

# THE CITIZEN'S GUIDE TO ZONING

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JACKSONVILLE PLANNING AND DEVELOPMENT DEPARTMENT



# ***The Citizen's Guide to Zoning***

## **I. PURPOSE OF THE GUIDE**

When zoning notices are posted in neighborhoods there is often confusion about their meaning and the associated processes. This guide is intended to demystify the zoning process for the citizens of Jacksonville by discussing zoning, its intent, terminology, process, and how you and your neighborhood can participate and be involved. Providing greater citizen understanding of the zoning process will allow for more meaningful citizen participation. *Read, understand and participate!*

## **II. WHAT IS ZONING?**

Zoning is the division of a municipality into districts for the purpose of regulating the use of land for the promotion of the public health, safety, and general welfare. These regulations must comply with the land use categories and are depicted on the Future Land Use Map series (FLUMs) and described in the Future Land Use Element (FLUE) of the 2010 Comprehensive Plan. The City's Zoning Code is known as Chapter 656 of the City's Land Development Regulations. There are thirty-five (35) zoning districts and all land within the City has both a zoning classification and a land use designation.

There are two types of zoning: conventional districts and Planned Unit Developments (PUDs). There are four categories of conventional zoning districts in Jacksonville: residential, commercial, industrial, and miscellaneous. All land within the City falls into one of these districts. *See Table 1.* The PUD district is intended for development that is designed as an integrated unit. It may include only one or a mix of land uses, and may provide common open space, recreation areas, or other amenities. Requirements for a PUD include submission of a written description of development and site plan to the Planning and Development Department for review. The Planning Department then makes recommendations to the Planning Commission, who then make a recommendation for approval or denial to the City Council. Both the site plan and written description are binding for development of the PUD.



Table 1. Zoning District Summary	
<b>Residential Zoning Types</b>	<b>Summary Description</b>
Residential Rural (RR)	Allows for single family dwellings or mobile homes at densities of 1-2 units per acre.
Residential Low Density (RLD)	8 RLD districts allowing for single family residential use at densities of up to 7 units per acre.
Residential Medium Density (RMD)	6 RMD districts allowing for single and/or multi-family use at densities of up to 20 dwelling units per acre.
Residential High Density (RHD)	2 RHD districts allowing for multi-family use at densities ranging from 20 to 60 dwelling units per acre.
<b>Commercial Zoning Types</b>	<b>Summary Description</b>
Commercial Office (CO)	Professional and Business Office
Commercial, Residential and Office (CRO)	Commercial office and residential use with a maximum of 20 dwelling units per acre.
Commercial Neighborhood (CN)	Neighborhood retail serving the daily needs of the contiguous neighborhoods.
Commercial Community General (CCG)	General retail serving large areas of the City, or populations of at least 25,000. 2 districts with varying degrees of intensity permitted.
Commercial Regional (CR)	Regional scale commercial center, such as a shopping mall, serving a population of 80,000 or more.
Commercial Central Business District (CCBD)	Downtown mixed-use business district.
<b>Industrial Zoning Types</b>	<b>Summary Description</b>
Industrial Business Park (IBP)	2 districts allowing office/business parks, light industrial, and warehousing activities at varying intensities.
Industrial Light (IL)	Industrial uses with few objectionable environmental impacts, such as noise, air and water pollution, and transportation conflicts.
Industrial Heavy (IH)	Industrial uses most likely to produce adverse environmental impacts such as noise, air and water pollution, and transportation conflicts.
Industrial Water Related (IW)	Industrial uses requiring deep-water access to the St. John's River.
<b>Miscellaneous Zoning Types</b>	<b>Summary Description</b>
Agriculture (AGR)	Rural areas, agriculture and residential uses.
Public Buildings and Facilities (PBF)	3 districts, one for government facilities and two for private and public institutional use. Includes government buildings and schools.
Conservation (CSV)	Intended for areas with valuable environmental resources.
Recreation and Open Space (ROS)	Includes parks, playgrounds, golf courses and other outdoor leisure activity spaces.
Planned Unit Development (PUD)	PUDs are designed as integrated developments that may include a mix of uses. PUDs are allowed in all zoning districts. In this type of development, specific uses and development standards are clearly defined.

