

ADOPTED BY THE BOARD OF COMMISSIONERS ON SEPTEMBER 1, 2004
(EFFECTIVE FOR PETITIONS FILED AFTER NOVEMBER 1, 2004)

ARTICLE XXVIII

REZONING AND OTHER AMENDMENT PROCEDURES

28.1. **GENERAL AMENDMENTS.** Whenever the public necessity, convenience, general welfare or good zoning practice justify such action, and after consideration by the Community Zoning Board, the Board of Commissioners may, by resolution, change the regulations set forth in this Zoning Resolution (text amendment) or amend the Zoning Maps.

In amending the Zoning Maps, the Board of Commissioners may approve a use permit and/or zoning district applied for by the applicant or a more restrictive zoning district based on the ranking of Fulton County zoning district intensities. The Board of Commissioners may consider a variance filed concurrently with a request for a rezoning and/or use permit.

In approving any zoning district change and/or use permit, the Board of Commissioners shall impose conditions of approval as deemed necessary and appropriate to mitigate potentially adverse influences or otherwise promote the public health, safety or general welfare.

Rezoning and/or use permit requests are referred to in this text as land use petitions. All land use petitions approved by the Board of Commissioners are subject to conditions approved by the Board of Commissioners.

28.2. **LAND USE PETITIONS.** Land use petitions may be initiated by the property owner or the Board of Commissioners on forms available from the Department.

No final action shall be taken on a land use petition affecting the same parcel more often than once every 12 months when the petition is initiated by the property owner.

At any time, the Board of Commissioners may initiate a land use petition on property which was previously rezoned. However, a six-month waiting period from the date of final Board action is required when a rezoning and/or use permit request was previously denied.

If a petition was previously denied, the owner must demonstrate that the proposed land use petition is significantly different from the previous denial to the satisfaction of the Board of Commissioners before it can be considered for a

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reinitiation. A significant difference includes, but is not limited to a change in zoning district, use, density, height, buffers or other methods of screening, or other items which were discussed at a public hearing.

Appeals to Superior Court.

Any appeal of, or other legal challenge to, a Board of Commissioners’ final decision regarding a use permit petition shall be pursued by petition for writ of certiorari filed with the Superior Court of Fulton County within 30 days of the date of the Board of Commissioners’ decision. The applicant’s petition and all other initial filings with the Superior Court shall be served upon the named defendants/respondents in accordance with O.C.G.A. § 9-11-4.

Upon filing such appeal, the Clerk of Superior Court shall give immediate notice thereof to the Director, and within 30 days from the date of such notice, the Director shall cause to be filed with the Clerk of Superior Court a certified copy of the proceedings before the Board and the decision of the Board.

- 28.2.1. **FILING DEADLINES.** A complete land use petition shall be submitted in accordance with the advertised filing deadlines. The Director may extend the filing deadline by two days with a letter of explanation from the applicant justifying the delay of submittal. An incomplete petition will not be accepted.
- 28.2.2. **WITHDRAWAL PRIOR TO ADVERTISING.** If a land use petition has not been advertised for public hearing, a written request for withdrawal with the reason for the request shall be made to and accepted by the Director. No refunds of petition fees will be made.
- 28.2.3. **WITHDRAWAL AFTER ADVERTISING.** After a land use petition has been advertised for public hearing, it may only be withdrawn by the Board of Commissioners at the public hearing. A withdrawal shall not be deemed final action and shall not bar submission of a new petition. A written request for withdrawal with the reason for the request shall be made to the Director.
- 28.2.4. **PETITION REQUIREMENTS.** All petitions shall include the following with the required number of copies of each as prescribed by the Director:
 - (1) Pre-application Review Form
 - (2) Signed and notarized petition with original signatures;
 - (3) Legal Description;
 - (4) Letter of Intent;
 - (5) Site plan which meets the requirements specified in Article 28.5.2;

- (6) Site plan checklist which indicates compliance with site plan requirements specified in Article 28.5.2;
- (7) Environmental Site Analysis;
- (8) 8 ½” x 11” transparency of site plan;
- (9) Impact Analysis for rezoning petitions;
- (10) Disclosure Form;
- (11) Public Participation Plan;
- (12) Public Participation Report (due no later than 7 business days before the Board of Commissioners meeting)
- (13) Traffic Study, if applicable;
- (14) Metropolitan River Protection Act Pre-Review Letter, if applicable;
- (15) MARTA Corridor Plan Review Form, if applicable;
- (16) Development of Regional Impact Review Form, if applicable;
- (17) Environmental Impact Report, if applicable;
- (18) Noise Study Report, if applicable;
- (19) Other documents as identified in the pre-application review; and
- (20) Non-refundable filing fee
- (21) Copy of deed(s) (Added 04/05/06)

28.3.

