

## ARTICLE III. ADMINISTRATION

### Sec. 301. - Administration of ordinance.

It shall be the duty of the city manager or his designee, and he is hereby given the authority, to administer and enforce the provisions of this ordinance.

### Sec. 302. - Application requirements.

Applications to amend the zoning map (rezoning), amend the future development map, planned developments, and building permits shall, as part of the application, include a set of development plans. Submitted development plans for the above projects and the eventual issuance of a building permit shall be prepared in accordance with the requirements of section 316. The plans shall contain the required number of sets (specified on each application) and shall illustrate each of the following elements, unless determined inapplicable to a specific development by the city.

(a) *Site analysis*. A site analysis and topographic map at a readable scale (1" = 100' minimum) shall include information on the following:

- (1) Existing shape and dimensions of the lot to be built upon including the size, measurement and location of any existing buildings or structures on the lot.
- (2) Utilities.
- (3) Streams and easements.
- (4) All existing man-made and natural features to be retained, moved, or altered.

(b) *Site plan*. A site plan at a readable (1" = 100' minimum) scale showing compliance with all regulations and calculations required by the zoning ordinance which shall include but not be limited to information on all proposed improvements including:

- (1) Boundary survey completed by a certified surveyor.
- (2) A correct scale and north arrow.
- (3) The present zoning classification of the subject and all adjacent parcels.

(4) Proposed land use and building footprints with door locations.

(5) The gross square footage of proposed buildings.

(6) Required yard setbacks appropriately dimensioned.

(7) Densities.

(8) The location of required off-street parking and loading spaces including total number of spaces, space and driveway dimensions.

(9) Internal circulation including the proposed location of all driveways and entry/exit points for vehicular traffic, using arrows to depict direction of movement.

(10) Building height.

(11) Sidewalks.

(12) Utilities, grading, drainage, amenities, and similar details including their respective measurements.

(13) Any applicable buffer boundaries such as streams, or other planted buffers as required by zoning district.

(c) *Landscape and tree plan.* A site plan at a readable scale (1" = 100' minimum) showing compliance with all regulations and calculations required by the zoning ordinance which shall include but not be limited to information regarding:

(1) Landscaping, including tree species, the number of all plantings, and landscaping that is replacing what is being removed.

(2) The location and extent of required buffers and screened areas, depicting extent of natural vegetation and type and location of additional vegetation if required.

(3) Open space.

(d) *Architectural design.* The architectural design elements showing compliance with all regulations and calculations required by the zoning ordinance which shall include but not be limited to:

(1) Scaled elevation drawings of proposed structures.

(2) Information on building materials, features, exterior finish, windows, doors, colors, and items affecting exterior appearance, such as signs, air conditioning, grills, compressors, and similar details including their respective measurements.

(e) Groups of buildings on the same parcel of land may be reviewed and permitted as a single project (planned unit development) rather than individual buildings. Grouping of similar buildings is encouraged to minimize the number of reviews required and to allow for originality and design flexibility. The requirements and procedures for planned unit developments are governed by Article VIII of this ordinance.

**Sec. 303. - Application submittal and completeness.**

No application shall be deemed accepted and filed until all required forms have been completed and all required materials have been submitted, including fees. The date an application is complete and hence accepted and filed shall be noted on the application form by the city clerk or other designee as appointed by the mayor. Any subsequent deadlines tied to date of application shall begin to run as of said date.

**Sec. 304. - Zoning ordinance and map amendment procedure.**

The city zoning ordinance, including the zoning map, may be amended from time to time by the mayor and city council, but no amendment shall become effective unless it shall have been first submitted to the planning and zoning board for review and recommendation.

(a) *City planner review.* Upon receipt of an application for amendment of the city zoning ordinance or zoning map, the designated city planner shall review the application and prepare a written analysis of the application, which shall be provided to the planning and zoning board as well as the city council. In the absence of a designated city planner, the application shall proceed directly to planning and zoning board review.