### III. DEFINITIONS

- **The 2010 Comprehensive Plan** is the legal tool for guiding land development in Jacksonville through the year 2010. This document addresses the allowed types, intensities, and location of growth in the City. Its purpose is to guide development so that potential growth problems can be avoided and the benefits can be more fully realized.
- **Zoning** is the designation of land in the City into districts within which the land use, intensity of use and bulk of the structure are regulated.
- **Land use** refers to the functional category for a piece of land, such as residential, commercial, or industrial.
- **Exceptions** relate to the use of the land. An exception is a use that would not normally be allowed in a given zoning district, but may be allowed if it can be demonstrated that the use would promote the public health, safety and welfare.
- **Waivers** provide for relaxation of the Zoning Code requirements as they (1) pertain to minimum distance separation between establishments that sell or serve alcoholic beverages and a school or church and (2) minimum street frontage.
- **Administrative Deviations** relate to the physical improvements on a site. This is the process through which property owners may apply for a relaxation of the following Zoning Code requirements: minimum lot area, required yards, minimum off-street parking, minimum landscaping requirements, maximum lot coverage, and maximum height of structures.
- **Variances** are a relaxation of the terms of the Zoning Code which will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Zoning Code would result in unnecessary and undue hardship. Variances are used for cellular phone towers and follow the same process as exceptions and waivers.
- **Primary Zoning Districts** are districts that permit land uses that are routinely acceptable anywhere in the applicable related land use category.



- **Secondary Zoning Districts** are districts that permit land uses that could be acceptable subject to meeting certain performance standards and development criteria within the applicable related land use category. See *Figure 5*.

#### IV. THE PROCESS

Property owners have a right to request both land use and zoning changes for their property. All such requests require public notice and hearings and votes of approval or denial by Planning Commission and the Land Use and Zoning Subcommittee of the City Council and the full City Council. All rezonings are done by ordinance and as such require passage of legislation through the City Council.

Land use category designations are distinct from zoning districts. If a property owner wishes to change the land use category, i.e., from residential to commercial, or rezone property to a district that is neither a primary nor a secondary zoning district within a particular land use category, the comprehensive plan must be amended in addition to the zoning ordinance. This is a much longer process lasting up to nine months and requiring approval from the Florida Department of Community Affairs. Only rezoning actions that do not require a comprehensive plan amendment will be discussed here. *A separate guide to land use is available.*

##### A Quasi-Judicial Process

The processes for rezoning of property and the granting of waivers, exceptions, variances and administrative deviations are *quasi-judicial*. Quasi-judicial hearings involve the application of zoning regulations to a specific piece of property and require the swearing in and cross-examination of witnesses and submission of substantially competent evidence. Local government actions are quasi-judicial where the decision (1) has an identifiable impact on a limited number of persons or property interests, (2) is contingent on facts arrived at from distinct alternatives presented at the public hearing, and (3) can be viewed as policy application rather than policy setting. The burden of proof is on the

landowner seeking the change to show that the proposed change is consistent with the comprehensive plan and complies with the procedural requirements of the zoning ordinance. The burden then shifts to the City or any opposing party to show that maintaining the existing classification achieves a legitimate public purpose.

### Appeal of Rezoning Decisions

When an appeal of a quasi-judicial decision is considered, the courts are limited to reviewing the record of the proceedings. Three questions are asked by the circuit court when a quasi-judicial decision is reviewed:

- (1) Whether procedural due process was afforded;
- (2) Whether the administrative body applied the correct law; and
- (3) Whether its findings are supported by substantial competent evidence.

### Procedural Due Process

Procedural due process in quasi-judicial hearings relates primarily to *ex parte* communications. *Ex parte* communications are contacts made by one party in a quasi-judicial proceeding with a decision-maker outside of the presence of the other parties. Such contact could be prejudicial to the decision-maker. However, so long as the proper disclosure is made prior to or during the hearing, *ex parte* communications are not presumed to be prejudicial. *Ex parte* communications are governed by Part 2, Chapter 50, of the City of Jacksonville Ordinance Code ("Procedures Governing Contact of Public Officials with Respect to *Ex Parte* Communication").

### Application of Correct Law

The application of correct law relates not only to the law *per se*, but to the correct *application* of that law. Specifically, the law must be applied as it exists, not as the decision-maker would like it applied. Issues relating to burden of proof arise in questions of the application of law. As a general rule, the burden of proof is on the landowner seeking the change to show that the proposed change is



consistent with the comprehensive plan and complies with the procedural requirements of the zoning ordinance. The burden then shifts to the City or any opposing party to show that maintaining the existing classification achieves a legitimate public purpose.

### Substantial Competent Evidence

What constitutes “substantial competent evidence” has been the subject of much discussion and misunderstanding. Much of the discussion of the types of evidence centers on findings of fact and testimony from experts and citizens.