PUBLIC HEARING AND NOTICE REQUIREMENTS.

Before adopting any change to the Zoning Maps or text of the Zoning Resolution, the Board of Commissioners shall hold a public hearing following the public hearing by the Community Zoning Board where a recommendation was made on the petition.

Notice of the Community Zoning Board and Board of Commissioners hearings shall be given simultaneously at least 15 days but not more than 45 days prior to the date of the Board of Commissioners’ public hearing and shall be published in a newspaper of general circulation. Renotification is not required when a petition is deferred by the Board of Commissioners.

The applicant or agent shall post a sign as issued by E&CD in a conspicuous location on each public street frontage of the subject property not later than 8:30 a.m. on the 20th day prior to the Community Zoning Board Hearing.

The sign shall be mounted and posted as specified by E&CD. Property that is not posted on the 20th day before the scheduled first hearing date will be administratively removed from the agenda.

When the Community Zoning Board or the Board of Commissioners defers a petition, the applicant is required to post an updated sign with new hearing dates 20 days prior to the next scheduled hearing date. When a petition is deferred by the Board of Commissioners for less than 20 days, posting an updated sign is not

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required.

The Department shall give notice by regular mail to all property owners within 300 feet of the boundaries of the subject property who appear on the tax records of Fulton County as retrieved by the County's Geographic Information System. The notices shall be mailed a minimum of 15 days prior to the hearing date. Renotification by mail is not required when a petition is deferred by the Board of Commissioners.

The published and mailed notices shall contain the time, place, and purpose of the hearing, the location of the property, and the present and proposed zoning classifications and/or requested use permit. The posted sign shall include all of the items required in the published notice except the location of the property. Notice shall not be considered inadequate if the mail is not delivered.

28.3.1. **SECRETARY.** The Director or his/her appointee shall serve as Secretary to the Community Zoning Board. The Secretary shall keep minutes of proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; and shall keep records of evidence, examinations and official actions, all of which shall be filed and shall be a public record.

28.4. **TECHNICAL EVALUATIONS AND REPORTS.** Proposed land use petitions shall be considered by the Board of Commissioners only after the evaluations and reports required below have been completed and the Community Zoning Board has made a recommendation. Such reports shall be public record.

28.4.1. **ZONING IMPACT ANALYSIS BY THE COMMUNITY ZONING BOARD AND THE DEPARTMENT.** For each rezoning petition, the Community Zoning Board and the Department shall investigate and make a recommendation with respect to the factors listed below. The Department shall make a written record of its investigation and recommendation on each rezoning petition, as well as any other factors it may find relevant, and carry out any other duties with which it is charged by the Board of Commissioners.

The Community Zoning Board shall make a recommendation which the Department shall transmit in writing to the Board of Commissioners.

The zoning impact analysis factors are as follows:

- A. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property;
- B. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;

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- C. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
- D. Whether the zoning proposal will result in a use which will or could cause an excessive burdensome use of existing streets, transportation facilities, utilities, or schools;
- E. Whether the zoning proposal is in conformity with the policies and intent of the land use plan;
- F. 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; and
- G. Whether the zoning proposal will permit a use which can be considered environmentally adverse to the natural resources, environment and citizens of Fulton County.

28.4.2. **ZONING IMPACT ANALYSIS BY APPLICANT.** If a rezoning is initiated by the property owner, a written documented analysis of the impact of the proposed zoning with respect to each of the matters enumerated in 28.4.1 is required at the time of filing the land use petition.

