

STATE OF GEORGIA
COUNTY OF FULTON

1st reading: February 8, 2010
2nd reading: March 8, 2010

**AN ORDINANCE TO AMEND THE PUBLIC NOTICE REQUIREMENTS IN
ARTICLE 31 and ARTICLE 12 OF THE ZONING ORDINANCE OF THE CITY OF
ROSWELL and ARTICLE 21 OF THE CITY CODE OF THE CITY OF ROSWELL**

WHEREAS, The Mayor and City Council are the governing authority of the City of Roswell, Georgia;

WHEREAS, the City of Roswell desires to protect the City by providing notice is sent to surrounding property owners; and

WHEREAS, the Mayor and City Council have determined that it is in the best interest of the public health, safety and welfare to preserve the integrity of the City of Roswell; and

WHEREAS, the Mayor and City Council have determined that revisions to the public notice requirements are needed; and

WHEREAS, the Mayor and City Council requested the City Codes and the Zoning Ordinances be amended to require additional public notice be given to property owners near certain applications; and

**NOW, THEREFORE, BE IT ORDAINED AND IT IS HEREBY
ORDAINED** by the Mayor and City Council of the City of Roswell, Georgia, pursuant to their authority as follows:

1.

Article 31, Amendments, Zoning Procedures and Permits, Chapter 31.1, Amendments and Zoning Procedures is hereby amended by adding a new section 31.1.21 (c), Notice to Surrounding Property Owners to read as follows:

Section 31.1.21 (c) *Notice to Surrounding Property Owners*. A public hearing notice shall be sent to all surrounding property owners within 300 feet of all property lines of the subject property, mailed no less than ten (10) days preceding the date of the meeting.

2.

Article 31, Amendments, Zoning Procedures and Permits, Chapter 31.2 Design Plans, Section 31.2.19, Appeal of Design Review Board Decision is hereby amended as follows:

Appeals of decisions of the design review board shall be taken to the city council in the following manner. Any person or persons, jointly or severally, aggrieved by any decision of the Roswell design review board may within thirty (30) calendar days of the decision take an appeal to the Roswell city council upon payment of the required fee. The city shall fix a reasonable time for the hearing of the appeal by the Roswell city council and give at least fifteen (15) calendar days public notice thereof and due notice to the parties in interest and surrounding property owners within 300 feet of all property lines of the subject property. The Roswell city council shall make a decision within thirty (30) calendar days from the date of the hearing unless such time is extended with the approval of the appealing party. Decisions shall be made based on

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the record presented to the design review board and the substantial evidence standard shall apply. All decisions of the city council regarding appeals of decisions of the design review board shall be final and shall in all instances be subject to judicial review in the manner prescribed by law.

In reviewing a decision of the design review board, the city council may remand the matter to the design review board for further action. When a decision is made by the city council on appeal to approve a design plan, said approval shall constitute final design plan approval for purposes of this chapter.

3.

Article 31, Amendments, Zoning Procedures and Permits, Chapter 31.3 Certificate of Appropriateness, Section 31.3.13, and Notice to Surrounding Property Owners is hereby amended as follows:

Prior to reviewing an application for a certificate of appropriateness, the zoning staff ~~historic preservation commission~~ shall take such action as may reasonably be required to inform the owners of any property likely to be affected materially by the application and shall give the applicant and such owners the opportunity to be heard. At minimum, this provision shall be construed to require written notice of the time and date of the meeting of the historic preservation commission at which the application will be considered to all surrounding property owners within 300 feet of all property ~~abutting~~ lines of the subject property, mailed no less than ten (10) days preceding the date of the commission's meeting.

4.

Article 31, Amendments, Zoning Procedures and Permits, Chapter 31.3, Certificate of Appropriateness, Section 31.3.14, and Public Hearing is hereby amended as follows:

In all applications involving the demolition of a structure that is subject to the requirements of this chapter, provisions shall be made for a public hearing before the historic preservation commission. In other cases, the commission shall hear from the public, as appropriate and as directed by the chairman, without the necessity of advertising a public hearing. In the event a public hearing is required pursuant to this section, notice of said public hearing shall be provided at minimum as follows:

At least ten (10) days' notice of the time and place of each public hearing involving the demolition of a structure shall be given by the zoning director as follows:

- (a) In writing to the applicant and ~~abutting~~ surrounding property owners within 300 feet of all property lines of the subject property.
- (b) By publication at least once in the form of an advertisement in a newspaper of general circulation within the city.
- (c) By sign posted on the property.

5.

Article 31, Amendments, Zoning Procedures and Permits, Chapter 31.3 Certificate of Appropriateness, Section 31.3.18, Appeals, is hereby amended as follows:

Appeals of decisions of the historic preservation commission shall be taken to the city council in the following manner. Any person or persons, jointly or severally, aggrieved

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by any decision of the historic preservation commission may within thirty (30) calendar days of the decision take an appeal to the Roswell city council upon payment of the required fee. The city shall fix a reasonable time for the hearing of the appeal by the Roswell city council and give at least fifteen (15) calendar days public notice thereof and due notice to the parties in interest and surrounding property owners within 300 feet of all property lines of the subject property. The Roswell city council shall make a decision within thirty (30) calendar days from the date of the hearing unless such time is extended with the approval of the appealing party. Decisions shall be made based on the record presented to the historic preservation commission and the substantial evidence standard shall apply. All decisions of the city council regarding appeals of decisions of the historic preservation commission shall be final and shall in all instances be subject to judicial review in the manner prescribed by law.

6.

