

# Brookhaven ZONING UPDATE



## Concepts and Direction Report

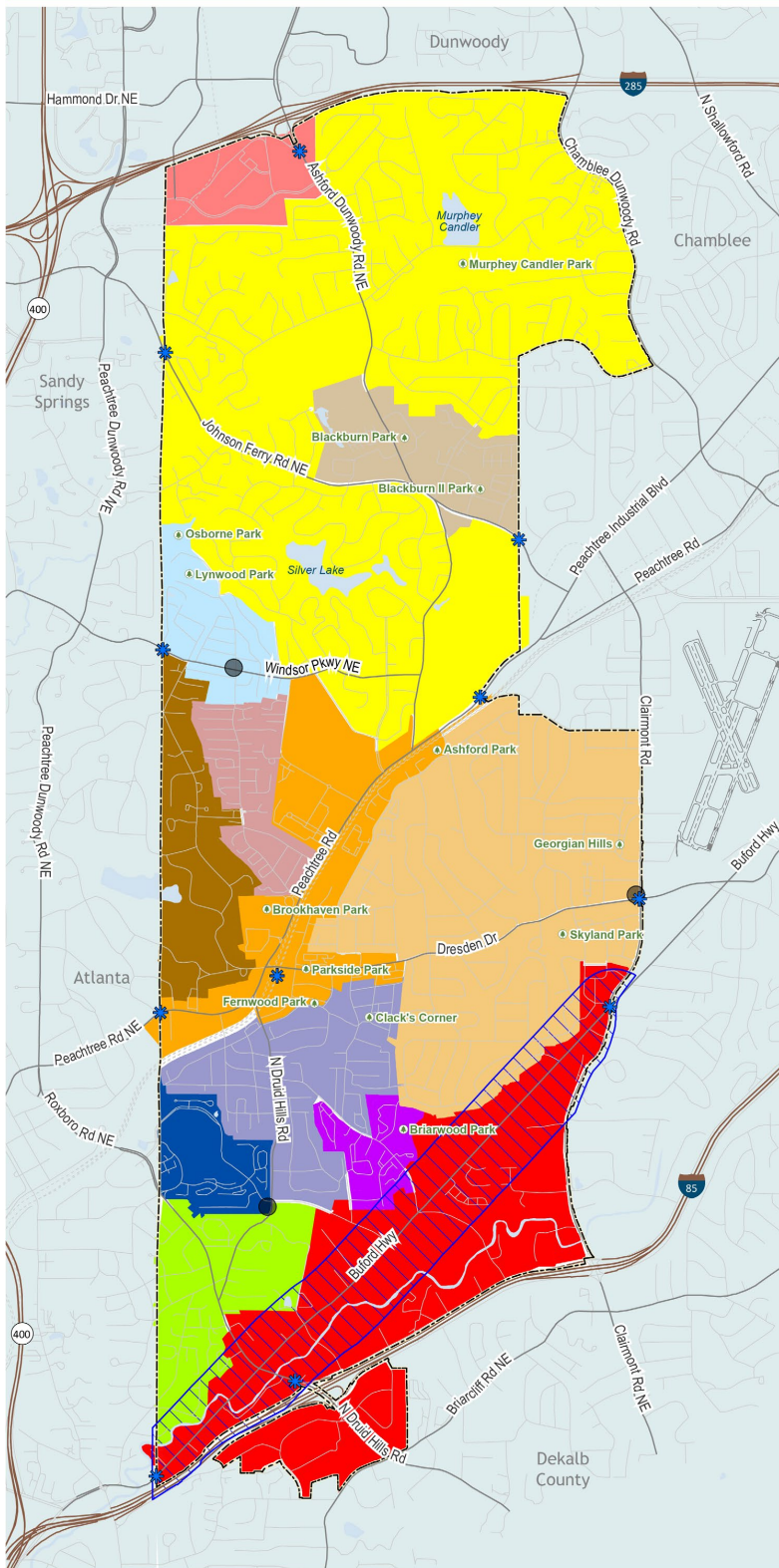
November 2015

**duncan** | associates

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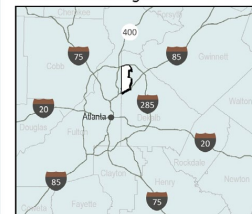
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# Character Area



- 0 0.25 0.5 Miles
- City of Brookhaven
- Buford Hwy Improvement Plan
- Perimeter Center
- Lakes District
- Blackburn Park Neighborhood Center
- Lynwood Park
- Historic Brookhaven
- Osborne
- Peachtree Corridor Overlay District
- Ashford Park-Drew Valley
- Brookhaven Heights-Brookhaven Fields
- Lenox Park
- Brianwood Park
- Roxboro
- Buford Highway Corridor
- Neighborhood Commercial Target Area
- Gateway Feature
- Waterbody
- Waterline
- Expressway
- Major Roads
- Street
- Railroad