28.4.3. **ENVIRONMENTAL REPORTS.** If a rezoning and/or use permit is initiated by the property owner, an Environmental Site Analysis and/or an Environmental Impact Report shall be filed with the land use petition per the following:

28.4.3.1. **ENVIRONMENTAL SITE ANALYSIS (ESA).** All rezoning and/or use permit petitions shall include an Environmental Site Analysis to identify environmental conditions on the site to determine if the proposed use may be considered environmentally adverse.

The Environmental Site Analysis shall detail the following:

- 1. How the project conforms to the Comprehensive Land Use Plan;
- 2. The presence or absence of the following and does the project encroach or adversely affect any of the following:
 - a. Wetlands;
 - b. Floodplains;
 - c. Streams/stream buffers;

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- d. Slopes exceeding 25 percent over a 10 ft. rise in elevation;
 - e. Vegetation (including endangered species; areas of confirmed Georgia Department of Natural Resources listed endangered species shall comply with the Federal Endangered Species Act) (Amended 04/05/06);
 - f. Wildlife species (including fish and endangered species; areas of confirmed Georgia Department of Natural Resources listed endangered species shall comply with the Federal Endangered Species Act) (Amended 04/05/06);
 - g. Archeological/historical sites;
3. How the project implements the following:
- a. Protection of environmentally sensitive areas (floodplains, slopes exceeding 25 percent, river corridors);
 - b. Protection of water quality;
 - c. Minimization of negative impacts on existing infrastructure;
 - d. Minimization of negative impacts on archeological/historically significant areas;
 - e. Minimization of negative impacts on environmentally stressed communities;
 - f. Creation and preservation of green space and open space;
 - g. Protection of citizens from the negative impacts of noise and lighting;
 - h. Protection of parks and recreational green space;
 - i. Minimization of impacts to wildlife habitats;

28.4.3.2. **ENVIRONMENTAL IMPACT REPORT (EIR)**. Any petition for an industrial rezoning and/or use permit shall include an Environmental Impact Report to determine if the proposed use is environmentally adverse.

The Environmental Impact Report shall detail the following:

- 1. Conformance to the Comprehensive Plan including each of the policies regarding environmental justice;
- 2. Impacts on noise levels of the surrounding area;

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3. Impacts on air quality of the surrounding area;
 4. Impacts on water quality/resources including surface water, ground water, flood plains, and wetlands;
 5. Impacts on vegetation, fish, and wildlife species and habitats;
 6. Impacts of thermal and explosive hazards on the surrounding area;
 7. Impacts of hazardous wastes on the surrounding area;
- The report shall cite all uses and quantities of any agents listed on the Federal Environmental Protection Agency Lists of Hazardous Wastes.

The Environmental Impact Report shall detail strategies to mitigate or avoid impacts listed above as applicable.

28.4.3.3. **REVIEW CRITERIA FOR ESA AND/OR EIR.** Environmental Site Analysis and/or Environmental Impact Reports shall be reviewed based upon the following:

1. Whether the petition is consistent with the policies of the Comprehensive Land Use Plan;
2. The detail provided for ESAs and EIRs as outlined in Sections 28.4.3.1. and 28.4.3.2. above.

The Department shall review the ESAs and EIRs submitted with petitions for rezoning and/or use permits and make recommendations to the Board of Commissioners with respect to the proposed use. The anticipated impact of the proposed use on an environmentally stressed community will be included in the Department's recommendation.

As determined by the Director or his/her designee, Environmental Impact Reports may also be required with applications for land disturbance permits, building permits, temporary or permanent certificates of occupancy, or any other permits issued by the Department of Environment and Community Development.

28.4.4. **TRAFFIC IMPACT STUDY.** A Traffic Impact Study is required when a land use petition equals or exceeds the thresholds indicated in the Department's Rezoning, Use Permit & Concurrent Variance Application Package. The study shall be prepared by a certified traffic engineer or transportation planner in accordance with professional practices and must be submitted at the time of the filing of the land use petition.

28.4.5. **DEVELOPMENT OF REGIONAL IMPACT STUDY (DRI).** A Development of Regional Impact Study is required when a land use petition meets or exceeds the thresholds indicated in the Department's Rezoning, Use Permit & Concurrent Variance Application Package. Form 1: Initial DRI Information must

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be submitted at the time of the filing of the land use petition.

