

## GENERAL OVERVIEW (Q&A) OF ZONING LAW IN GEORGIA

**Q: What are the primary authorities that guide zoning decisions by the Forsyth County Board of Commissioners?**

A: The general and special considerations in *Chapter 8 (8-5.5(F)(2)(a) and (b))* of the Unified Development Code.

**Q: What criteria does the Unified Development Code require the Board of Commissioners consider when reviewing a zoning?**

A: The criteria are set forth at Chapter 8 (8-5.5(F)(2)(a) and (b)). Chapter 8 of the Unified Development Code may be accessed using this internet link:

[http://www.forsythco.com/CPFiles/UDC/udc\\_010\\_ch8.pdf](http://www.forsythco.com/CPFiles/UDC/udc_010_ch8.pdf)

**Q: What does the general law of the State of Georgia say regarding what a court will consider when reviewing the underlying zoning on a piece of property?**

A: First, it should be noted that the focus of a reviewing court in a zoning lawsuit is not the zoning designation that was denied; rather, it is the underlying zoning that remains on the land. This state uses a balancing test to determine whether the police power has been properly exercised. This test weighs the benefit to the public against the detriment to the individual. The factors to be considered are set forth in Guhl v. Holcomb Bridge Road Corp., 238 Ga. 322, 232 S.E.2d 830 (1977). A zoning ordinance is presumptively valid, and this presumption can be rebutted only by clear and convincing evidence. Guhl v. Holcomb Bridge Road Corp., supra. The burden is on the plaintiff to come forward with clear and convincing evidence that the [present] zoning presents a significant detriment to the landowner and is insubstantially related to the public health, safety, morality, and welfare. Only after this initial burden is met must the governing authority come forward with justification for the zoning as reasonably related to the public interest. Brown v. Dougherty County, 250 Ga. 658, 300 S.E.2d 509 (1983); Flournoy v. City of Brunswick, 248 Ga. 573, 285 S.E.2d 16 (1981); DeKalb County v. Flynn, 243 Ga. 679, 256 S.E.2d 362 (1979).

If the plaintiff does not meet the initial burden of showing both significant detriment and insubstantial relationship to the public health, safety, morality and welfare, there is no need for the governing authority to present any evidence justifying the zoning. Flournoy v. City of Brunswick, supra. Further, the question as to “reasonableness” of a zoning classification concerns constitutional reasonableness rather than economic reasonableness, “... whether the plaintiff has carried the burden of showing that the zoning under attack is so detrimental to him, and so insubstantially related to the public health, safety, morality and welfare as to amount to a unconstitutional ‘taking,’ that is, an arbitrary confiscation of his property without compensation by the governing authority.” Guhl v. M.E.M. Corp., 242 Ga. 354, 249 S.E.2d 42 (1978).

**Q: Is conditional zoning lawful in Georgia?**

A: Conditional zoning is permissible in Georgia, and “such conditions will be upheld when they were imposed pursuant to the police power for the protection or benefit of neighbors to ameliorate the effects of the zoning change.” *Cross v. Hall County*, 238 Ga. 709, 713, 235 S.E.2d 379 (1977). Generally, zoning laws enjoy a presumption of validity on review. *Flournoy v. City of Brunswick*, 248 Ga. 573, 285 S.E.2d 16 (1981). See *Cross v. Hall Co.*, supra. “[T]he local governing body is the more appropriate

one to shape and control the local environment according to the best interests of the locality and its citizens.”*Westbrook v. Board of Adjustment*, 245 Ga. 15, 17, 262 S.E.2d 785 (1980).

**Q: Can a disappointed zoning applicant sue the County if a requested zoning is denied?**

A: Yes. The lawsuit must be filed within 30 days of the adverse zoning decision. The various burdens at trial will be as set forth above in the answer to the 'third' question above.

**Q: Can a third party (not the zoning applicant) challenge a zoning awarded to a zoning applicant?**

A: Yes. However, it is difficult to prevail. A third party can challenge a zoning decision. However, to have ‘standing’ to bring such a challenge, normally the challenger must own property adjacent to the property that was zoned. Moreover, the burden is quite severe, with the plaintiff normally having to prove that a zoning was based upon fraud, corruption, or a manifest abuse of discretion. Moreover, the challenger must meet that standard by clear and convincing evidence.

**Q: Can the Board of Commissioners simply deny all zoning requests that come before it?**

A: The answer is “yes,” the Board can deny all zoning requests if it should choose to do so. That would not, however, be an exercise in good stewardship by the Board. Indeed, following such denial(s), the Board can and should anticipate a legal challenge predicated upon the notion that the underlying/existing zoning of the property is unconstitutional. The argument that will inevitably be raised by the disappointed zoning applicant is that the burden imposed by the County in requiring the property to remain at the existing zoning designation represents a significant detriment to the owner while being “*insubstantially related to the public health, safety, morality and welfare.*” The outcome of a zoning challenge is almost never a foregone conclusion. A zoning lawsuit is normally tried before a judge; and judges have wide discretion in their decision making. Moreover, it is a lengthy (and oftentimes) expensive undertaking. The County does (generally) have the advantage in a zoning lawsuit (note the presumptions in favor of the zoning in the Q&A above), but the County has lost zoning litigation in the past (i.e., Lanier Golf Course). The threat or specter of litigation should not dictate land use decisions. However, the Board of Commissioners is and should be cognizant that simply denying a zoning rarely ends the process. There will almost invariably be a challenge to the zoning decision therefore obligating the County to spend both time and money to vindicate its decision in a courtroom.

**Q: If the County loses the lawsuit, does the court rezone the property?**

A: No. “[T]he local governing body is the more appropriate one to shape and control the local environment according to the best interests of the locality and its citizens.”*Westbrook v. Board of Adjustment*, 245 Ga. 15, 17, 262 S.E.2d 785 (1980). If the Court determines that the underlying zoning is unconstitutional, the court will remand the matter back to the Board of Commissioners with direction that that the Board rezone the property to a constitutional zoning designation.