Though very helpful for reviewing rezoning decisions, *written findings of fact* in support of rezoning decisions are not required of local governments.

*Expert testimony* is considered substantial competent evidence so long as the testimony is within the witness's area of expertise and is based on facts known to the expert, a hypothetical situation, or facts disclosed at the hearing.

Professional planning staff reports and Planning Commission decisions can be considered expert testimony. Attorney “testimony” as the applicant’s agent is *not* expert testimony for purposes of substantial competent evidence.

*Citizen testimony* is substantial competent evidence only where it is based on something more than “mere opinions”. Examples of acceptable citizen testimony include statements regarding the effect of development on quality of life and testimony relating to first-hand knowledge of changes in conditions.

Unacceptable as evidence are so-called “expressions of mass opinion” and opinions that are not based on first-hand or otherwise specialized knowledge.

## **NOTICE**

Public notice is required at least 14 days prior to a public hearing for all rezoning ordinances, exceptions, waivers, variances and administrative deviations. This public notice includes two or more of the following: (1) notice by mail to all property owners within a 350-foot radius of the boundaries of the affected

property, Community Planning Advisory Committees (CPACs), and eligible neighborhood organizations; (2) notice of the hearing is published in a newspaper of general circulation; and (3) the applicant must post a sign issued by the Planning and Development Department at intervals of not more than 200 feet along the rights-of-way of the affected property. The property owner requesting the exception, waiver, variance, or administrative deviation is responsible for the costs of notification and any required advertisement. If a particular rezoning affects you and you want to make your position known, public hearings are the forum for your statements.

## **STANDING**

A significant issue with rezonings, exceptions, waivers, and administrative deviations is who has standing to appeal a decision of the Planning Commission, City Council, or Zoning Administrator. Generally, any person or organization who can prove that they are an “affected party”, or those persons receiving notice by mail of the public hearing, have the right to appeal a zoning decision.

## **CONVENTIONAL REZONING**

### **Step 1**

- Application is submitted to the Planning and Development Department (PDD) Current Planning Division. PDD reviews for sufficiency and applicant pays the application fee. It is then forwarded to the Office of General Counsel for preparation of the rezoning ordinance.

### **Step 2**

- The rezoning request is placed on the City Council agenda. A hearing date is assigned.
- The PDD Current Planning Division creates the notification sign(s) which are issued to the applicant.

### **Step 3**

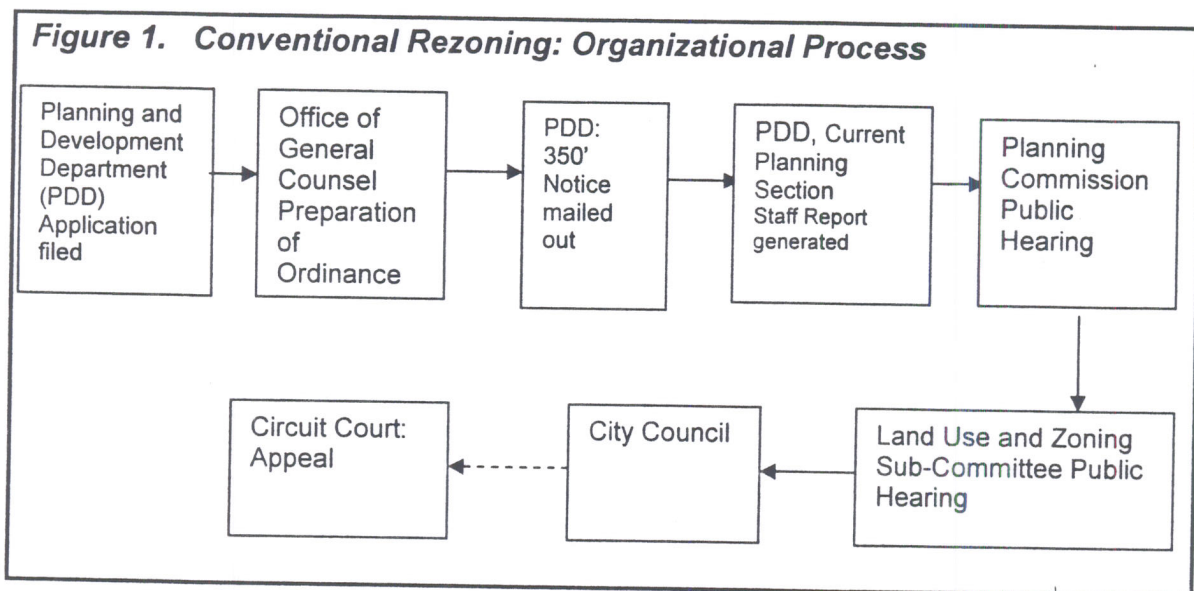
- The application is routed to other agencies and reviewed by the PDD Current Planning Division.
- PDD mails out 350' notices.