28.4.6. **NOISE STUDY REPORT.** (Amended 04/05/06)

A noise study shall be performed, by a state registered professional engineer or noise professional, if a proposed site is located within 1,000 feet of an expressway, within 3,000 feet of an active rail line, or within 5 miles of the Hartsfield-Jackson International Airport boundary. An expressway is defined as a highway facility usually having two or more lanes for the exclusive use of traffic in each direction and partial control of access (i.e. I-85, I-285 and GA-400).

1. The noise study shall include an analysis of the proposed use with respect to existing ambient noise, that is, business and industry noise, aircraft noise, roadway noise, and construction noise.
2. If the noise study results in a day-night average sound level greater than 65 dBA, the applicant shall provide a sound attenuation plan specifying the type of noise buffering measures/materials to be employed during construction that will reduce the interior residential noise levels to 50 dBA or less.
3. The sound level readings shall be measured at a distance from the site to the noise source. The measurement should be from the source to the nearest points on the site where structures having noise sensitive uses are located. These points shall be labeled as the NAL (noise assessment locations). The measurement location for structures is a point 6.5 feet from the facade. In the event that the location of the structures has not yet been specified at the time of the noise study, then the distance used in the noise study should be measured as 6.5 feet less than the distance from the structure setback line to the major source(s) of noise. (Reference: Title 24, Housing & Urban Development, Part 51 – Environmental Criteria and Standards, Subpart B – Noise Abatement and Control, Section 51.103) Criteria and Standards (c) Exterior standards.

28.4.7. **PUBLIC PARTICIPATION PLAN AND REPORT.**

The Public Participation Plan is to ensure that applicants pursue early and effective public participation in conjunction with their petitions, ensure that the citizens of Fulton County have an adequate opportunity to learn about petitions that may affect them, and to ensure ongoing communication between applicants, adjoining property owners, environmentally stressed communities, community associations and other organizations, elected officials and County staff. A target area for public participation should be determined by the applicant and current planner at the time of the pre-application review. Applicants are required to

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submit a Public Participation Plan for meeting with interested citizens to advise of pending rezoning/use permit applications and to allow citizens the opportunity to discuss concerns and provide input about project design or development. An applicant's responsibilities are to inform the public, solicit input, and provide a summary of these activities in the form of a written report (Public Participation Report).

The requirement for a Public Participation Plan does not give communities decision making powers or force a consensus on issues. Applicants are not obligated to make any concessions or changes based upon input from citizens. A refusal by the community to meet with applicants does not mean that the applicants fail to meet the requirements of the Public Participation Plan.

Dialogue should occur between applicants and communities before the Community Zoning Board hearing, the first public hearing. Public Participation Plans are required with all rezoning and/or use permit applications and must be filed simultaneously with the application. Participation Plan Reports are required to be submitted no less than seven (7) business days before the scheduled Board of Commissioners' hearing. If the report is not submitted as required, the Board of Commissioners may defer an application.

The minimum requirements for Public Participation Plans and Public Participation Reports are as follows:

- A. Public Participation Plan. Every application for a rezoning or use permit which requires a public hearing shall include a Public Participation Plan which must be implemented prior to the first public hearing.

Minimum Standards:

1. Identification of all property owners within a quarter mile of the site and area homeowners' associations, environmentally stressed communities, political jurisdictions, and any other public agencies or organizations which may be affected by an application as determined by the applicant and the current planner at the time of the pre-application review.
2. Explanation of how interested parties will be informed of rezoning/use permit applications.

3. Methods for providing opportunities for discussion with interested parties before public hearings are held. Applicants are required to schedule at least one meeting at a convenient location and time and notify all interested parties, as identified in 1. above, of the purpose, place and time of the meeting.
4. Applicant's schedule for completion of the Public Participation Plan.

B. Public Participation Report. Every rezoning and use permit applicant is required to provide a Public Participation Report on the Department's form no later than seven (7) business days before the scheduled Board of Commissioners' hearing. This report shall be made a part of the official file and a summary will be provided to the Board of Commissioners.