(b) *Planning and zoning board review.*

(1) All applications for zoning text or map amendments shall be submitted to the planning and zoning board for review. Such review shall

be conducted based upon the standards for land use approval set forth in section 305 of this article. The planning and zoning board shall meet with the applicant and consider the application at its next regularly scheduled meeting. Such meeting shall include a public hearing and the planning and zoning board shall take comment from the applicant and the public with regard to the application. Following the public input and comment, the planning and zoning board shall, upon appropriate motion, vote to recommend approval or denial of the application. It may make such recommendations as it deems appropriate in the best interests of the city, including the specification of certain conditions to its approval of any proposed zoning action.

(2) The planning and zoning board shall make a written report of its recommendation to the city council and mayor with respect to its findings. Such written report shall be a part of the permanent record of the application and shall be reported at any meeting of the city council which considers the application. Upon motion, the planning and zoning board may defer any application which it deems to be incomplete. An application may be deferred on only one occasion. An applicant may withdraw his application at any time until a final recommendation on the application is issued by the planning and zoning board.

(3) *Failure to act.*

a. Failure by the planning and zoning board to act upon any application shall not cause delay of process unless such failure is due to incomplete data or information in an application. Should the planning and zoning board fail to act upon any complete application, it shall pass to the city council with a notation thereon that the planning and zoning board has reviewed but failed to act upon the application.

b. If the planning and zoning board fails to submit a report within thirty (30) days of its first meeting after it has received an amendment request complete in all respects, it shall be deemed to have recommended approval of the proposed amendment. However, the planning and zoning board and the applicant for an amendment may jointly agree to a postpone action for a thirty-day period.

(4) The city council shall hear the application at its next meeting which complies with the Zoning Procedures Act of the State of Georgia.

(5) Provisions for application withdrawal shall be as established in section 310

(c) *City council and mayor.*

(1) *Public hearing procedures.* Before the mayor and city council shall approve any amendment to the city's zoning ordinance, they shall hold a public hearing thereon, except for amendments to section 311, for which no public hearing shall be required.

a. The notice of such hearing shall be published at least fifteen (15) but not more than forty-five (45) days prior to the hearing on the proposed action, such publication to be in the legal organ for DeKalb County, Georgia. The notice shall state the time, place, and purpose of the hearing.

b. Said public hearing may be continued to the next regular city council meeting date and for additional consecutive regular meeting dates, or such other date as directed by the mayor, without further legal notice as good planning requirements dictate and the mayor and city council deem necessary, provided that the date on the sign advertising the hearing be changed to reflect the continued hearing date.

c. If the requested zoning action is for the rezoning of property and is initiated by a party (applicant) other than the city, then:

(i) City staff shall erect on the subject property, not less than fifteen (15) days prior to the hearing, a sign giving the date, place and time of the city council public hearing; the applicant shall be responsible for ensuring that such sign stays where placed and in legible condition.

(ii)

The notice to the legal organ as required above shall include the location of the property, the present zoning classification of the property, and the proposed zoning classification for the property.

(2) *Final action.*

a. The city council and mayor shall approve, approve with conditions, or deny the request. Such final zoning action may occur at the time of the public hearing or at the next regularly scheduled city council meeting.

b. The city council shall not be bound by, but shall consider the recommendations of the planning and zoning board in its deliberations on the application.

**Sec. 305. - Zoning proposal review standards.**

When any request is made for a change in the zoning for any parcel of property, or when an amendment is requested to the zoning map, the planning and zoning board and the city council shall make their recommendations and ultimate decision with regard to such request after due and diligent consideration of the following:

(1) The effect upon the health, safety, morals or general welfare of the public compared to any hardship imposed upon the individual property owner seeking rezoning should rezoning be denied;

(2) Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property;

(3) Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;

(4) Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;

(5) Whether the zoning proposal will result in a use that may cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;

(6) Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal;

(7) Whether the zoning proposal is compatible with the principals of the city's long range plan as set forth in the Conceptual Master Land Use and Connectivity Plan for the City of Clarkston, a part of the Clarkston Livable Centers Initiative Study as adopted in March 2005, adopted as the city's comprehensive plan.