Article 31, Amendments, Zoning Procedures and Permits, Chapter 31.4, Variances, is hereby amended by adding a new section 31.4.7 Notice to Surrounding Property Owners, with the renumbering of the existing Section 31.4.7 thru 31.4.12 to 31.4.8 to 31.4.13, to read as follows:

Section 31.4.7 Notice to Surrounding Property Owners.

A public hearing notice shall be sent to surrounding property owners within 300 feet of all property lines of the subject property, mailed no less than ten (10) days preceding the date of the meeting.

7.

Article 31, Amendments, Zoning Procedures and Permits, Chapter 31.6, Appeals of Administrative Decisions, Section 31.6.3, Procedures, is hereby amended as follows:

Any appeal received and all papers constituting the record relating to ~~upon which the action appealed from was taken~~ shall forthwith be transmitted by the zoning director to the board of zoning appeals. Such appeal shall be taken to the board of zoning appeals for hearing within thirty-five (35) days of receipt by the zoning staff board's secretary.

A reasonable time for the hearing of appeals shall be fixed, and there shall be at least fifteen (15) days public notice thereof and due notice to the parties in interest and surrounding property owners within 300 feet of all property lines of the subject property. Specifically, the appeal hearing shall follow advertised notice of public hearing procedures specified in section 31.1.21. At a hearing, any party may testify in person, or by agent or by attorney.

The board shall make findings and render a decision in writing within thirty-two (32) days after the initial hearing on the administrative appeal. The zoning staff board's secretary shall notify the applicant, in writing, of its decision within five (5) days after the board has rendered its decision.

8.

Article 12, Parkway Village, Section 12.2.6 Variances for Hardships, is hereby amended as follows:

The mayor and city council may waive one (1) or more of the specific requirements applicable to sites located in the overlay district in accordance with this section. The mayor and city council may approve any variance to the minimum extent necessary to allow the project to be constructed. Specifically, the hearing shall follow advertised

notice of public hearing procedures specified in section 31.1.21. The applicant for any such waiver shall have the burden of showing that the proposed project, with such waiver granted will be as good or better than a project developed in compliance with the overlay district regulations in terms of environmental compatibility and traffic considerations. In order to qualify for a variance under this chapter, the applicant must demonstrate an undue hardship imposed on a tract by the Parkway Village overlay district regulations or the cumulative effect of such regulations, due to the peculiar configuration, topography, size or location of the tract.

9.

Article 12, Parkway Village, Section 12.2.10, Non Single Family-Small Tract Requirement, is hereby amended as follows:

A non-single-family use on a small tract which is less than seven (7) acres in size or has less than four hundred (400) feet of road frontage may be developed in accord with applicable development standards of this chapter, and the following:

(a) A petition by the proposed owner must be filed with the zoning director and presented to the mayor and city council for consideration as a small tract use. Specifically, the hearing shall follow advertised notice of public hearing procedures specified in section 31.1.21. Petitioners shall present sufficient evidence to the mayor and city council to (i) verify that the property is configured in such a manner that it is not physically feasible to combine and develop the small tract of land with abutting property to create a larger tract of land, so that even if a parcel of land seven (7) acres in size with four hundred (400) feet of road frontage cannot be assembled, the resulting assemblage of the tract with abutting property will result in the largest tract which is feasible to combine, or (ii) present a site plan of the proposed improvements and a tree protection plan together with sufficient information that the development of the tract as proposed will result in a better land use than if the small tract were combined with abutting property;

Upon a finding by the mayor and city council that (i) the tract can not feasibly be combined with abutting property to create a larger tract of land, or (ii) development of the tract as proposed will result in a better land use than if the small tract were combined with abutting property, the petitioner shall receive approval to develop in accordance with this section subject to such reasonable conditions as may be imposed by council, and shall be entitled to develop as a small tract use;

10.

Article 21.2, Standards for Wireless Communication Facilities, Section 21.2.6 (b), Approval Process, of the Roswell City Code is hereby amended as follows:

(b) If the proposed tower or antenna is not included under the above described expedited approval uses, or the application does not on its face satisfy the development standards and other criteria specified herein, then a public hearing before the mayor and council shall be required for the approval of the construction of a wireless transmission facility in all zoning districts. Applicants shall apply for a public hearing through the community development department and pay the required five-hundred-dollar fee at such time. Applications, when complete, shall be placed on the next available agenda of the mayor and council at which zoning matters are considered. At least thirty (30) days prior to any scheduled hearing, the community development department shall cause a sign to be posted on the property and the publication of a public notice in a newspaper of general circulation and notice sent to surrounding

property owners within 300 feet of all property lines of the subject property. Said notice shall state the nature of the application, street location of the proposal and height of the proposed structure.

11.

All ordinances, parts of ordinances, or regulations in conflict herewith are repealed.

12.

Severability. Should any court of competent jurisdiction declare any section of this Ordinance invalid or unconstitutional, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof, which is not specifically declared to be invalid or unconstitutional.

13.

It is the intention of the Mayor and Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances, City of Roswell, Georgia and the sections of this Ordinance may be renumbered to accomplish such intention.

This Ordinance shall take effect and be in force from and after the date of its adoption, the public welfare demanding it.

The above Ordinance was read and approved by the Mayor and Council of the City of Roswell, Georgia on the ____ day of _____, 2010.

Jere Wood, Mayor

Attest:

Sue H. Creel, City Clerk
(Seal)

Councilmember Jerry Orlans

Councilmember Rebecca Wynn

Councilmember Betty Price

Councilmember Richard Dippolito

Councilmember Kent Igleheart

Councilmember Nancy Diamond

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