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**ZONING 101:**  
A Primer on Zoning Law  
for Nonprofit Leaders

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# Mission of Pro Bono Partnership of Atlanta

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To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

# Client Criteria

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In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.

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# Legal Information

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This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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**I.**

**DETERMINING THE**  
**ZONING CLASSIFICATION OF PROPERTY**  
**&**  
**THE ALLOWED USES FOR THAT PROPERTY**

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## **Home Rule Power**

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The GA Constitution confers the right by a county or city to regulate land within its borders, including the uses and development allowed on such land, by enacting zoning and land use laws and regulations.

### **The GA Constitution states:**

***Planning and zoning.*** *The governing authority of each county and of each municipality may adopt plans and may exercise the power of zoning. This authorization shall not prohibit the General Assembly from enacting general laws establishing procedures for the exercise of such power.*

### **The GA General Assembly has passed limitations, such as:**

#### **The Georgia Zoning Procedures Law (“ZPL”)**

O.C.G.A. § 36-66-1 *et seq.* – sets out procedures for enacting zoning laws

This is just one of several other state statutes which provide additional restrictions on the zoning authority of local governments

## 2. SO, WHAT DOES THE TERM “ZONING” MEAN?

- **Defined in State Law**, O.C.G.A § 36-66-3(3), as follows:
- **"Zoning" means** *the power of local governments to provide within their respective territorial boundaries for:*
  - *the zoning or districting of property for various uses,*
  - *the prohibition of other or different uses within such zones or districts, and*
  - *the regulation of development and the improvement of real estate within such zones or districts in accordance with the uses of property for which such zones or districts were established.*



- **In Laymen's Terms, "Zoning"** is the process by which a local government divides land into districts for different uses using its legislative power.
- The local **government passes laws** to:
  - Establish the various zoning districts
  - Regulate the Uses for each district
  - Regulate the structures to be built on the land
- These laws are typically enacted with an eye toward **"protecting the health, safety and welfare of the general public"**
- Local Governments are tasked with trying to **place compatible uses near each other and separating incompatible uses** from each other.
  - For instance, governments try to keep industrial uses from abutting residential uses.

- In trying **to accomplish compatibility of uses**, Cities and Counties use zoning laws to establish how the City or County will grow.
- Once it **divides the City or County into districts**, the next step is to **enact laws** which regulate:
  - The **uses** for each district (e.g., commercial, residential, agricultural),
  - What types of **buildings** and other **structures** can be constructed within each district (e.g., size, number of stories, configuration)
  - **Where** those structures can be located (e.g., setbacks, green space), and
  - What **measures** the landowner must take **to further compatibility** with neighboring uses (e.g., buffers, flood control, set-backs, etc.).
- Zoning laws usually allow for **some flexibility** to conform to inevitable changes, or special circumstances.

- The laws that are enacted are set forth in what is typically known as the local government's “Zoning Ordinance.”
- State law gives each local government a tremendous amount of power to establish its own zoning laws.

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## **B. ALIGNING LAND USE WITH THE COMPREHENSIVE PLAN**

**Georgia State Law Requires That Each City Or County Adopt A  
Comprehensive Plan For Future Land Use**

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## **C. HOW DOES ALL OF THIS IMPACT YOUR ORGANIZATION?**

1. The **Organization must determine what zoning district** a subject property is in before signing a purchase or lease agreement or accepting donations, such as a trailer.
2. **Steps For Researching Zoning District For Property:**
  - a. Using the address, determine whether the property is in the limits of a City or in an unincorporated part of a County – GIS Map or Contact the city or county
  - b. Determine the zoning classification for the property - GIS
  - c. Examine the uses for that zoning classification – is the use proposed allowed by right, by special permit or is it prohibited? - Uses are in the Zoning Ordinance
  - d. If the use is not allowed by right, what does the future “Comprehensive Land Use Plan” say about the land?  
Local Jurisdictions want zoning amendments or exceptions to align with the future development plans