(8) Whether the zoning proposal is compatible with the most current adopted version of the Future Development Map of the Clarkston Comprehensive Plan.

**Sec. 306. - Conditions to rezonings.**

Unless otherwise specifically provided in this zoning ordinance, any approved rezoning shall be conditioned upon the applicant's initiation of and substantial progress toward the development of the property, in accordance with the uses proposed in the rezoning application, within 12 months of the date of the initial approval of the rezoning. For purposes of this section, "substantial progress" shall mean that time when an initial construction, excavation, or site inspection has been made by city or county building or development inspectors.

*(a) Substantial Progress.*

(1) If substantial progress, as defined above, has not been made within the twelve-month period, then a material condition to the initial approval of the rezoning shall be deemed to have failed, the approval shall be revoked, and the zoning classification of the property shall revert to its original classification prior to the initial approval. Applicant is responsible for ensuring progress is initiated prior to the elapse of the twelve-month period.

(2) Should an applicant determine that substantial progress toward the development of the property cannot be made within the twelve-month period, he may make written application to the city council, no later than sixty (60) days before the expiration of the twelve-month period, for an extension of the twelve-month period, which may not exceed six (6) months.

a. The application for such extension shall be in writing and shall set forth each and every fact or circumstance upon which the request for the extension is based.

b. The city council, upon a finding of just cause and substantial hardship to the applicant, may extend the original twelve-month period for an additional period of time not to exceed six (6) months.

(b) Should the applicant not seek such extension, or should the extension be denied, it shall be deemed that the subject property is not suited for the purposes proposed in the rezoning application, and the zoning classification of the subject property shall revert to the classification status it held prior to the initiation of the proposed rezoning.

(1) This reversion action shall be the same as if a rezoning were being considered. Proper notification shall be given, a sign posted on the property and a public hearing duly advertised following the procedure outlined in section 304(c) of this ordinance.

(2) The public hearing shall be held and zoning action taken by the city council.

(c) Upon the reversion action of the subject property, the applicant may not appeal such action to the mayor and city council. Should the applicant seek to rezone the property again, he/she shall comply with all of the provisions of this ordinance as required for all rezoning applicants.

**Sec. 307. - Variance procedures.**

The mayor and city council may authorize upon proper application in specific cases, variance from the terms of this zoning ordinance. Applications should be submitted and reviewed by the designated city planner for technical review and recommendation in the form of a written staff report. The staff report shall be forwarded to the planning and zoning board for their consideration. In the absence of a designated city planner, once reviewed for completion by the public works director, applications shall be forwarded directly to the planning and zoning board, which shall review the application and conduct a public hearing in accordance with section 304(b) of this appendix.

(a) Before the mayor and city council act upon an application for a variance, they shall hold a public hearing thereon. The notice of the time and place of such hearing shall be published at least fifteen (15) days prior to the hearing in the inspector legal organ of the city or in the inspector legal organ of DeKalb County. At the hearing any party may appear in person or by agent or attorney.

(b) In addition, city staff shall erect, at least fifteen (15) days prior to the hearing, in a conspicuous place on the property involved, a sign which shall contain: information as to the variance applied for and the time and place of hearing. However, failure to erect and maintain the sign as specified above shall not invalidate the subsequent determination of the mayor and city council.

(c) *Mayor and city council decision.*

(1) The mayor and city council shall make a "variance decision" for each application. For purposes of this article the term "variance decision" means final action by the mayor and city council which results in a variance approval, approval with conditions, or a variance denial.

(2) The "variance decision" shall be made based upon an evaluation of the variance criteria provided in section 308 of this article.