- A planning professional performs a site visit, looks for the notification sign and prepares a report based on review criteria with a recommendation on the application.

#### Step 4

- A public hearing is held before the Planning Commission who vote on the rezoning ordinance.
- A public hearing is held before the Land Use and Zoning Sub-Committee, who vote on the rezoning ordinance.
- The ordinance then goes before the full City Council for a vote.
- If approved, the applicant may commence the use or begin the permitting process. The decision may be appealed to the Circuit Court within 30 days of rendition.



### Planned Unit Development (PUD) REZONING

#### Step 1

- Applicant has pre-application meeting with Planning and Development Department (PDD), Current Planning Division staff.
- Application is submitted to the PDD Current Planning Division. It is then forwarded to the Office of General Counsel for preparation of the rezoning ordinance.

## Step 2

- The rezoning request is placed on the City Council agenda. A hearing date is assigned.
- The PDD Current Planning Division creates the notification sign(s) which are issued to the applicant.

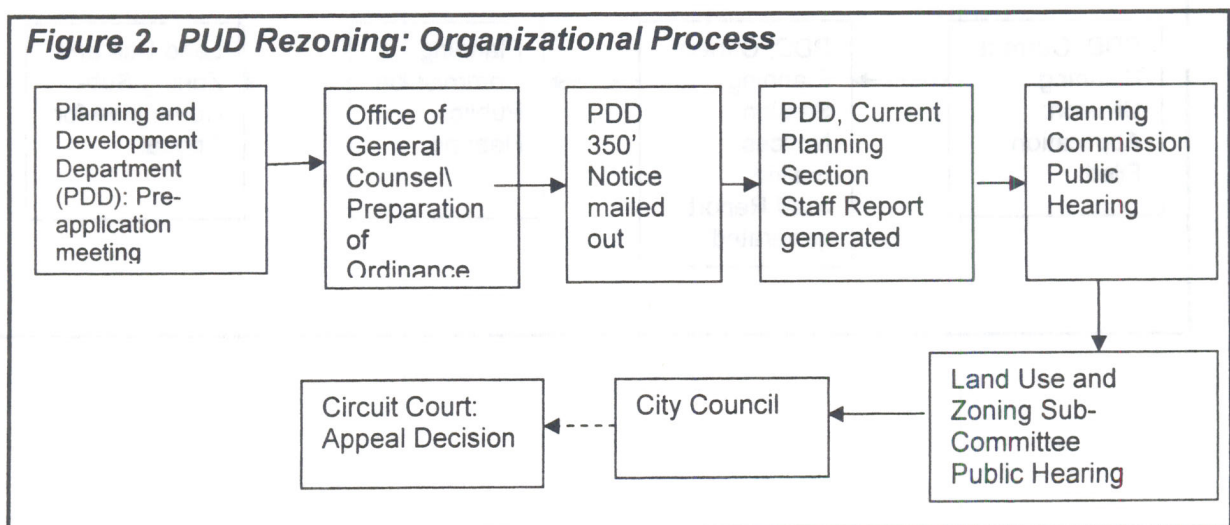
## Step 3

- The application is routed to other agencies and reviewed by the PDD Current Planning Division.
- PDD mails out 350' notices.
- A planning professional performs a site visit, looks for the notification sign and prepares a report based on review criteria with a recommendation on the application.

## Step 4

- A public hearing is held before the Planning Commission who vote on the rezoning ordinance.
- A public hearing is held before the Land Use and Zoning Sub-Committee, who vote on the rezoning ordinance.
- The ordinance then goes before the full City Council for a vote.
- If approved, the applicant may commence the use or begin the permitting process. The decision may be appealed to the Circuit Court within 30 days of rendition.

**Figure 2. PUD Rezoning: Organizational Process**





## EXCEPTIONS AND WAIVERS

### Step 1

- Application filed with the PDD Current Planning Section. A notification sign is issued to the applicant once the application is found sufficient and all fees have been paid.

