance establishments, escort bureaus, and introduction services. Advertising structure. Any structure or device erected for the purpose of supporting any sign or other advertising or informational media and the framework of the sign.

**A-frame sign.** Any double-faced sign having a metal or wooden frame adequately braced so as to be freestanding on but not permanently attached to the ground.

**Agricultural.** See Sec. 6.7.1.

**Alley.** A public or private way which affords only a secondary means of access to property abutting thereon.

**Alternative telecommunication tower structure.**

Man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures, that are compatible with the natural setting and surrounding structures, and effectively camouflage or conceal the presence of antennas or towers.

**Amenity space.** See Sec. 2.1.3.

**Animal care.** A facility designed or arranged for the care of animals without any outdoor activity. No outdoor activity associated with care of animals is allowed. Includes animal grooming, animal hospital, veterinary clinic, pet clinic, animal boarding, animal shelter, cattery, commercial kennel (11 or more dogs) and doggy day care. Includes veterinary hospital, clinic, kennel, animal grooming and doggy day care.

**Animated sign.** Any sign with action or motion with moving characters or changing colors which requires electrical energy, but not including wind actuated elements such as flags or banners. This definition includes electronic signs with lights and other elements which change copy and other characters.

**ANSI.** American National Standards Institute; organization that publishes national standards for tree care maintenance operations, safety standards, and nursery stock.

**Antenna.** See Telecommunications Antenna.

**Apartment house.** See dwelling, multiple.

~~**Appeal.** A request for a review of the UDO Administrator's interpretation of or final action on any provision of this UDO, or other administrative or court reviews authorized by this UDO.~~

**Applicant.** A person submitting a post-development stormwater management application and plan for approval.

**Applicable codes.** Applicable codes are as follows:

- 1) Any optional housing or abatement standard provided in Chapter 2 of Title 8 of the Official Code