(3) Said final action shall be made no later than sixty (60) days following filing of a complete application, unless extended by agreement of the applicant.

(4) The mayor and city council may require accompanying written requirements as part of a "variance decision," thereby approving the variance as "conditional."

(5) An application may be withdrawn by the applicant prior to the "variance decision."

(6) Appeals of a "variance decision" of the mayor and city council by an aggrieved party shall be available by writ of certiorari to the DeKalb County superior court.

**Sec. 308. - Variance criteria.**

A variance from the terms of this ordinance must not be contrary to the public interest. Thus, the mayor and council may attach thereto any conditions which may be deemed advisable to the extent that the purpose of this ordinance will be served, public safety and welfare secured, and substantial justice done. The existence of a non-conforming use of neighboring land, buildings, or structures in the same or in other districts shall not constitute a reason for a variance. A variance may be granted in an individual case of unnecessary hardship upon a finding by the city council that all of the following conditions exist:

Variance criteria:

(1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.

(2) Such conditions are peculiar to the particular piece of property involved.

(3) Such conditions are not the result of the actions of the applicant.

(4) A literal interpretation of the provisions of this ordinance would create an unnecessary hardship.

(5)The variance requested will not cause substantial detriment to the public good nor impair the purposes or intent of this zoning ordinance.

(6)The variance is not a request to permit a structure or use of land not authorized in the applicable district.

**Sec. 309. - Administrative variances.**

The city manager or his designee shall have the option to grant variances from the development and design standards of this ordinance, where, in his/her opinion, the intent of the ordinance can be achieved and equal performance obtained by granting a variance. All applicants for administrative variances must complete the forms and follow procedures as required by the city in section 307. Each request for an administrative variance must be reviewed in accordance with the criteria established in section 308 of this ordinance. The authority to grant such variances shall be limited to variance from the following requirements:

(1) Front yard or yard adjacent to Public Street—Reduction not to exceed ten percent of that required.

(2) Side yard—Variance not to exceed three (3) feet reduction.

(3) Rear yard—Variance not to exceed five (5) feet reduction.

(4) Height of building—Variance not to exceed five (5) feet reduction.

(5) Fenestration—Not to exceed twenty (20) percent deducted from the requirement.

(6) Landscape zone—Variance not to exceed two (2) feet deduction.

(7) Sidewalk zone—Not to exceed two (2) feet deduction.

**Sec. 310. - Reapplication to the mayor and city council for variance or zoning amendments.**

If an application for a variance or rezoning is denied by the mayor and city council, then such variance or rezoning of the same property may not again be considered until the expiration of at least twelve (12) months from the date of the original application. This limitation shall not apply to a rezoning initiated by the City of Clarkston or to cases where the city, by majority vote of the city council, waives the one-year limitation. A property owner may voluntarily withdraw his application for a proposed amendment or variance prior to the public hearing where it is acted upon by the city council; such an application shall be considered withdrawn without prejudice

and deemed not to be an initiation of action for zoning amendment. If the request for withdrawal by the applicant occurs after the public hearing, the zoning and review commission shall determine whether the withdrawal occurred with or without prejudice.

**Sec. 311. - Zoning and sign fees.**

The zoning and sign fees designated by the mayor and city council of Clarkston shall be established by separate ordinance or resolution, to be updated as necessary. However, no fee shall be charged for the construction of new fences.

Any application or permit filed pursuant to this ordinance for which the subject matter has been partially or wholly undertaken prior to approval or permit by the mayor and city council of Clarkston, the fee charged for said application or permit shall be double the amount listed in the fees ordinance (Number 297).

**Sec. 312. - Conditional Use Permit.**

Certain uses of property, designated as conditional uses, Article VII this Zoning Ordinance, are declared to possess characteristics that may be incompatible with other uses in the District within which they are proposed for location. No conditional use shall be constructed, erected, enlarged, performed, or otherwise undertaken without first obtaining a conditional use permit.