## **II.**

# **UNDERSTANDING AND NAVIGATING THE PROCEDURES FOR REZONING PROPERTY**

## **A. NAVIGATING THE REZONING PROCESS**

### **What is Rezoning?**

- Rezoning is the reclassification of property or an entire area of properties to a different zoning district or the reassignment of property to different zoning restrictions.
- Rezoning authority is vested in the local government and is the result of the need for the government to be flexible and to respond to significant changes in the community.
- Case law has made it clear that factors, such as:
  - Community Growth
  - The Economy
  - New Development and
  - Improved Technologymay require that land be rezoned to meet the needs of the community

## **B. PROCEDURES FOR REZONING PROPERTY**

1. **Pre-Application Meeting** with Concept Review Committee (Atlanta) or Planning Staff (Other Jurisdictions)
2. **Petition / Application** for Rezoning
3. **Notice** of Public Hearing
4. **Public Hearing** is Held
5. Governmental Body makes **a Decision**
6. Possible **Appeal** (if applicable)



## **Rezoning Application Continued:**

### **1. Pre-application Meeting With Planning Staff Or Concept Review Committee (CRC):**

- In most jurisdictions, **rezoning applicants** must **meet with planning staff before** filing the application
- In the **City of Atlanta**, rezoning applicants **must have a meeting with the CRC** before filing a rezoning application
- **CRC is comprised of City Staff** from the following departments:  
Buildings, Zoning,  
Arborist, Planning,  
Watershed Management (Site Development),  
and Public Works (Streets)
- CRC application must be filed through the City's **Accela Citizen Access Website** at:

**[https://acaproduct.accela.com/ATLANTA\\_GA/Default.aspx](https://acaproduct.accela.com/ATLANTA_GA/Default.aspx)**

## **Rezoning Application Continued**

### **The CRC Applicant must also submit the following items:**

a. **Existing Conditions:**

Scaled Site Survey noting existing topographic and tree conditions.

b. **Conceptual plans:**

A proposed concept showing proposed building footprint, roadway/site access, grading, stormwater management plan, landscaping, etc.

- CRC meets the 2<sup>nd</sup> and 4<sup>th</sup> Fridays of each month from 9 AM to 12 PM – currently being done virtually
- Applicant is given approx. 10 – 15 minutes to present

## Rezoning Application Continued:

### 2. Petition / Application For Rezoning:

- Each local government has its own application forms for requesting a rezoning
- The City of Atlanta Rezoning Application is a good example.

It requires an Applicant to submit:

- a. A Summary of the Rezoning Project
- b. A Documented Impact Analysis on the following factors:
  - i. **Compatibility** with comprehensive development plans; timing of development;
  - ii. **Availability of and effect on public facilities and services/referrals** to other agencies;

## **Rezoning Application Continued:**

- iii. ***Availability of other land*** suitable for proposed use: effect on balance of land uses;
  - iv. ***Effect on character*** of neighborhood;
  - v. ***Suitability*** of proposed use;
  - vi. ***Effect on adjacent property***;
  - vii. ***Economic use*** of the current zoning classification;  
and
  - viii. ***Tree preservation***
- c. **Site Plan** of property

## **Rezoning Application Continued:**

d. **Property Description:**

- Must submit a copy of a recent plat or survey and
- Must submit a legal description
- If more than one contiguous property is involved, then a consolidated legal description must be filed

e. **Housing Application:**

- If the rezoning involves the construction of one or more **residential units**, including multi-family, an Atlanta Public School Form must be filed

f. **Developments Of Regional Impact (DRI):**

- If the rezoning application meets certain density and size thresholds set forth in state law, then the applicant must contact the City of Atlanta Office of Zoning & Development

