



Development Services Department

Escambia County, Florida

PLEASE TAKE TIME TO READ THE FOLLOWING INFORMATION:

Rezoning is typically an eight (8) week process from time of the application submittal deadline to the Board of County Commissioners' final decision.

HEARING PROCEDURES:

The hearings before the Planning Board are quasi-judicial. Quasi-judicial hearings are like evidentiary hearings in a court of law; however, they are slightly less formal. Nonetheless, all public testimony is taken under oath and everyone testifying before the Planning Board is subject to cross-examination. All documents and exhibits the Planning Board considers are entered into evidence and made part of the record of the hearing. Opinion testimony will be limited to experts, and closing arguments will be limited to the evidence in the record. Only those individuals who are present and give testimony on the record at the hearing before the Planning Board will be allowed to speak at the subsequent hearing before the Board of County Commissioners (BCC). No new evidence can be presented at the BCC meeting. After hearing testimony and arguments for and against the proposed rezoning, and before making a decision regarding a recommendation, the Planning Board considers relevant testimony, exhibits entered into evidence and applicable law.

The Planning Board will render a recommendation regarding each rezoning to the BCC, who will review the record and render a final decision. All decisions by the BCC are final and appealable. This means anyone who wishes to contest the BCC's decision must seek review in a court of competent jurisdiction. Any party who wishes to seek judicial review of the decision of the BCC must do so within 30 days of the date the BCC approves or rejects the recommended order of the Planning Board.

QUASI-JUDICIAL REZONING HEARING:

On October 7, 1993, the Florida Supreme Court, in the case of *Board of County Commissioners of Brevard County v. Snyder*, held that an individual rezoning was a *quasi-judicial* act rather than a *legislative* act of the County Commission. As a result of this decision, the way that the County holds public hearings on individual rezonings is in a setting that is like a trial in court. All public testimony will be taken under oath, everyone testifying before the Planning Board will be subject to cross-examination, all documents and exhibits that the Planning Board is to consider will be entered into evidence, the giving of opinion testimony will be limited to experts, and closing arguments to BCC will be limited to the evidence of record. After hearing the testimony for and against the rezoning, the Planning Board will submit a written recommendation to the BCC who will review testimony, documents, and exhibits, consider the closing arguments, and make its decision.



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Rezoning Criteria

The applicant for a proposed rezoning has the burden of proving by substantial, competent evidence that the proposed rezoning: is consistent with the Comprehensive Plan; furthers the goals, objectives and policies of the Comprehensive Plan and is not in conflict with any portion of the County's Land Development Code. The applicant has the burden of proving the proposed rezoning complies with the following six criteria set forth in Section 2.08.02.D.6 of the Land Development Code:

1. Consistency with the Comprehensive Plan. Whether the proposed amendment is consistent with the Comprehensive Plan;
2. Consistency with this Code. Whether the proposed amendment is in conflict with any portion of the Land Development Code, and is consistent with the stated purpose and intent of the Land Development Code;
3. Compatibility with surrounding uses. Whether and the extent to which the proposed amendment is compatible with existing and proposed used in the area of the subject property(s);
4. Changed conditions. Whether and the extent of which there are any changed conditions that impact the amendment or property(s);
5. Effect on natural environment. Whether and the extent to which the proposed amendment would result in significant adverse impacts on the natural environment;
6. Development patterns. Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

Once an application for a zoning change is submitted, staff conducts research and site visits, creates maps and submits Findings of Fact based on the above-mentioned six-point criteria to the applicant and Planning Board.

The Findings of Fact and all other evidence introduced by staff, the applicant, and the public are presented to the Planning Board at a quasi-judicial hearing. The Planning Board will make a recommendation to the BCC. The BCC reviews all testimony and evidence for each case and votes to adopt or deny the Planning Board's recommendation or remand the case back to the Planning Board for more information.

Withdrawal of Rezoning Requests

Applicant withdrawal of rezoning request - Applicant/agent submits a written/signed letter of withdrawal to the Development Services Bureau. If an applicant/agent withdraws a rezoning request, the applicant/agent may submit a new application for rezoning at any time. If 15- day notice has occurred, staff should be available for the applicable Planning Board hearing in order to inform citizens of cancellation. Signs should be posted & memos issued to citizens arriving. (Applicant may attend out of courtesy to neighbors for any questions/concerns they may have that staff could not answer).



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Amendments to Rezoning Requests

Deadline for Amendments to Rezoning Requests – An applicant/agent cannot amend his/her rezoning request to a more intense zoning district after an application has been submitted. To facilitate citizen participation in the rezoning process, an applicant/agent may amend his/her rezoning request to a less intense zoning district provided the notice provisions set forth in section 2.08.02.D can be complied with. After those dates the applicant/agent must reapply, unless the agent/applicant can show substantial evidence supporting such a request at the scheduled Planning Board meeting. Any reapplication will be subject to all standard rezoning fees.

Continuances

Applicant Requests for Continuance – An applicant/agent may request a continuance at any time. If an applicant/agent requests a continuance prior to evidence or testimony being distributed to the Planning Board, the case will be scheduled to be heard at the next meeting for which the application deadline has not passed.