Atlanta Metro Region





*“Brookhaven will be a national model for a walkable, urban community that preserves its unique character and history of neighborhoods, parks, and natural assets while welcoming higher density activity nodes that support transit use, biking, community hubs, sense of place, and diversity of residents and businesses.”*

-Brookhaven Comprehensive Plan Vision Statement

## Introduction

The City of Brookhaven has begun a project that will lead to a complete rewrite of the existing zoning ordinance. The project is being undertaken for two key reasons:

1. The city’s existing regulations are based on ordinances that were in effect in the county long before the city was incorporated. City leaders have signaled that it is time for Brookhaven to chart its own course with respect to the rules that govern land use and development. These regulations must respect private property rights, protect the established character of the city’s many stable neighborhoods and accommodate high-quality development in areas slated for growth and change.
2. Since formation of the city in late 2012, several planning initiatives have been completed, including adoption of a new comprehensive plan. The key goals and policies established from these efforts can and should be implemented in the city’s new zoning ordinance.

The city has engaged a consultant team to lead the ordinance update effort. Since beginning their work, the team has been examining the city’s existing zoning ordinance as well as planning documents that provide an important policy framework for new Brookhaven-style regulations. In October 2015, the consultant conducted small group listening sessions with community residents and elected and appointed officials. A project advisory group has also been established to help review and comment on initial draft ordinance provisions. An initial meeting of this group was held in mid-October.

A website has been established for the rewrite project. This site will serve as a central clearinghouse for information, including reports, documents and notices of upcoming public meetings: [www.brookhavenzoning.com](http://www.brookhavenzoning.com).

This report presents the consultant’s preliminary proposed outline for the new ordinance, as well as preliminary recommendations for substantive changes.

## Brookhaven Comprehensive Plan Goals



### LAND USE + TRANSPORTATION COORDINATION

Achieve greater walkability, bikeability, and overall mobility for day-to-day activities through transportation and land use coordination.



### TRANSIT ORIENTED DESIGN

Pursue Transit Oriented Development (TOD) as a key strategy to shaping the city's future.



### DIVERSITY

Preserve the economic and cultural diversity of the Brookhaven community.



### NEIGHBORHOODS

Preserve the city's unique neighborhoods and communities.



### UNIQUE BROOKHAVEN

Establish an identity and brand for the City of Brookhaven.



### SUSTAINABILITY

Develop reputation as a forward thinking and sustainable city.



### A CITY OF PARKS

Enhance the City's parks and recreation system.



### ECONOMIC PROSPERITY

Ensure a balanced economic environment.



### BUFORD HIGHWAY GATEWAY

Promote Buford Highway to enhance this strategic location in the city.

# What We've Heard...So far

A wide variety of views and opinions were expressed during the early project listening sessions and the introductory meeting of the project advisory group. This section summarizes the views expressed at those meetings. It is important to remember, that these views do not necessarily represent the views of the city or the consultant. They are offered to provide context and a sense of the varying community sentiment regarding the types of issues that may be addressed in Brookhaven's zoning ordinance rewrite.

## Organization and Format

Several people lamented the current document's organization and format, offering the following suggestions for improvement:

- A major clean-up;
- More illustrations and graphics;
- A greatly simplified document;
- Consistent formatting and terminology;
- New, more intuitive zoning district names;
- Modernized use regulations.

## Clarity and Predictability

Meeting participants offered several examples of zoning-related issue that are not clearly addressed in the current ordinance, such as:

- How to calculate lot coverage on a lot abutting a private street (when property boundaries extend to street centerline);
- The difference between a porch, a deck and a patio and which are allowed to encroach into required setbacks;
- What definitions governs when there is not a definition in the ordinance;
- How height is measured;

## Comprehensive Plan Linkage

At least one person suggested that the new ordinance needs to be tied more closely to the new comprehensive plan.

## Zoning Districts

Several participants offered comments about zoning districts, such as:

- The need for a (fee-simple) townhouse district, a parks and recreation district and a public and institutional district;
- The possibility of consolidating existing PC districts into a single mixed-use district, which retains current amenity requirements; and
- The need for reducing the minimum acreage requirements for certain zoning districts such as OCR and PC.

## Administration and Procedures

Several people mentioned "concurrent variances," the practice of allowing city council to hear and decide variance requests at the same time as they are making decisions on rezonings and special land use permits. Some view concurrent variances as a very logical and efficient way to review development proposals. Others feel that the practice vests too much control in the hands of a single entity and removes an important "layer of protection."