## **Rezoning Application Continued:**

g. **Tree Preservation:**

The rezoning application must comply with the City's Tree Ordinance and must be approved by the Arborist

h. **Comprehensive Development Plan (CDP) Amendment:**

If required, certain additional information is required

i. **Disclosure:**

If the owner of the property to be rezoned, the applicant, and/or applicant's representative (including a realtor or an attorney) has made a financial contribution to any member of the City Council for \$250 or more within the past two years, the contribution must be disclosed:

Who got the contribution, When & Amount of \$\$

## **Rezoning Application Continued:**

**j. Authorization To Inspect Premises:**

- Allows inspection of property by zoning staff

**k. Fees For Application:**

- Rezoning application fees are based on the zoning district in the application and upon the size of the property to be rezoned
- See the Fee Schedule in application package

**l. Hearing Date Before The City's Zoning Review Board Is Scheduled By Planning Dept.**

- Date of hearing is based on date of filing application
- See ZRB Calendar in application package

## **Rezoning Application Continued:**

### **m. Meeting With The Neighborhood Planning Unit (NPU):**

- The City of Atlanta is divided into **25** **Neighborhood Planning Units** or **NPU**s
- **NPU**s are **citizen advisory councils** that make recommendations to the Mayor and City Council on zoning, land use, alcohol licenses, & other planning issues.
- Each NPU is comprised of one or more **neighborhood associations** which are organizations that work to beautify and maintain neighborhoods
- Once the application is filed, the **Applicant** for **Rezoning** **MUST appear before the NPU** to present the application & receive NPU's recommendation



## **Rezoning Application Continued:**

- The *NPU usually requires* that the applicant meet with the requisite *Neighborhood Association* (or maybe 2 if the property is within close proximity to the second one) to get a recommendation prior to the NPU meeting
- *NPU decision* is a *recommendation* only but must be given before the ZRB hearing on the rezoning application

### **n. Planner's Recommendation:**

- May be published a week ahead of the ZRB hearing but sometimes it is not published more than a few days in advance
- Must be within 60 days of the date the application was scheduled for the ZRB hearing

## **Rezoning Application Continued:**

### **3. Notice Requirements To Public:**

#### **- Three Requirements for Notice:**

##### **a. Newspaper Publication:**

- At least 15 days before ZRB hearing
- Newspaper of general circulation

##### **b. Posting Sign on Property:**

- At least 15 days before the hearing
- The City prepares a sign to be posted on the property abutting a street
- If the property does not abut a street, then the sign posting is waived

##### **c. Mailing to Neighbors:**

- The City requires that letters be sent out at least 14 days in advance to property owners within 300 feet of the property to be rezoned

## Rezoning Application Continued:

### 4. Public Hearing At ZRB:

- Applicant presents the rezoning application to the ZRB in a public hearing
- The ZRB hears the recommendation of both the NPU and the Planning Department
- The ZRB hears legal argument as to why the application should or should not be approved
- The ZRB will take comments from the public, either in support of or in opposition to the rezoning request
- The Applicant must make “constitutional objections” at this hearing in order to preserve them for appeal

## Rezoning Application Continued:

### 5. Government Body Decision:

#### a. ZRB Recommendation:

- The ZRB Decision is usually issued after the hearing and must be in writing
- ZRB Decision is a favorable or unfavorable recommendation to City Council or recommends a substitute with conditions

#### b. City Council Decision:

- Reviews the rezoning application, the Planning Report & Recommendation, the NPU recommendation, the record of the hearing before the ZRB & the recommendation of the ZRB
- Council votes to pass or reject the rezoning request, or to suspend action where prior changes in comprehensive development plans are required and council finds reasonable justification for change.

