

Article 10

Variations, Appeals, Amendments and Fees

10.01 Variations:

- A. Purpose: The Hearing Officer shall have the authority to determine and vary the bulk regulations of the zoning districts set forth in this Ordinance, and other regulations of a dimensional or spatial nature, in harmony with the general purpose and intent of said districts. The Hearing Officer shall make a finding of fact based upon the standards hereinafter prescribed. No variation shall authorize a change or waiver of a definition, regulation or requirement of this Ordinance that is not of a dimensional or spatial nature.
- B. Application for Variations: An application for a variation shall be filed with the Zoning Administrator on a prescribed form. A hearing shall be held on the application, no more than ninety (90) days after the filing of such application. Notice of such hearing shall be published at least once, not more than thirty (30) days or less than fifteen (15) days before the hearing, in a newspaper of general circulation in the County. The County may also provide notice of such hearing by erection of a sign on the subject property, posted in a conspicuous place on the subject property allowing unobstructed public viewing.
- C. Standards of Variations: The Hearing Officer shall not vary the bulk regulations of this Ordinance, as authorized herein, unless he shall make findings based upon the evidence presented to him in each specific case that all of the following are true:
 - 1. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in the district in which it is located.
 - 2. The plight of the owner is due to unique circumstances.
 - 3. The variation, if granted, will not alter the essential character of the locality.
 - 4. For the purpose of implementing the above rules, the Hearing Officer shall also, in making his determination whether there are practical difficulties or particular hardships, find that the following facts have been established by the evidence:
 - a. The particular physical surroundings, shape, or topographical condition of the specific property involved would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.
 - b. The conditions upon which the petition for a variation is based would not be applicable, generally, to other property within the same zoning classification.
 - c. The purpose of the variation is not based exclusively upon a desire to make more money out of the property.
 - d. The alleged difficulty or hardship has not been created by the owner of the property.
 - e. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
 - f. The proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood or adversely affect the health, morals, or general welfare of the public.
- D. The Hearing Officer shall not grant a variation from minimum required lot size.
- E. The Hearing Officer may impose such conditions and restrictions upon the premises benefited by a variation as may be necessary to comply with the standards set forth in this section to reduce or minimize the injurious effect of such variation upon other property in the neighborhood, and to better carry out the general intent of this Ordinance.

10.02 Use Variations:

- A. The authority to approve or deny a request for a use variance shall be solely that of the County Board.
- B. Use Variations are only authorized to permit the construction of one single family detached dwelling on any lot less than forty (40) acres in size, which was legally recorded and existing prior to October 20, 1976 and the legal description of which has not been altered since that date by the addition or subtraction of land, had agricultural district zoning prior to September 18, 1991, and where no dwelling unit existed thereon on said date.
- C. The Hearing Officer shall hold a public hearing to hear an application for a use variation, as permitted above, and within a reasonable time after the close of such public hearing, the Hearing Officer shall make a written finding of fact and recommendation and shall submit the same to the Planning and Regulation Committee of the DeKalb County Board. In addition to considering the standards set forth in Section 10.01.C above in making such written findings of fact and recommendation, the Hearing Officer shall consider the following findings of fact:
 - 1. The petitioner must have purchased the property prior to December 31, 1993, or acquired the property prior to October 20, 1976;
 - 2. The petitioner must demonstrate that the property was buildable under the applicable zoning regulations at the time it was purchased.
The Hearing Officer shall also consider such factors as:
 - 3. If the property was purchased after October 20, 1976, did the petitioner pay a premium price for the property because it was buildable (for example, substantially more than agricultural land was selling for at that time)? and
 - 4. Whether the property is viable for agriculture or any other reasonable use.
- D. After considering the application and findings and recommendation of the Hearing Officer, the Planning and Zoning Committee shall forward the same to the County Board, who thereafter shall grant or deny any proposed variation, or refer it back to the Hearing Officer for further consideration. A use variation request receiving an unfavorable recommendation from the Hearing Officer shall not be passed except by the favorable vote of three-fourths (3/4) of all the members of the County Board.