At least one person raised the issue of applicants being responsible for providing required notices of meetings, suggesting that the practice was not always effective in reaching parties affected by a zoning proposal.

The comments summarized in this section reflect the views of a diverse group of individuals. They are intended to provide a representative sampling of comments offered in early project meetings. They do not necessarily reflect the official position of the city or the viewpoint of the consultant team.



Another person mentioned that infrastructure and service providers “need to be at the table” when considering development proposals, thereby helping to ensure early consideration of infrastructure adequacy to handle such development.

Some listening session participants mentioned the importance of review and decision-making bodies adhering to the zoning ordinance’s approval criteria. Others raised the issue of how many minor property improvements seem to require variances, suggesting that all of the ordinance’s hardship criteria should perhaps not apply to minor matters, such as the “in-kind” replacement of a rear yard deck that already exceeds lot coverage requirements.

At least two people asked whether Brookhaven’s development process would benefit from establishment of a community council or neighborhood planning unit (NPU) approach to community participation, as employed by Atlanta and other local governments in the area. Others opined that existing (pre-hearing) neighbor communication requirements are serving much the same purpose.

## Nonconformities

Many people mentioned the fact that some older areas of the city—particularly R-75 zoned areas—have lot sizes that are at odds with zoning district lot area and width requirements. This mismatch results in lots being deemed nonconforming and owners needing to obtain variances to build or make improvements. Some suggested addressing this situation by amending zoning district regulations to better fit existing lot and building patterns or by rezoning such areas to another conforming zoning classification.

Someone also posed the scenario of a property owner with an existing nonconformity who wishes to make an improvement that would make the property more conforming, though not entirely conforming. The question raised by this individual, was different decision-making criteria should apply in such cases (rather than strict adherence to *all* of the hardship criteria).

At least one person stressed the importance of re-

taining the nonconforming lot “merger” provisions of Section 27-938.

## Peachtree Road (The Overlay)

Several respondents mentioned the need for better building height transition rules when higher intensity development borders on low-intensity neighborhoods. Others mentioned that building height is not the only important “transition” issue. The general sentiment seemed to be that the overlay works fairly well for properties with frontage (access) on Peachtree Road, but is less effective when it extends into or near interior neighborhood areas.

Other overlay-related comments focused on such issues as:

- The thresholds for compliance (i.e., whether interior renovations and minor building additions and improvements should trigger requirements for compliance with all of the overlay district regulations);
- How to regulate density within the boundaries of the overlay (i.e., whether density should be controlled by underlying zoning or by overlay-specific rules);
- How to promote a more “cohesive” approach to mixed-use, rather than the parcel-by-parcel approach that results from existing regulations; and
- The need for clarified intent statements and better-defined streetscape standards

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## Buford Highway

Some participants who talked about the Buford Highway area mentioned the corridor’s economic potential. Others, citing the trail plans for North



Fork Peachtree Creek and the possibility of creating more connectivity into the area, believe that Buford Highway has enormous “place-making” potential. The vision expressed is for a mixed-use corridor with uniform streetscape elements and private development that helps activate the linear park envisioned for the stream corridor.

Several participants mentioned importance of implementing the *Buford Highway Improvement Plan and Economic Development Strategy*. They also stressed the desire to retain the area’s ethnic, racial and income diversity, while recognizing that affordability will be a challenge moving forward.

One person noted that it will be important to work with the state to devise and get approval of any streetscape regulations

## Parking

Parking issues seemed to focus primarily on the minimum parking ratios of the Peachtree Road overlay. The sentiment expressed by some was that the minimum off-street parking requirements in the overlay are too low and have resulted in spill-over parking into stable neighborhood areas. One person noted that the “problem” may be the result of allowing single-use developments to use the overlay’s shared, mixed-use parking standards.

## Character & Appearance

A few comments and suggestions focused on community character and appearance. Sample comments follow:

- The city needs better design regulations, but be careful not to apply a one-size-fits-all approach (what’s good for Peachtree Road may not be appropriate for Buford Highway);
- Sign regulations need to be updated to ensure better appearance (Note: Most of the city’s sign regulations are not part of the zoning ordinance, and thus will not be a focus of the zoning update project);
- Preserving granite curbing is important to preserving neighborhood character (Note: this

issue is technically not a zoning issue and is therefore beyond the scope of this project); and

- It is important to retain the existing desired “suburban” character of many residential neighborhoods.

Many people commented on the “setback averaging” regulations of the zoning ordinance. Most were in favor of attempting to craft new rules for corner lots, allowing reduced building setback on side streets. Others suggested attempting to refine clarify the method for establishing what constitutes the “average” or mean setback in a given context. Still others suggested that mandatory setback averaging requirements pose too many hardships and should be eliminated or drastically overhauled.

