

Tuesday, March 18, 2014

## Dunwoody Special Land Use Permits - Running with the Land for Home Occupations may not be what we intended?



On October 14, 2013 we approved the Zoning Code rewrite Amending and Readopting Chapter 27. In the old regs the Special Land Use Permits (SLUPs) were granted to the applicant and in [the new regs](#) the SLUPs [run with the land](#) except that [the documentation provided to Council in the Notes \(143 in particular as shown below\)](#) specifically identifies that a time limit can be expressly imposed as a condition of approval. (Bottom of pg 163 in link above)

I voted for the zoning rewrite code under the belief that time limits could be put into place if appropriate to do so. Now based on conversations with staff and legal, I am told that we are not allowed to use the time limits that I intended to use on a regular basis in order to protect the long term character of our communities.

New Zoning Code and Notes:

### 27-19.80 City Council Public Hearing and Decision

**27-19.80-A.** Upon receipt of recommendations from the planning commission, the mayor and city council must hold a public hearing on the special land use permit application. Following the close of the public hearing, the mayor and city council must act by simple majority vote to approve the special land use permit, [approve the special land use permit with conditions](#) or deny the special land use permit based on the applicable review and approval criteria of Sec. [27-19.90](#). The mayor and city council are also authorized to defer action on the special land use permit or allow the applicant to withdraw the special land use permit without prejudice.<sup>143</sup>

<sup>143</sup> The current ordinance requires that the city council specify a time duration on all approved SLUPs...at the time of approval. This provision has not been carried over, which means that no limitation would apply [unless a time limit is expressly imposed as a condition of approval](#).

### 27-19.110 Transfer of Special Land Use<sup>147</sup>

Approved special land use permits, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

<sup>147</sup> This is a change. The current ordinance states that approvals are granted to persons, corporations or other legal entities and allows transfers to others only after application to the community development director.

I understand the need for some SLUPs to be tied to the land for example: a multimillion dollar church is given a SLUP to build in the R-100 zoning district and if forced to expire 5 years later it would be unfair for

Council to deny the second application.

That being said, I question the home occupation Special Land Use Permits being given the same “forever status” without the ability to sunset the activity at some foreseeable time in the future.

[Sec. 27-168. Home occupations.](#)

*Use permits and supplemental regulations for Type B home occupations.*

(1) *Special land use permit approval required.* Type B home occupations are allowed only if reviewed and approved in accordance with the special land use permit procedures of article V, division 3, provided that teaching-related home occupations conducted entirely within the principal dwelling are not subject to the special land use permit procedures, but instead require review and approval in accordance with the administrative permit procedures of article V, division 7.

This new SLUP process potentially enables 'spot zoning,' once approval is granted as the SLUP now 'runs with the land,' which means that the variance will stay in place after the property is sold. Thus, one owner can permanently change the intrinsic use and value of their property forever and force all future neighbors to have little or no recourse than to live with the business allowed to exist next door.

What if a future owner is not be a good neighbor, or may seek to expand operations causing adverse impact on neighbors; there is little legal remedy other than code enforcement.

What if there are five SLUP's in a row on what is now a residential main street, would that then be a quasi-commercial zone?

I am told that one interpretation of the current Dunwoody ordinance (maybe Georgia Law?) is that once a SLUP has been granted for a home occupation, it is forever tied to the land and cannot be taken away without evoking eminent domain of a regulatory taking. I am told that there is no process in Georgia by which a SLUP can be removed through automatic operation of law or a condition placed upon it.

I have reviewed other administrative options in Dunwoody besides a Special Land Use Permit, including Variances, Special Exceptions and Administrative Permits and all currently run with the land with different decision makers being the main difference.

I am confused as to why the [City of Atlanta](#) and others have Special Permits tied to the applicant and allow a sunset clause to be enacted, as we had previously, yet we are now told that we need to tie SLUPs to the land with no sunset clause allowed? Was there a State Zoning Law change that we have adopted based on our rewrite that other Cities have not?

I have asked our Planning Director if a Text Amendment could be drafted to not tie Home Occupations to the land and/or to allow a sunset clause?

After [watching the video of the March 11th Planning Commission discuss our first SLUP application since the rewrite and in reading the final recommendation](#); I am interested to know if their recommendation of Approval with a sunset clause tying the approval to the applicant (not the land) was a sound recommendation based on a legal interpretation in which they may not be aware?

If an interpretation of Dunwoody Code would not allow time limits, should the Planning Commission hear this matter again before it reaches the City Council so that a proper recommendation can be given?

I am interested in discussing this further with my fellow Council Members, Staff and our legal team in an open forum and have asked that it be added to the March 24th, 7 pm Dunwoody City Council Meeting.

## Survey of Other Georgia Cities and Counties – Special Land Use Permits

**Issue:** Whether the City Council may apply conditions on the approval of a SLUP that impose a time limit on the life of the permit or restrict the permit to the applicant.

Book: “Zoning and Land Use Law in Georgia” (Weissman, Dillard, and Skinner)

- Some discretion is allowed for the City Council when issuing permits, legislative in nature.
- City of Atlanta Zoning Ordinance allows consideration of *“length of time regarding the duration of such permit, if any.”*
- No court case specific to whether time limits can be placed on a SLUP.
- Appears that courts will *“only overturn ... a decision for an abuse of discretion.”*

City of Atlanta:

- Subject to approval by the City Council via Ordinance
- Have approved with conditions on length of time and to applicant
- Example wording in ‘conditions’ of approval: *“Special use permit shall expire ten years after City Council approval.”*

City of Woodstock:

- Subject to approval by the City Council via Ordinance
- City Council considers limitations on length of time where warranted
- Home Occupations do not require Special Land Use Permit
- Approval may use condition related to lapse of use for 6 months voids permit
- Example wording taken from Zoning Ordinance and approving ordinance: *“the Mayor and City Council shall consider, at a minimum, the following in its determination of whether or not to grant a Conditional Use Permit, whether to limit the time such conditional use is allowed and whether to restrict the conditional use to a particular owner or party.”*

DeKalb County:

- Commissioners have placed time limits that expire automatically. At the end of the time limit the applicant may re-apply for the SLUP to be continued.
- They have attached approval of a SLUP to the owner/applicant.

Gwinnett County:

- Has placed time limits on items like mobile homes or personal care homes. At the end of the time period they can re-apply if they want the use to continue. This gives the Council an opportunity to look at the history and any complaints.

Considerations:

- The City of Dunwoody Zoning Ordinance states that a SLUP, Special Exception, Administrative Permit, and Variance *“run with the land and are not affected by changes in tenancy or ownership.”*
- The Georgia ZPL (Zoning Procedure Law) requires that changes to conditions of approval must be processed through the full review and notice procedures required for the original action.