10.03 Appeals:

- A. Scope of Appeals: An appeal to the Hearing Officer may be made by any person, firm, or corporation, or by any office, department, board, or bureau aggrieved by a decision of the Zoning Administrator under this Ordinance in accordance with Illinois Statutes and the following:
- B. Application: An application for an appeal shall be filed with the County Clerk within twenty (20) days of the date of the action from which the appeal is being filed, and thereafter the County Clerk shall forward such application to the Hearing Officer for processing. The County Clerk shall forward to the Zoning Administrator a notice of appeal specifying the grounds thereof, and he shall forthwith transmit to the Hearing Officer, all the papers constituting the record upon which the action appealed from was taken.
- C. Effect: The appeal stays all the proceedings in furtherance of the action appealed from, unless the officer from whom the appeal was taken certifies to the Hearing Officer after the notice of appeal has been filed with him, that by reason of fact stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Hearing Officer or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- D. Decision: The Hearing Officer shall fix a reasonable time for the hearing of appeal and give due notice thereof to the parties and decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or attorney. The Hearing Officer may affirm or may reverse wholly or partly, or may modify the order, requirement, decision, or determination as in his opinion ought to be done or made on the premises, and to that end shall have all the powers of the office from whom the appeal was taken.

10.04 Amendments:

- A. Authority: The regulations imposed and the districts created under the authority of this Ordinance may be amended, from time to time, by ordinance in accordance with applicable Illinois Statutes. An amendment shall be granted or denied by the County Board only after a public hearing before the Hearing Officer, and a report of his findings and recommendations has thereafter been submitted to the County Board.
- B. Initiation of Amendments: Zoning District Map and Zoning Ordinance Text amendments may be proposed by the County Board, the Hearing Officer, and by any person, firm, or corporation having a possessory interest entitled to exclusive possession, a contractual interest, an option to purchase, or any exclusive possessory interest which is specifically enforceable on the land which is described in the application for an amendment. Zoning District Map Amendments shall be restricted to requests to change the zoning of any lot(s) from the current district in which said lot(s) is located to another zoning district established by this Ordinance.
- C. Application for Amendment: An application for map or text amendments shall be filed with the Zoning Administrator and shall be accompanied by the following information:
 - 1. Present zoning and use.
 - 2. Requested zoning and intended use.
 - 3. Legal and common description of subject property.
 - 4. Map showing location of subject property.
 - 5. A concept plan, as defined in the DeKalb County Subdivision Regulations, may be required at the discretion of the Zoning Administrator.
 - 6. An application must also be made to the DeKalb County Soil and Water Conservation District for a natural resources report and a land evaluation and site assessment review for any land to be rezoned from an agricultural use to a nonagricultural use. These applications shall be filed no less than thirty (30) days prior to the date of the zoning hearing. All data generated by the natural resources report and the land evaluation and site assessment review will become part of the public record, and selected portions will be forwarded to the Hearing Officer and the County Board as a part of the Planning Department's land use review.
 - 7. Applications for a change of zoning to a planned development shall comply with the provisions of Chapter 4, Section G.
- D. Hearing on Application: The Hearing Officer shall hold a public hearing on each application for an amendment and on each proceeding initiated by the Hearing Officer of his motion. The hearing shall be conducted in such a manner as the Hearing Officer shall, by rule, prescribe from time to time.
- E. Notice of Public Hearing: Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the County not less than fifteen (15) days before such hearing. A copy of such notice shall be mailed to the clerk of each municipality, the corporate limits of which lie within one and one-half (1-1/2) miles of the land proposed to be reclassified. Supplemental or additional notices may be published or distributed as the Hearing Officer may, by rule, prescribe from time to time. Additionally, a copy of such notice shall be mailed to owner(s) of record of all properties adjacent to the parcel(s) included in the application. The County may also cause notice of such hearing by erection of a sign on the subject property. The sign required hereby shall be posted in a conspicuous place allowing unobstructed public viewing.
- F. Findings of Fact and Recommendation of the Hearing Officer: Within a reasonable time after the close of the hearing on a proposed amendment, the Hearing Officer shall make written findings of fact and shall submit same together with his recommendation to the County Board. Where the purpose and effect of the proposed amendment is to change the zoning classification of a particular property, the Hearing Officer shall make findings based upon the evidence presented to him in each specific case with respect to the following matters:
 - 1. The planned land use for the subject property as shown on the DeKalb County Comprehensive Land Use Plan Map.
 - 2. Existing uses of property within the general area of the property in question.
 - 3. The zoning classification of property within the general area of the property in question.
 - 4. The suitability of the property in question for the uses permitted under the existing zoning classification.