One meeting participant commented that wide sidewalks can be disruptive of neighborhood character, although it should be noted that minimum sidewalk widths are partially a function of federal accessibility requirements, which cannot be modified through zoning

## Impervious Cover & Stormwater

Discussions regarding impervious cover and stormwater runoff focused mostly on residential development.

Currently, most infill single-family residential development is exempt from stormwater management requirements. Some suggested lowering the stormwater exemption threshold below its current 5,000 square feet (of impervious coverage).

Others focused their comments on the need for clearer rules regarding what constitutes “impervious” vs. “pervious” surface. Some participants pointed out that flooding regulations, stormwater regulations and zoning regulations tend to be geared towards different objectives, sometimes having to do with hydrology and sometimes aesthetics. In their opinion, what counts as “lot coverage” for purposes of zoning should not always be the same as impervious coverage requirements in stream buffer, floodplain and stormwater regulations.

Staff suggested that requiring a permit for

non-structural impervious additions would help in administration and enforcement of coverage regulations.

At least one person mentioned the challenges sometimes posed by the zoning ordinance's front yard paving limitation (and the requirement that unpaved areas between "ribbon paver strips" are considered paved).

## Environment

Several people expressed a desire for clearer, simpler tree canopy protection requirements.

One person expressed the view that property owners should be allowed to at least request relief from stream buffer regulations.

## Perimeter Center

PCID representatives expressed their desire to maintain Perimeter Center's unique identity and brand and for a seamless transition between the Brookhaven and Dunwoody portions.

## Transportation and Traffic

Concerns about traffic were raised in nearly every discussion, with almost everyone agreeing that perceived traffic impacts are the source of much opposition to new development proposals.

Non-motorized options (bicycle, pedestrian and transit) are not viewed as a panacea, but many expressed the view that they should be addressed.

## Miscellaneous

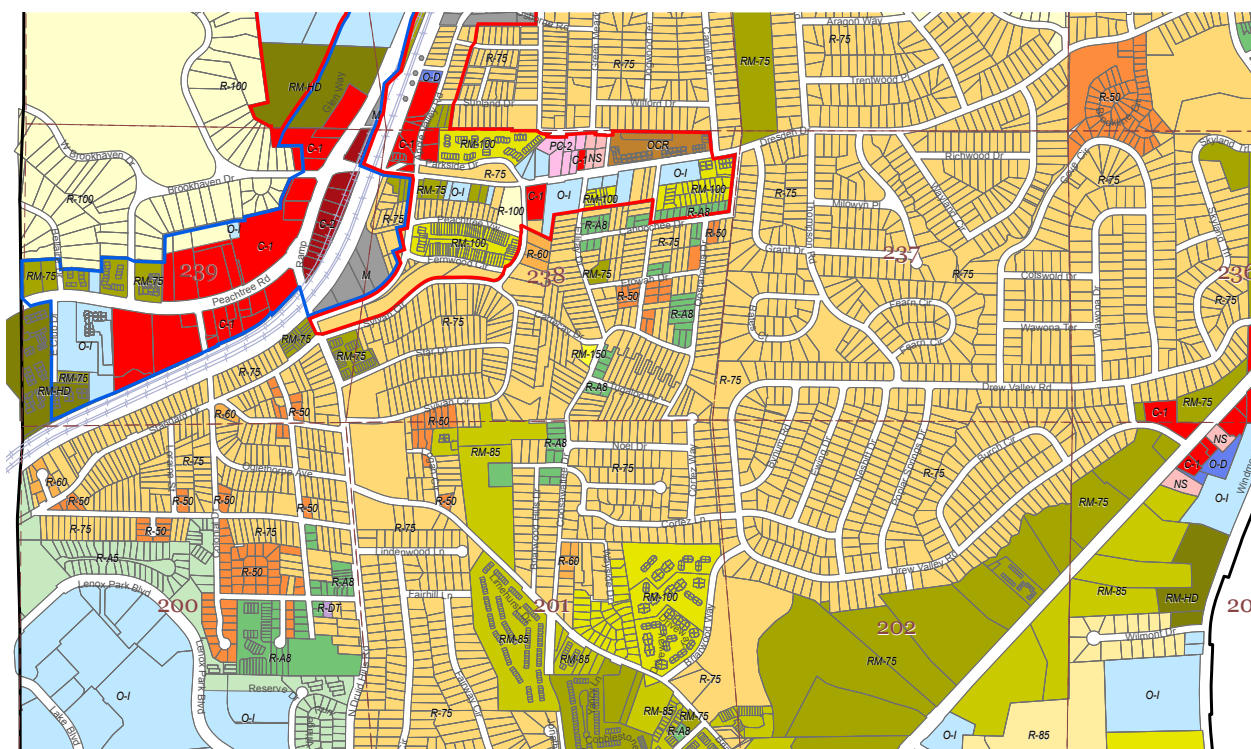
The following paraphrased comments were also offered by listening session and meeting participants;