## Rezoning Application Continued:

### c. Limitation On Frequency Of Application (Atlanta)

- **Generally:** once an application has been filed for a lot or parcel or any part of it, no other application for any change affecting the same property or any part thereof shall be filed within **24 months** – this applies even if the application is **withdrawn before** a public hearing.
- **Exception:** City Council can pass legislation waiving the 24-month waiting period
- The limitation does not prohibit the planning bureau or the council from proposing amendment at any time on their own initiative.
- **Caveat:** Regardless of any waiver, no application for rezoning shall be filed by or accepted from anyone within 12 months of ***final action*** on substantially the same rezoning application by the council,
  - This 12-month limitation may not be waived

## Rezoning Application Continued:

### 6. Appealing A Rezoning Decision:

- Most jurisdictions allow for an appeal of a decision on a rezoning application in their Zoning Code
  - Any aggrieved party can appeal
  - But, he or she **must have standing** to appeal – must demonstrate that the decision will cause some injury that is unique to the person appealing
    - Can be the Applicant, the Government, or a member of the opposition
  - Usually, appeal must be filed **within thirty (30) days** from the date of the decision being appealed
  - Appeal filed in Superior Court of the County in which the Property is located
  - Should be handled by a zoning attorney

## **IV. OBTAINING VARIANCES AND PERMITS FOR SPECIFIC USES**

### **A. VARIANCES:**

#### **1. WHAT IS A VARIANCE?**

- A variance is the **grant of authority to use property** or to construct on it **in a manner that is prohibited** under the City or County Zoning Ordinance
- A variance **runs with the land**, so once it is granted, it can be used by subsequent property owners
- The grant of a variance is **not legislative**
- It is usually heard by a “**quasi-judicial**” or **administrative body**
  - **Examples:** Atlanta Board of Zoning Adjustment (**BZA**) or the Sandy Springs Board of Appeals (**BOA**)

## 2. KINDS OF VARIANCES:

### a. Area / Dimensional Variance:

- Permits land to be used in a way that does not comply with the existing dimensional or physical requirements of the zoning ordinance
- Typically allows the reduction of some dimension in a very small increment
- Examples:
  - Reduction of yard setbacks
  - Reduction of Buffer Size
  - Reduction of Height requirements for a fence or building

### b. Use Variance:

- Permits land to be used in a way that is not allowed or is prohibited by the zoning ordinance
- Not liked by Planners and Courts
- City of Atlanta prohibits obtaining a use variance where the use is prohibited unless it is otherwise expressly allowed



### 3. CRITERIA FOR GRANTING A VARIANCE

- a. There are **extraordinary and exceptional conditions** pertaining to the particular piece of property in question because of its size, shape or topography;
- b. The **application of the Zoning Ordinance** of the City or County to this particular piece of property **would create** an **unnecessary hardship**;
- c. Such **conditions are unique** to the particular piece of property involved;
- d. The **conditions** of the property are **not the result of any action taken by the property owner** or variance applicant
- d. **Relief**, if granted, **would not cause substantial detriment to the public good** or impair the purposes and intent of the Zoning Ordinance of the City or County

## 4. APPLICATION PROCESS FOR A VARIANCE

### a. APPLICATION:

- The application **must be complete** at filing
- In Atlanta, the Applicant must get a “**Referral Certificate**” from the Zoning Department before filing the application
- Must submit a **Written Legal Description or a Plat of Survey**
- Must submit a **Site Plan** showing existing and proposed conditions including streets, footprints of buildings, parking, curb cuts, driveways, streams, buffers, floodplains
- **Elevations** may be required under certain circumstances
- Must contain a **Written Justification / Legal Analysis** addressing criteria forming the basis of the BZA decision

## **Variance Application Continued:**

### **b. FEES FOR VARIANCE APPLICATION:**

- are set out in a schedule and are based on the zoning district within which the property is located

### **c. SCHEDULE FOR BZA HEARING:**

- the BZA meets 2 times a month and is scheduled so that the applicant can attend its requisite NPU meeting

### **d. MEETING WITH NPU:**

- applicant must notify the NPU of its application within 5 days of filing it to schedule a meeting with the NPU