5. The trend of development, if any, in the general area of the property in question, including changes, if any, which may have taken place since the day the property in question was placed in its present zoning classification.
6. The extent to which property values would be diminished by the proposed amendment.
7. The length of time the property has been vacant as zoned, considered in the context of land development in the vicinity of the subject property.
8. The effect of the proposed change upon the public health, safety, and welfare.

The Hearing Officer shall not recommend the adoption of a proposed amendment unless he finds that the adoption of such an amendment is not detrimental to the public interest and is not solely for the interest of the applicant. The Hearing Officer may recommend the adoption of an amendment changing the zoning classification of the property in question to any lesser intense classification than that requested by the applicant. For the purpose of this paragraph, the A-1 District shall be considered the least intense classification.

G. Decisions:

1. The County Board, upon request of the Hearing Officer and without further public hearing, may grant or deny any proposed amendment, or may refer it back to the Hearing Officer for further consideration.
2. Except as provided in subsection (3), text amendments may be passed at a County Board meeting by a simple majority of the elected County Board members, unless written protests against the proposed text amendment are signed by 50% of the land owners of the county, in which case such amendment shall not be passed except by the favorable vote of 3/4 of all members of the County Board. Except as provided in subsection (3), map amendments may be passed at a County Board meeting by a simple majority of the elected County Board members, except that in case of written protest against any proposed map amendment that is either: (A) signed by the owner or owners of at least 20% of the land to be rezoned, or (B) signed by the owner or owners of land immediately touching, or immediately across a street, alley, or public right-of-way from, at least 20% of the perimeter of the land to be rezoned, or (C) in cases where the land affected lies within 1-1/2 miles of the limits of a zoned municipality, or in the case of a proposed text amendment to the Zoning Ordinance, by resolution of the corporate authorities of the zoned municipality with limits nearest adjacent, filed with the County Clerk, such amendment shall not be passed except by the favorable vote of 3/4 of all members of the County Board. In such cases, a copy of the written protest shall be served by the protestor or protestors on the applicant for the proposed amendment and a copy upon the applicant's attorney, if any, by certified mail at the address of such applicant and attorney shown in the application for the proposed amendment.
3. In any township having a township plan commission and such plan commission objects to a text amendment or a map amendment affecting an unincorporated area of the township, then the township board of trustees may submit its written objections to the County Board within 30 days after the hearing before the Hearing Officer, in which case the County Board may not adopt the text amendment or the map amendment affecting an unincorporated area of the township except by the favorable vote of at least 3/4 of all the members of the County Board.

10.05 Reapplication: At least six (6) months shall elapse between the date of an adverse decision and the reapplication or re-petition for a variation, amendment, or special use on the same zoning lot by the same applicant for the same or similar zoning classification.

10.06 Fees: In the administration of this Ordinance, the Zoning Administrator and the County Engineer shall collect fees as established in DeKalb County Ordinance 2003-14, adopted May 21, 2003, and any subsequent amendments thereto.

During the review process of any application for a Variation, Special Use Permit, Planned Development, Zoning Text Amendment, Zoning Map Amendment or Appeal, and during the implementation of any condition of approval associated with any of the above, the Zoning Administrator may engage professional assistance other than County staff. The applicant shall be notified in writing that such professional assistance will be engaged. Prior to such use of professional assistance, the applicant may meet with the Zoning Administrator in

order to discuss the activity. The applicant shall reimburse the County for the full costs associated with such professional assistance within 30 business days of the costs being forwarded to the applicant by the County. Failure to reimburse the County for the costs of professional assistance may result in a suspension of activity associated with the applicant's project and the County Board shall have the right to revoke approval of the project after affording the applicant the right to be heard by a Committee of the Board.