Minimum Standards:

1. Provide a list of all parties that were contacted, the methods of notification that were used, and copies of all notification letters.
2. Provide dates and locations of all community and/or other meetings that were attended by the applicant to discuss an application. (attach meeting notices, letters, etc.)
3. Provide the number of people who participated in meetings held to discuss an application. (attach sign-in sheets)
4. A summary of concerns and issues expressed by interested parties.
5. A summary of the applicant's response to concerns and issues.

28.5. **CONDITIONAL DEVELOPMENT.**

28.5.1. **DESIGNATION.** Each zoning district shall have a designation thereunder to be known as Conditional for that district.

28.5.2. **PLANS.** Site plans for rezonings and use permits must be folded, drawn to scale, no larger than 30" x 42", and shall, at a minimum, include the following information:

- (1) Key and/or legend and site location map with North arrow;
- (2) Boundary survey of subject property which includes dimensions along property lines that match the metes and bounds of the property's written

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- legal description and clearly indicates the point of beginning;
- (3) Acreage of subject property;
 - (4) Location of land lot lines and identification of land lots;
 - (5) Existing, proposed new dedicated and future reserved rights-of-way of all streets, roads, and railroads adjacent to and on the subject property;
 - (6) Proposed streets on the subject site;
 - (7) Posted speed limits on all adjoining roads;
 - (8) Current zoning of the subject site and adjoining properties;
 - (9) Existing buildings with square footages and heights (stories), wells, driveways, fences, cell towers, and any other structures or improvements on the subject property;
 - (10) Existing buildings with square footages and heights (stories), wells, driveways, fences, cell towers, and any other structures or improvements on adjacent properties within 400 feet of the subject site based on the County's aerial photography or an acceptable substitute as approved by the Director;
 - (11) Location of proposed buildings (except single family residential lots) with total square footage;
 - (12) Layout and minimum lot size of proposed single family residential lots;
 - (13) Topography (surveyed or County) on subject site and adjacent property within 200 feet as required to assess runoff effects;
 - (14) Location of overhead and underground electrical and pipeline transmission/conveyance lines;
 - (15) Required and/or proposed setbacks;
 - (16) 100 year flood plain horizontal limits and flood zone designations as shown on survey or FEMA FIRM maps;
 - (17) Required landscape strips, undisturbed buffers, and any other natural areas as required or proposed;

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- (18) Required and proposed parking spaces; Loading and unloading facilities;
- (19) Lakes, streams, and waters on the state and associated buffers;
- (20) Proposed stormwater management facilities;
- (21) Community wastewater facilities including preliminary areas reserved for septic drain fields and points of access;
- (22) Availability of water system and sanitary sewer system;
- (23) Tree lines, woodlands and open fields on subject site;
- (24) Entrance site distance profile assuming the driver's eye at a height of 3.5 feet (See Fulton County Subdivision Regulations);
- (25) Wetlands shown on the County's GIS maps or survey; and
- (26) Airport noise contours on those properties within the FAR Part 150 Airport Noise Contour Map.

A request for relief from any of the above site plan requirements may be submitted in writing to the Director for approval prior to the filing deadline. The request should clearly state the reasons for the request. Projects subject to Development of Regional Impact reviews and other large projects that will be phased shall be required to revise the site plan for each phase of the development to comply with the above standards through a Zoning Modification.

- 28.6. **ZONING MAPS.** The official Zoning Map will be amended to reflect the land use petition approvals. Rezoning and use permits that have not vested pursuant to Section 28.11. will be removed from the Zoning Map and the zoning/land use designation shall revert as indicated in Article 28.10.
- 28.7. **APPLICABLE REGULATIONS.** Zoning regulations that applied at the time of acceptance of an application for a Land Disturbance Permit shall prevail.
- 28.8. **PETITION FEES.** Prior to accepting a petition for rezoning, use permit, concurrent variance, or extension of zoning and/or use permit, the Director shall collect nonrefundable fees as established by the Board of Commissioners.
- 28.9. **PROCEDURES FOR MODIFICATION OF ZONING CONDITIONS.** See Article XXII.

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28.10.

EXPIRATION AND EXTENSIONS OF ZONINGS AND/OR USE

PERMITS. Land use petitions approved after March 16, 1986 shall expire unless the property owner takes action to vest the zoning and/or use permit in accordance with Article 28.11. within a period of 36 months from the date of approval by the Board of Commissioners, or fails to secure an approved extension.