### **e. PUBLIC NOTICE:**

Each of the following must be done at least 15 days before the BZA Hearing:

- Written Notice to all property owners within 300 feet of the subject property
- Notice in Newspaper of general circulation
- Posting of a Sign on Property

## **Variance Application Continued:**

### **f. STAFF RECOMMENDATION REGARDING VARIANCE:**

- In Atlanta, the Planner's Report is not usually available until the day before the BZA hearing
- Other jurisdictions may make the report available the week before the hearing

### **g. AMENDMENTS TO APPLICATION:**

- Any amendment that substantially changes the request must be submitted at least 18 days prior to the hearing

### **h. DEFERRALS:**

- Can be made in writing prior to the hearing or in person at hearing
- Assessed a fee

### **i. CONSENT AGENDA:**

- The BZA may use a consent agenda to approve non-controversial or routine matters by a single vote
- But, an application can be pulled off the Consent Agenda for discussion and approval/non-approval

## **5. APPEALS FROM DECISIONS OF THE BOARD OF ZONING ADJUSTMENT (BZA):**

- Any person aggrieved by a decision of the board, or any officer, department, board or office affected by such decision, may appeal the decision **within 30 days**
- In the **City of Atlanta**, Appeals must be **filed in the Superior Court** by petition for certiorari.
  - Each City or County has different procedures as to where to appeal an adverse decision
- Aside from the Applicant, "**any person aggrieved**" shall mean one who demonstrates that his property **will suffer special damage** as a result of the decision complained of rather than merely some damage which is common to all property owners similarly situated" – this is what gives the person "**standing**" to file the appeal in court

## **B. SPECIAL PERMITS:**

- Cities and Counties **vary with the terms** used for these types of permits but they all do essentially the same thing
- These are **permits granted** by a City or County to a landowner **through an administrative process** which **allows** the property or building **to be used in a manner** that is **not allowed by right** under the zoning ordinance
- In the seminal case *City of Atlanta v. Wansley Moving Co.*, 245 Ga. 794, 267 S.E. 2d 234 (1980), the GA Supreme Court held:
- These permits “involve a special use authorized by the existing zoning ordinance..., but the ordinance provides that such uses shall be allowed only upon the condition that it be approved by the appropriate governmental body.”
- This is a **zoning vehicle** which provides a mechanism **for** local **governments to be flexible** in deciding compatibility of future land uses with existing permitted land uses

## **Special Permits Continued:**

- **City of Atlanta Zoning Ordinance Sets Out 3 Classes Of Special Permits:**

1. Special Use Permits
2. Special Administrative Permits
3. Special Exceptions

- Some Cities and Counties issue **Conditional Use Permits (CUP)** and some issue **Special Land Use Permits (SLUP)**

1. **Special Use Permits (City of Atlanta):**

- Require public hearing before ZRB
- ZRB provides recommendation to City Council
- City Council grants, denies or approves SUP with conditions
- SUPS **are** intended to be used in connection with uses of substantial significance or of unusual operational characteristics.

## **Special Permits Continued:**

### 2. **Special Administrative Permits (SAP) (City of Atlanta):**

- Processed and approved by the **Bureau of Planning**
- **Do not** require public **notice or a hearing**
- SAPs are intended to be used where complex or unusual technical determinations are involved and/or in conjunction with temporary uses and structures
- Are often required in some zoning districts to perform **building renovations** in Atlanta



## **Special Permits Continued:**

### 3. **Special Exceptions (City of Atlanta):**

- Use the same application and process as Variances
- Decided by the BZA after public notice and hearing
- Are intended to be used in conjunction with cases where consideration of effects on the surrounding property is of principal importance
- BZA is authorized to waive or reduce parking and loading requirements in any of the zoning districts when the character or use of the building does not require the full regulations of parking or loading facilities  
*or*  
Where the full regulations would impose an unreasonable hardship on the use of the lot

## Special Permits Continued:

### 4. Administrative Variations (City of Atlanta):

- Is not a permit
- Authorizes an applicant for an SAP to deviate from regulations upon a written finding that:
  - The plan satisfies the public purposes and intent of the regulations and
  - It provides public protection to an equivalent or greater degree than strict enforcement of such regulations would provide; or
  - Strict application of a particular regulation or regulations to the subject property is not necessary for the accomplishment of public purposes or the provision of public protection, at that time or in the future.

b.

c.