In addition, any use that may be compatible with existing uses in the area where it is proposed and is consistent with the purpose and intent of the zoning district wherein it is proposed to be located, but does not expressly fit into the list of permitted uses for such zoning district shall require the approval of a conditional use permit.

The Mayor and City Council shall hear applications for conditional use permits. The Mayor and City Council shall issue a conditional use permit to an applicant upon a finding that the proposed conditional use would generally be in the public interest.

I. In considering whether a proposed conditional use is in the public interest, the Mayor and City Council shall consider the following, among other relevant factors:

- A. Whether the conditional use would be injurious to the use and enjoyment of the environment or of other property in the immediate vicinity or diminish and impair property values within the surrounding neighborhood;
- B. Whether the proposed conditional use would increase local or state expenditures in relation to cost of servicing or maintaining neighboring properties;

- C. Whether the establishment of the conditional use would impede the normal and orderly development of surrounding property for uses predominant in the area; and
- D. Whether the location and character of the proposed conditional use would be consistent with a desirable pattern of development for the locality in general.

II. Once a conditional use has been approved by the Mayor and Council, said conditional use and any conditions shall run with the land upon which the conditional use was approved.

**Sec. 313. – Temporary Use Permit.**

- 1) Certain temporary uses of property may be permitted in the NC-1, NC-2, TC and I Districts of the City.
- 2) Temporary uses include festivals, farmer’s markets, tent sales or the sale of goods from any temporary location, including but not limited to, holiday sales, fireworks sales or Christmas tree sales, as well as other special events of community interest.
- 3) Temporary uses are only permitted with the advance approval of the City Manager or his designee. No permit for a temporary use shall issue unless:
  - a) Written permission of the property owner is presented.
  - b) The temporary use is not located within 25 feet of any public right-of-way.
  - c) Adequate parking, ingress and egress are provided on site.
- 4) No temporary use may last more than 45 consecutive days.
- 5) No more than two (2) temporary use permits may be obtained per parcel per year.

**Sec. 314. - Powers of the mayor and city council with respect to zoning appeals.**

The mayor and city council shall have the following powers with respect to zoning appeals:

- (a) Administer oaths and compel the attendance of witnesses by subpoena.
- (b) To hear and decide appeals when it is alleged there is error in any order, requirement, decision, or determination made by city staff in the interpretation or enforcement of this zoning ordinance.
- (c) In exercising the above powers, the mayor and city council may, in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirements, decisions or determination from which the appeal is taken, and to that end, may issue or direct the issuance of a building or occupancy permit.

**Sec. 315. - Appeals from final decisions of the mayor and city council.**

Any person with a special interest in a zoning decision that is substantially aggrieved by any final decision of the mayor and city council may take an appeal to the superior court. Such an appeal to the superior court shall be by writ of certiorari and shall be filed within thirty (30) days from the date of the final decision of the mayor and city council. Upon failure to file the appeal within thirty (30) days, the decision of the mayor and city council shall be final.

**Sec. 316. - Reserved.**

**Sec. 317. - Reserved.**

**Sec. 318. - Reserved.**

**Sec. 319. - Construction and use consistency with application, plans, and permit.**

Building permits or certificates of occupancy issued on the basis of plans and applications approved by the building inspector authorize only the use, arrangement, and construction set forth in such approved plans and applications. Any other use, arrangement, or construction which varies from approved plans shall be deemed a violation of this ordinance.

All departments, inspectors and public employees of the city of Clarkston which are vested with the duty or authority to issue permits or licenses shall issue no permit or license for any use, building, or purpose if the same shall be in conflict with the provisions of this ordinance.

**Sec. 320. - Time limits and action for proposed plans not implemented after zoning action.**

Upon a property owner's request for the issuance of a building or occupancy permit, the building inspector or other issuing person shall not issue to the property owner any building or occupancy permits if any of the following occurs.