- Need more effective controls on accessory buildings and structures in residential districts;
- Accessory buildings—regs are too vague—need clearer/more reasonable regulations-height, setbacks, coverage, size; need to consider more than immediate neighbors because the area affected is broader;
- Consider allowing walls, monuments, and fences

es to be more than 4 feet tall;

- Retaining wall regulations are too restrictive;
- Consider allowing increased retaining wall height if it's set back from abutting residential;
- Consider codifying policy distinction between wing walls and retaining walls;
- Zoning options should be provided to accommodate "aging in place;"
- The ordinance's minimum dwelling size requirements and outdated, exclusionary and ineffective;
- Transitional buffer requirements reflect outdated Euclidean (separation) zoning thinking;
- RM districts allow too many building types; or don't provided enough guidance; residential building type regs are confusing and overlapping;
- Take-out alcohol sales needs spacing from similar uses;
- The ordinance should allow accessory dwelling units (ADUs);
- Regulations for low-impact home occupations should be relaxed; and
- Side setback variance should be based on lot width

The comments summarized in this section reflect the views of a diverse group of individuals. They are intended to provide a representative sampling of comments offered in early project meetings. They do not necessarily reflect the official position of the city or the viewpoint of the consultant team.



## Recommended Approach

The section of the report sets forth a series of conceptual recommendations for Brookhaven's new zoning ordinance. It is based on issues raised by staff, residents and city officials during early project meetings and the consultant's review of the current zoning ordinance. It does not attempt to identify every needed change. Instead, it sets the tone for an overall approach to the ordinance rewrite—a kind of big picture road map for rewriting the ordinance. As the project proceeds, many additional technical revisions and edits will also be proposed in an effort to produce a more comprehensible and user friendly document. Additional substantive changes will likely be identified and worked out during the ordinance drafting process.

### 1. Organization and Format

One of the central goals for the rewrite project is to ensure that Brookhaven's new zoning ordinance is easier to use than its present-day counterpart. Substantive regulations should be clear, comprehensive and internally consistent. Administrative

and procedural provisions should be streamlined, consistent and easy to understand.

Given the important role that zoning plays, the new ordinance should be logically organized, well-formatted and easy to use. The document should be laid out in a way that people can find the information they need and written so that information can be understood once it is found

Like many ordinances, the way in which information is organized and presented in the city's existing zoning ordinance could be greatly improved. This section describes several ways in which the new ordinance will be made easier to navigate, use and understand.

#### 1.1. General Outline

The zoning ordinance is currently codified as Chapter 27 of the city code of ordinances. It is organized into a series of six articles, each of which contains a broad range of information:

Article I: General

Article II: District Regulations

Article III: Overlay District Regulations

Article IV: Supplemental Regulations

Article V: Administration

Article VI: Enforcement and Penalties

A preliminary proposed outline for the new ordinance follows. This proposed outline breaks out and “elevates” important zoning provisions that are sometimes “buried” within the document’s current organizational scheme. This approach should make it easier to zero-in on provisions of importance to individual ordinance users.