## **EXAMPLES OF APPLICATIONS IN THE CITY OF ATLANTA:**

### **Atlanta - Board of Zoning Adjustments (BZA):**

- Variance and Special Exception Consolidated Application
- Appeal Application

### **Atlanta - Zoning Review Board (ZRB):**

- Rezoning Application Packet (**updated 8/2020**)
- Special Use Permit (SUP) Application Packet
- Special Transfer Application Packet
- Nomination Form for the Creation of a New Neighborhood Commercial (NC) District
- Nomination Form for the Expansion of an Existing Neighborhood Commercial (NC) District
- Concept Review Committee Fact Sheet

### **Atlanta - Special Administrative Permit (SAP):**

Application for SPI, Beltline, LW, MR, MRC, and NC Districts (**updated 2/2021**)

Application for Cell Tower Colocation (TCO)

Application for Cell Towers

Application for Outdoor Events & Sales

Application for Farmer's Market

Application for Urban Gardens (Residentially zoned vacant lots ONLY)

## 5. SPECIAL PERMITS IN OTHER JURISDICTIONS

### a. **FORSYTH COUNTY:**

#### 1. **Conditional Use Permit:**

Similar to a Special Use Permit – Permit with Conditions

- #### 2. **Sketch Plats:** Provide the director and the board of commissioners an opportunity, prior to construction or build-out of a proposed development, to review a detailed site plan of the proposed subdivision or land development to ensure development compliance with the Zoning Ordinance and all other county ordinances and regulations.
- Gives the public the opportunity to participate in decisions regarding developments for which a sketch plat is required
  - All major subdivisions and any other land development requiring a permit for land disturbance that involves either a tract of land two acres or more, or an area of disturbance two acres or more, shall require the submission of a sketch plat to the director.

**b. DEKALB COUNTY AND CITY OF TUCKER :**

- Require **Special Land Use Permits (SLUP)** for certain uses, including:
  - Beer and wine retail package sales
  - Gas Stations / Fuel Pumps
- Dekalb **provides certain exemptions**, which if met, waive the requirement of needing a SLUP for beer and wine retail sales and gas/fuel pump sales

**c. CITY OF SANDY SPRINGS:**

- Requires **Conditional Use Permits (CUP)** for certain uses

**d. COBB COUNTY:**

- Requires **Special Exceptions** for certain uses
- Certain uses are permitted as special exception uses in all districts, provided the conditions listed are met.
- The division manager of zoning or his or her designee shall issue a **certificate of special exception** to an applicant when the conditions relating to the special exception have been met.
- The **list of uses** is in Sec. 134-271 of the Cobb County Zoning Ordinance

# SUMMARY

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- **Thoroughly understand the property** before committing to a lease or sales agreement, using a property in a certain way or accepting a donation of an object to be used on the Property:
  - Determine **which jurisdiction** controls the property;
  - Review the **zoning classification** and laws for that jurisdiction to determine how the property can be used;
  - **Do the laws allow for the use** contemplated?
- If the zoning laws do not allow for the use, **can the property be rezoned easily?**
- **Will the issuance of an SUP, SAP, Special Exception or Variance be necessary** to operate on the property?
- **Assess Factors:** possible community opposition, surrounding uses, political climate, traffic patterns, buffers and design standards, public safety, property value of surrounding properties, and other factors to determine whether to proceed with zoning relief.
- **Is Appeal Necessary:** assess pros and cons of appeal

Questions?

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