- A. Each zoning and/or use permit approval is allowed one (1) 24-month extension subject to the qualifying conditions in Section 28.11.2.
- B. Land use petitions initiated by the Board of Commissioners to implement the Fulton County Comprehensive Plan Land Use Map are exempt from the provisions of Section 28.11.2.

28.11.

VESTING OF ZONING AND/OR USE PERMIT. Upon occurrence of one of the four conditions listed immediately below, a zoning and/or use permit shall be vested and such vesting shall be spread upon the minutes of the Board of Commissioners' meeting.

- A. Prior to the expiration of a Land Disturbance Permit, a vesting determination may be made by the Department that substantial progress (28.11.1) has been made toward the completion of on-site construction depicted on the site plan approved with the rezoning and/or use permit.
- B. Prior to the expiration of a building permit, a vesting determination is made by the Department that substantial progress (28.11.1.) has been made toward the completion of a building depicted on the site plan approved with the rezoning and/or use permit.
- C. The issuance of a certificate of occupancy and/or permit for a use and/or structure specified in the approved conditions shall vest the zoning.
- D. The issuance of a business license for the approved use shall vest the zoning, but only when no new construction or land disturbance is approved and/or required as a condition of zoning.

28.11.1.

SUBSTANTIAL PROGRESS. To demonstrate substantial progress for purposes of vesting a conditional zoning and/or use permit, one of the following must be fulfilled:

- A. The Department may approve a construction schedule which includes at least 50 percent of the public improvements specified for one phase. Substantial progress shall have been demonstrated when, within one year of the date of the issuance of the land disturbance permit, the Department

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observes normal progress toward the approved construction schedule.

- B. The Department shall approve a construction schedule which includes at least the pouring of footings for a principal building. Substantial progress shall have been demonstrated when, within 6 months of the date of the issuance of the building permit, the Department observes routine progress toward the approved construction schedule.

Refusal to certify that substantial progress has been achieved may be appealed in accordance with Article 22 of this Resolution.

- 28.11.2. **EXTENSIONS.** Extensions of zonings and/or use permits for any of the four qualifying conditions listed in this section shall be considered by the Board of Commissioners.

To qualify for an extension, the property owner must submit an application to the Department at least 30 days prior to the expiration of a 36-month period beginning with the date of approval of a zoning and/or use permit.

The Department shall prepare an analysis and recommendation as to whether the documentation in the application is sufficient based on one of the four criteria which may validate an extension request.

The Department shall submit its recommendation to the Board of Commissioners.

No more than one two-year extension, per zoning and/or use permit case, may be granted for any of the qualifying conditions listed below (except a court action delay).

An extension may not be sought for less than the total acreage of the underlying zoning and/or use permit.

In every application for an extension, the owner(s) shall provide an affidavit documenting at least one of the following:

- A. A delay resulting from court action involving the zoning and/or use permit or a previous extension on the property for which an extension is sought. Extensions approved in connection with court action shall remain valid for one year beyond the granting of an order or the expiration of an appeal period before any court with jurisdiction.
- B. Non-availability of utilities or facilities resulting from government inaction. In those instances where wastewater facilities are available for a fraction of the desired capacity, or when capacity was available at some

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time during the 3 year period, but not during the 60 days prior to expiration, the Board of Commissioners shall evaluate such case's qualifications for an extension on their individual merits considering any evidence that might indicate a diligent effort to proceed with development.

- C. A delay in development resulting from wetlands regulatory procedures requires the applicant to provide a copy of the application acknowledgment letter from the Savannah Regulatory Branch of the Corps of Engineers as documented evidence. Said application should have been filed at least 12 months before zoning and/or use permit expiration.
- D. An inability to obtain financing, despite documentation of the owner's efforts during the first year after zoning and/or use permit approval and continuing until one week prior to consideration of the extension request to the Board. Documentation shall consist of two official denials signed by officers of two different lending institutions who have final jurisdiction over such financing transactions.

28.11.3. **NOTICE OF EXPIRATION.** At least 90 days prior to the expiration of a zoning and/or use permit, the Director shall send by certified mail a notice of expiration to each owner of record as shown in the tax records.