Article 1: Introductory Provisions

Article 2: Residential Districts

Article 3: Commercial & Mixed-Use Districts

Article 4: Overlay & Special Purpose Districts

Article 5: Buildings & Uses

Article 6: Parking and Access

Article 7: Landscaping and Screening

Article 8: Review & Approval Procedures

Article 9: Administration

Article 10: Nonconformities

Article 11: Violations & Enforcement

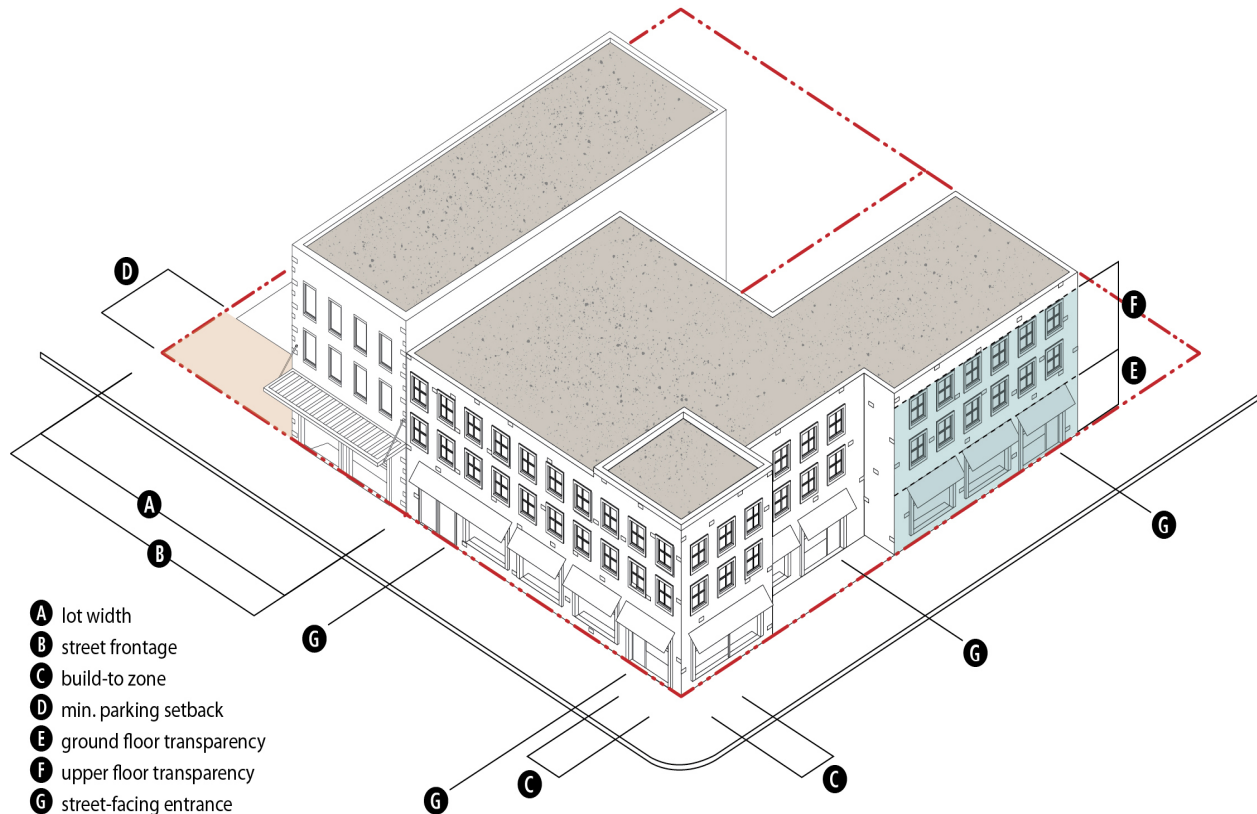
Article 12: Definitions & Measurements

## 1.2 Tables, Charts and Illustrations

Many ordinance regulations can be more clearly presented by using tables or charts. This will help eliminate redundancies, as well as the inevitable inconsistencies and internal conflicts that occur when the same regulations are restated in multiple sections of an ordinance. Eliminating these redundancies can also reduce the bulk of the printed document.

The new regulations should also contain illustrations and graphics—instead of just long passages of text—to help convey the meaning of regulatory concepts.

### Sample Illustration





## 1.3 Page Layout

The new ordinance should use distinct typefaces for articles, divisions, sections and subsection titles. Indented text should be used to indicate the hierarchical nature of ordinance sections and subsections. Generous white space and graphics should be used to enhance the document's visual appearance and improve its usability. Page headers and footers

should be used to provide navigational aids to those searching for information within the document. A mock-up page showing potential page formatting techniques is depicted below (based on the city's R-100 district). This sample page also shows how proposed changes will be identified in the ordinance drafting process.

### Sec. 2.2. R1-15, Residential Single-Dwelling District

#### 2.2.1. Description

The R1-15 district is primarily intended to accommodate detached houses on lots at least 15,000 square feet in area.



#### 2.2.2. Building Types

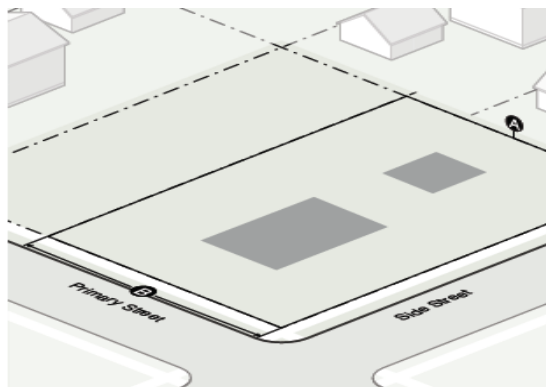
The following building types are permitted in the R1-15 district:

- A. Detached houses
- B. Public and civic buildings

#### 2.2.3. Lot Regulations

Lots in the R1-15 district are subject to the following regulations.