One Continuance Limit & Associated fees – An applicant/agent may request one continuance. After that continuance, the applicant/agent must present his/her case at the scheduled Planning Board meeting provided the notice provisions set forth in section 2.08.02.D. have been complied with or withdraw his/her request for rezoning. Withdrawn cases will be considered withdrawn without prejudice and the applicant/agent may reapply the request for rezoning at any time. Any reapplication will be subject to all standard rezoning fees.

Deadline for Inactive Continued Cases – For cases currently continued with no scheduled hearing date, the Development Services Department will send letters to the applicant/agent stating that their case is currently considered inactive and if appropriate action is not taken on the part of the applicant/agent to schedule a hearing date within 180 days of the date the letter was mailed, then the Development Services Department will consider the case withdrawn. Withdrawn cases will be considered withdrawn without prejudice and the applicant/agent may reapply the request for rezoning at any time. Any reapplication will be subject to all standard rezoning fees.

Reapplication

Reapplication Due to Applicant/Agent-Initiated Amendment to Rezoning Request, Continuance or Withdrawal – If an applicant/agent withdraws a rezoning request, or must reapply due to continuance or a past-deadline change to a rezoning request, the applicant/agent may submit a new application for rezoning at any time.

Reapplication After BCC Denial of Rezoning Request – If a request for rezoning is denied by the Board of County Commissioners, no request for rezoning, *identical or otherwise*, for that property may be submitted for 180 days.

Resubmittal After Court Denial of Rezoning Request – If a request for rezoning is denied by the Board of County Commissioners and that denial is upheld by a court of competent jurisdiction, then *res judicata* shall apply to any subsequent rezoning request for the subject property. The application of *res judicata* means the applicant carries additional burdens,



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including the requirement to show a significant change in circumstances since the previous denial.

Conduct of Rezoning Hearings

Participation in Rezoning Hearings – Any person wishing to speak at a rezoning hearing must fill out a speaker request form at the Planning Board meeting.

Standing – Aside from the applicant and staff, parties with standing shall generally be owners of property within 500 feet of the subject property or any additional people that the Planning Board deems to have standing.

Order of Hearings - The order of appearance at the hearing shall be as follows:

- A. The Planning Board shall announce the case;
- B. The planning staff will conduct a presentation of maps and photos;
- C. The applicant shall present his/her case;
- D. The planning staff shall present its case;
- E. The Planning Board shall permit cross-examination by all parties with standing;
- F. Parties deemed to have standing shall present their case;
- G. The applicant shall have an opportunity for rebuttal.

Testimony - All testimony shall be taken under oath or affirmation. Opinion testimony will be limited to experts, and closing arguments will be limited to the evidence in the record.

Cross Examination – The Planning Board may interpose questions at any time during the examination or cross-examination of the witness. The applicant, the agent for the applicant and County staff may cross-examine any witness. All other witnesses may only ask cross-examination questions of witnesses who have testified for the applicant or staff in the rezoning proceeding.

Petitions and Notarized Letters - Petitions will not be accepted as evidence or made a part of the record of any rezoning case. Also, notarized letters presented at the hearing from people not present at the rezoning hearing will not be accepted as evidence or made a part of the record of any rezoning case.

Appeal - If a person decides to appeal any decision made by the Board of County Commissioners with respect to a rezoning case he/she will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. If any party wishes to seek judicial review of the decision of the Board of County Commissioners with regard to a rezoning request, they must do so within 30 days of the date the BCC approves or rejects the recommended order of the Planning Board.

Order of Rezoning Case Presentations – The order in which complete applications for rezoning are received is the order in which the cases will be presented at the Planning Board meeting, except that cases from a previous meeting that were continued at the request of the applicant/agent will be presented last.



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Interaction Between Staff, Public, Planning Boards and County Commission Members

Communication Between Staff and Public - Oral and written communications between staff and members of the public shall be permitted and encouraged.

Communication Between Staff and Planning Board/ Board of County Commissioner Members - Written and oral communications between Board of County Commission/Planning Board members and staff regarding pending rezoning cases shall be limited to discussions of the facts of an application or case. Discussions of the positions or arguments of the applicant or members of the opposition shall be prohibited. Any communication between the Board of County Commissioner /Planning Board members and staff should be directed to the Clerk to the Planning Board, and not to the Planning Board/Rezoning Coordinator or any other staff member who may give expert testimony at the hearing.

Communication Between Planning Board/ Board of County Commissioner Members and Public - It is the policy of the Escambia County Attorney's office to advise all Board of County Commissioner members and all Planning Board members to refrain from any communications with the public regarding any pending rezoning case.

Meetings between Staff and Planning Board - Workshop meetings at which staff and Planning Board discuss quasi-judicial applications or cases shall be prohibited.

Written Communications - All written communications received by the Planning Board members concerning an application or pending case shall be immediately turned over to staff and should not be read further once identified as pertaining to a pending case. Staff shall forward a written response to acknowledge receipt of the correspondence.

Staff Criteria Worksheet - The Findings of Fact on the case shall be sent to the Planning Board members and the applicant and be available to the general public at least ten days prior to the hearing on the case. In the event the staff report is not available, applicant, or staff, shall have the right to a continuance upon request.

Viewing of Subject Property - The Planning Board/ Board of County Commissioner members may drive by and physically inspect the property, but must state at the hearing that they have done so. Communications with the owners or surrounding property owners should be avoided.