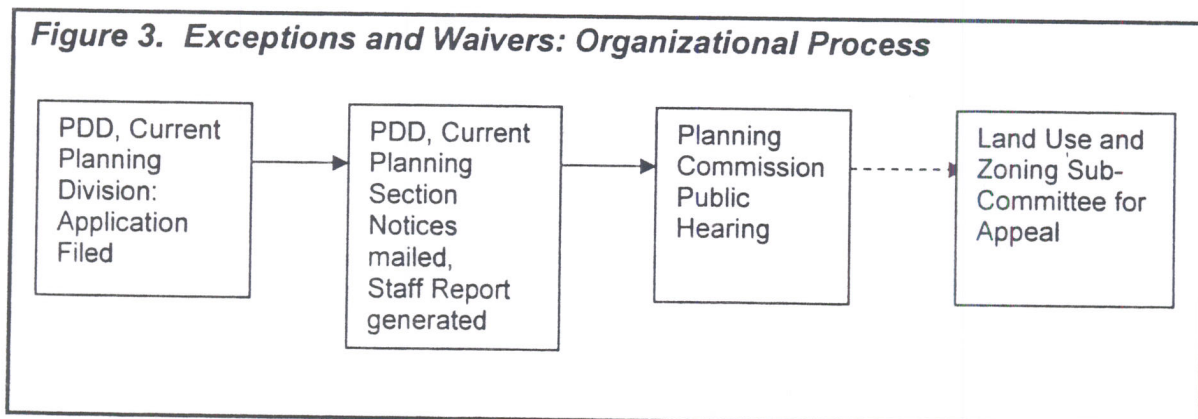
### Step 2

- The application is forwarded to a planning professional for review. The planner performs a site visit in and evaluates the compatibility of the proposed change with the surrounding area and checks for the presence of the notification sign. A written report with recommendations is prepared and submitted to the Planning Commission.

### Step 3

- The Planning Commission conducts a public hearing on the requested exception or waiver.
- A representative of the Office of General Counsel then issues the Final Order on the application.
- If approved, the applicant may commence the use or begin the permitting process. The decision may be appealed to the Land Use and Zoning Sub-Committee within 21 days of the Final Order.

**Figure 3. Exceptions and Waivers: Organizational Process**



## ADMINISTRATIVE DEVIATION

### Step 1

- The application is filed with the PDD Current Planning Section. A notification sign is issued to the applicant once the application is found sufficient and all fees have been paid.

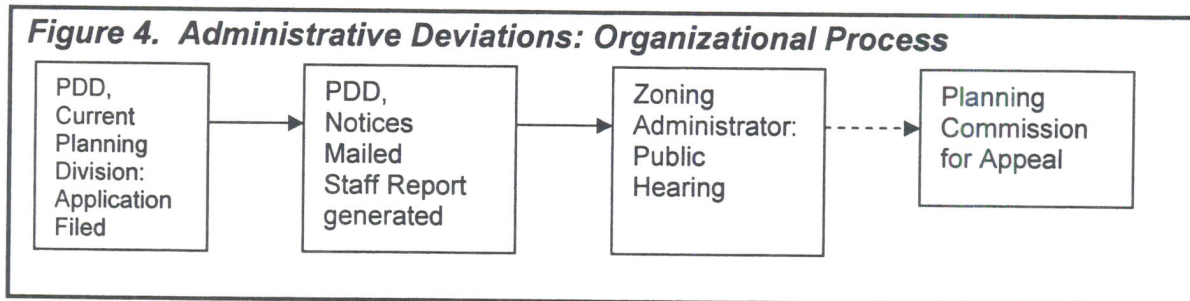
### Step 2

- The application is forwarded to a planning professional for review. The planner performs a site visit and completes a review. A written report is prepared with recommendations for the Zoning Administrator.

### Step 3

- A public hearing is held before the Zoning Administrator. Following this hearing a written order is prepared with the assistance of the Office of General Counsel and executed by the Administrator.
- If the administrative deviation is approved, the applicant may commence the use or begin the permitting process following execution of the written order. The decision may be appealed to the Planning Commission within 15 days of the Final Order.

**Figure 4. Administrative Deviations: Organizational Process**



## V. CONTACT INFORMATION

- City of Jacksonville Planning and Development Department: 630-1900
  - Current Planning Division (Applications and Filing Procedures) 630-1902
  - Zoning Administrator 630-1474
  - Comprehensive Planning Division 630-1904
- On the Internet:
  - [www.Municode.com](http://www.Municode.com): Zoning Code Online



- [www.coj.net/Departments/Planning+and+Development/default.htm](http://www.coj.net/Departments/Planning+and+Development/default.htm) the site of the Planning and Development Department, with links to the 2010 Comprehensive Plan, Planning Commission agendas, and Administrative Deviation agendas.