Lot Regulation	
A Minimum Lot Area (square feet)	15,000
W Min. Lot Width and Frontage (feet)	100
C Maximum Lot Coverage (%)	
	Residential lot 35 Nonresidential lot 45

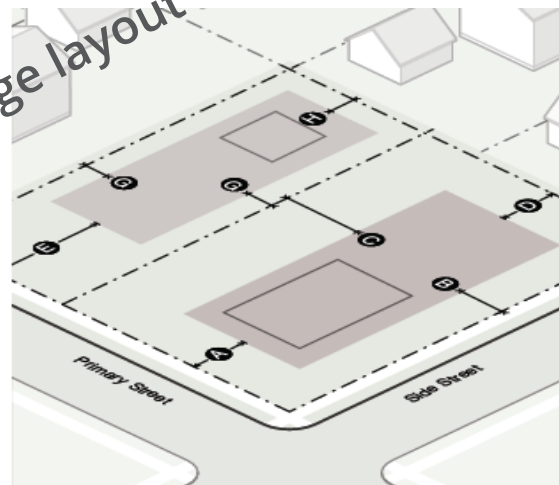


#### 2.2.4. Building Regulations

Principal buildings in the R1-15 district are subject to the following regulations.

Building Regulation	
Minimum Building Setbacks (feet)	
F Front Street	35[1]
S Side Street	20[1]
I Interior Side	10
R Rear	40
Maximum Building Height (feet)	
40	
Minimum Floor Area (square feet)	
2,000	

[1] Setback averaging regulations apply to infill development. See XXX.



#### 2.2.5. Use Regulations

Principal uses are allowed in the R1-15 district in accordance with the use regulations of XXX.

#### 2.2.6. Other Regulations

- A. Accessory Uses and Structures  
See XXX.
- B. Parking  
See XXX.
- C. Fences  
See XXX.

## 2. Use Classifications

Brookhaven’s current zoning ordinance lists hundreds of residential, business, civic/institutional and other uses that may—or may not—be allowed in one zoning district or another. These use regulations and the way in which uses are classified and defined, should be updated as part of the rewrite. In many cases, the ordinance relies on overly detailed lists of allowed uses. Instead of broadly defining “administrative and professional offices,” for example, the current ordinance lists several specific office types with little logic about why one is permitted and another is not permitted in some zoning districts. The same is true of retail and service use types and numerous other uses and business types.

The current ordinance’s use typology could be simplified and collapsed into a logical, well-defined use classification system that includes just a few dozen land use categories. This move would eliminate an outmoded system of use regulation and allow the city to better respond to economic and technological changes over time.

The new zoning ordinance should include one or more use tables that identify which uses are allowed in which districts. Pointers or cross-references to any special regulations that apply to listed use types, such as the use-specific regulations now found in the supplemental regulations of Article IV, can also be noted in the table. This table format would be much easier to use than the narrative “laundry list” of uses now found in each respective zoning district section and help to ensure that future amendments can be made in a careful, systematic way (see the sample use table below).

## 3. Off-street Parking

Excessive off-street parking requirements can lead to the over-development of parking infrastructure, which increases impervious cover and stormwater runoff and drives up the cost of development.

“Right-sized” minimum parking ratios can help reduce impervious surfaces, which reduces stormwater runoff and the heat island effect caused by the sun’s heating of large paved areas. Updated parking

Sample Use Table Format

USE CATEGORY	ZONING DISTRICT														Supplemental Regulations
Subcategory	R1-6	R2-5	R3-5	R6-5	RM	MX1	MX2	MX3	MX4	CO-1	CO-2	CN	CG	I	
Specific Use (See															
Minor	P	P	P	P	P	S	S	S	S	P	P	P	P	P	
Major	S	S	S	S	S	S	S	–	–	S	S	S	S	S	
<b>Wireless Telecommunications</b>															
Freestanding tower	S	S	S	S	S	S	S	S	S	S	S	S	S	P	18.25.11-F
Building-mounted antenna	S	S	S	S	S	S	S	S	S	S	S	S	S	P	18.25.11-F
Tower-mounted antenna	P	P	P	P	P	P	P	P	P	P	P	P	P	P	18.25.11-F
<b>COMMERCIAL</b>															
Adult Use [1]	–	–	–	–	–	–	–	–	–	–	–	–	–	P	18.25.11-A
<b>Animal Service</b>															
Boarding or shelter	–	–	–	–	–	P	–	–	–	–	–	–	–	S	18.25.11-B
Grooming	–	–	–	–	–	P	P	P	P	–	–	P	P	P	
Veterinary care	–	–	–	–	–	P	P	P	P	–	–	S	P	P	
Assembly and Entertainment	–	–	–	–	–	P	–	–	P	–	–	S	P	P	
<b>Commercial Service</b>															
Building service	–	–	–	–	–	P	–	–	–	–	–	–	P	P	
Business support service	–	–	–	–	–	P	P	P	P	–	–	–	P	P	
Consumer maintenance and repair	–	–	–	–	–	P	P	P	P	–	–	P	P	P	
Personal improvement service	–	–	–	–	–	P	P	P	P	–	S	P	P	P	
Research service	–	–	–	–	–	P	P	–	–	–	–	P	P	P	
<b>Day Care</b>															
Day care home	P	P	P	P	P	P	P	–	–	–	–	–	–	–	
Day care center	–	–	–	–	–	P	P	–	P	S	P	P	P	–	
<b>Eating and Drinking Establishment</b>															
Restaurant	–	–	–	–	–	P	P	P	P	–	P	P	P	P	???
Bar	–	–	–	–	–	P		P	P	–	–	?	?	?	