- (a) In such cases where preliminary land subdivision plats have not been approved within twelve (12) months since the application date; or when building or occupancy permits have not been issued within the twelve (12) months since the plat was approved, it shall be deemed that the subject property is not suited for the purposes proposed in the rezoning application, and the zoning classification of the subject property shall revert to the classification status it held prior to the initiation of the proposed rezoning. To ensure compliance, no permits shall be issued without confirmation of the original zoning action date.

(b) If construction or utilization of the land in accordance with approved preliminary land subdivision plats or building or occupancy permits is not well under way within the succeeding twelve (12) months, it shall be deemed that the subject property is not suited for the purposes proposed in the rezoning application, and the zoning classification of the subject property shall revert to the classification status it held prior to the initiation of the proposed rezoning. To ensure compliance, no permits shall be issued without confirmation of the original zoning action date. The mayor and city council shall also cancel the building or occupancy permits and declare them null and void.

**Sec. 321. - Future development map amendments.**

The future development map of the comprehensive plan may be amended by the mayor and city council. Future development map amendment applications shall be filed with the city clerk. All filed applications shall be reviewed in accordance with the procedures established in sections 304(a) and 304(b) of this article. Amendments to the future development map shall meet the following procedures and criteria:

(a) *Initiation of amendments.* Future development map amendments may be initiated by one of the following:

(1) The mayor and city council may initiate amendments to the future development map. The requirements for applications in section 302 shall not apply to amendments initiated by the mayor and city council.

(2) Any person, firm, corporation or agency may initiate applications to amend the future development map, provided that said person, firm, corporation or agency is the owner or the authorized agent of the owner of all of the property involved.

(b) *Applications to amend the future development map.*

(1) Each application to amend the future development map shall be filed with the city clerk and shall include the following information:

a. A legal description of the tract(s) that are the subject of the application.

b. The name and address of the owner(s) of the tract and agent(s), if any.

c. Whenever the applicant is not the property owner, the owner shall certify by notarized signature that (s)he has given authority

to the applicant to file the application. When properties have more than one (1) owner, the notarized signature of all property owners shall be required.

d. An application fee established by the city.

e. The land use classification for the tract(s), as shown on the future development map and when necessary, the present and proposed zoning classification.

f. A written analysis of the impact of the proposed amendment with respect to the criteria established in subsection (d) of this section 321

g. Other materials reasonably required by the city necessary to the analysis of the application.

(c) *Review.* With respect to each application for a future development map amendment, the review commissions shall investigate and make a recommendation based on the following criteria:

(1) Whether the future development map amendment proposal is compatible with the surrounding future land uses as identified in the future development map.

(2) Whether the future development map amendment proposal can be adequately served by existing transportation facilities and other infrastructure, such as schools, water and sewer.

(3) Whether the future development map amendment proposal negatively impacts natural and historic resources identified by the city.

(4) Whether the future development map amendment proposal is in the best interest of the city and the public good and whether the proposal protects the health and welfare of its citizens.

(5) Whether the property to be affected by the future development map amendment proposal has a reasonable economic use as currently designated on the future development map.

(6) Whether the future development map proposal meets the policies and intent established in the comprehensive plan.

(d) *Re-submittal of land use amendment application.* An application for an amendment affecting the same property shall not be submitted more often than once every six (6) months; however, this provision shall not apply to those properties affected by an amendment filed by the mayor and city council or by the city clerk.

**Sec. 322. - Penalties for violation.**

(a) Any person violating any provision of this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars (\$1000.00) or imprisoned for not more than one hundred eighty (180) days or both for each offense. Each day such violation continues shall constitute a separate offense.

(b) The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

(c) Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

**Sec. 323. - Remedies.**

If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure or land is used in violation of this ordinance, the mayor or council of Clarkston, the building inspector, or any adjacent or other property owner who would be damaged by such violation, in addition to other remedies, may institute injunction, mandamus or other appropriate action in proceeding to stop the violation in the case of such building, structure or land use.