

# City of Dunwoody Planning Commission Briefing

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# US Constitution

- Some common “Constitutional” freedoms:
  - Freedom of speech.
  - Right to petition government.
  - Unfettered use of property.
  - Freedom to travel.

# The Police Power

- Government has the power to restrict “constitutional” freedoms through regulation.

The **Police Power** of government ...

- Allows **restrictions** on “constitutional” freedoms, by...
- Regulating the **time, place or manner** of the imposition of the restriction...
- For a **substantial governmental interest**.

# The Police Power

A regulation will be found constitutional if ...

- The governmental interest is substantial.
  - E.g., clearly protects public health, safety or general welfare.
- The regulation directly advances that governmental interest.
  - As in *Nollan v California Coastal Comm* case – rational nexus.
- The regulation is **NOT** more extensive than is necessary to serve that interest.
  - As in *Dolan v Tigard* case – rough proportionality.

Thus, zoning regulation must **balance** the unfettered use of property with the extent to which the public interest is adequately served.

# GA Constitutional Authority

- The Georgia Constitution ...
  - Provides that cities and counties “may adopt plans and may exercise the power of zoning” ...
  - **Except**, the State Legislature is authorized to adopt “general laws establishing **procedures** for the exercise of such power”.

# GA Zoning Procedures Act

- Defines a “Zoning Decision”, which includes:
  - Adoption of a Zoning Ordinance & Map,
  - Rezoning a property,
  - Approving a special use.
- Requires Procedures to be adopted by the locality for the calling and holding of a public hearing.
- Requires the locality to adopt “standards **governing** the exercise of the zoning power”.

# GA Zoning Procedures Act

- Specifically, the law provides that “the standards may include any factors which the local government finds relevant in balancing the interest in promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of property”.

# Dunwoody's Rezoning Standards

- Conformity to the Comprehensive Plan.
- Suitability of the proposed use.
- Reasonable economic use as zoned.
- Adverse impacts on other properties.
- Other changing conditions that support approval or denial.
- Adverse impacts on historic or archeological assets.
- Burden on streets and other public facilities.

# Special Use Approval Standards

- Consistency with Comprehensive Plan.
- Meets Zoning Ordinance requirements.
- Adequacy of site to accommodate the use.
- Compatibility of the use with adjacent properties.
- Adequacy of public facilities and services to serve the use.
- Impact on traffic safety.
- Adequacy of refuse and service areas.
- Shadow impact on adjoining properties.

# The Courts

- When a zoning decision is appealed, the Court looks at ...
  - Were all procedures followed?
  - Was the action “arbitrary and capricious”?
  - Is the **current** zoning constitutional?

# DO's and DON'T's



Thanks in part to Frank Jenkins, Attorney

# DO's and DON'T's

- Do express a continuously open mind about the zoning issue before and during the public hearing.
- Don't promise a vote.
- Do make your statements to the chair-- avoid arguing with your colleagues or anyone in the audience.

# DO's and DON'T's

- Don't interject personalities into your statements.
- Do elicit agreements from the property owner for proposed conditions of approval.
- Do make your vote based on the record of the public hearing.

# DO's and DON'T's

- Do state any conflicts of interest at the beginning of the hearing and either sit quietly by or excuse yourself from the hearing room.
- Don't base a decision on factors not connected with the adopted review standards.

# DO's and DON'T's

- Don't tell the property owner and the neighborhood to go "work it out".
- Don't talk about campaign contributions or political issues during the hearing.
- Don't encourage people in the audience to attack or question one another.

# DO's and DON'T's

- Do state a reason when making a motion for approval or denial, whether directly or by reference to facts presented by staff, the applicant or through public comments on the record.
- Do move for a deferral if you are aware of pertinent facts not presented in the public hearing.

# DO's and DON'T's

- Don't cut off speakers because their time is up, but be sure both sides have the same amount of time to speak.
- Do weigh the facts that have been presented, the extent to which negative impacts can be alleviated by conditions of approval, and seek a **balance** between the property owners desires and adequate protection of the public interest.

# Q & A

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