regulations will be proposed as part of the zoning ordinance update. The specific changes to be proposed will likely include:

- Tying minimum parking ratios to defined land uses and reducing minimums for some categories, including retail, administrative/professional offices and restaurants;
- Exploring the use of context-based parking requirements (i.e., variable requirements by location) or even maximum parking ratios for some types of uses;
- Promoting shared parking and allowing greater flexibility for meeting parking and transportation access demands;
- Expressly allowing the use of pervious pavement materials and bioretention areas within parking lots;
- Updating parking lot design standards to include drive aisle dimensions;
- Clarifying parking stall size requirements for residential use;
- Incorporating minimum vehicle stacking area requirements for drive-through uses; and
- Adding minimum bicycle parking requirements for some use types.

## 4. Mixed-Use and Commercial

One of the key themes of the comprehensive plan is its call for walkable, mixed-use development patterns in all of the designated community activity center areas—Perimeter Center, Blackburn Park, Peachtree Corridor, Lenox Park and the Buford Hwy. Corridor. Although the zoning ordinance includes several tools intended to accommodate and promote this type of development (e.g., OCR, PC and Peachtree Road overlay zoning), it may be necessary to further refine these existing provisions or even create new mixed-use zoning options as part of the ordinance update.

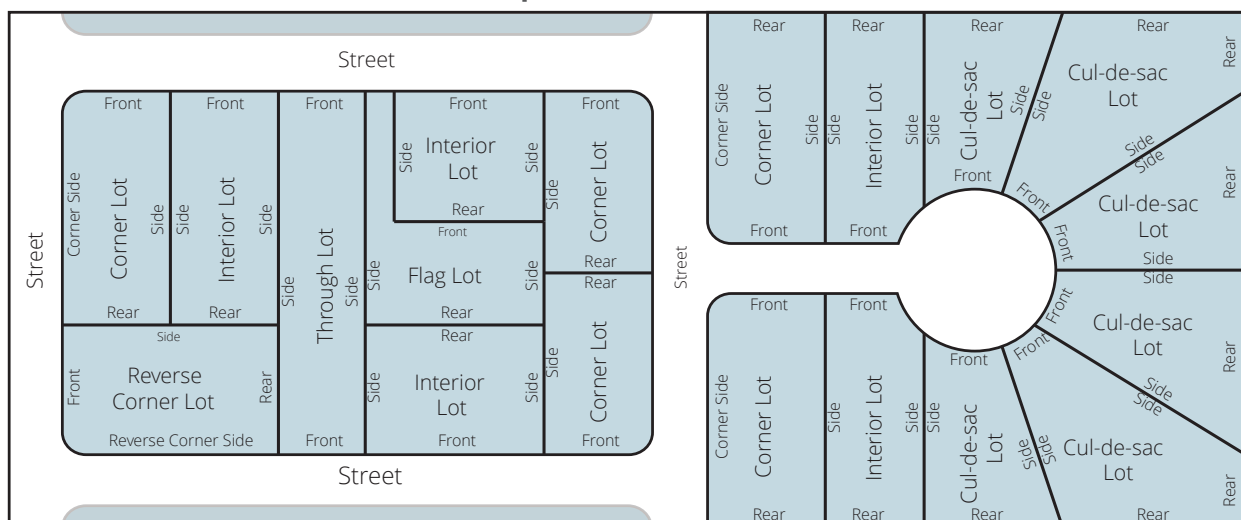
The plan also identifies needed neighborhood-serving retail nodes (“neighborhood commercial target areas”) in at least four of the stable neighborhood character areas. Again, while the current ordinance does include “neighborhood shopping” and “local commercial” zoning options, these districts may need to be revised or supplemented to fully realize the plan’s vision for these areas.

## 5. Housing Options

Brookhaven’s current zoning ordinance defines a relatively broad palette of residential dwelling types:

- Single-family detached
- Single-family attached
- Duplex

### Sample Illustration





- Triplex
- Multi-family
- Supportive living

However, the ordinance could do more to provide for a wider range of housing options by including additional housing options in one or more districts. Such alternatives could include:

- Accessory dwelling units (now allowed only in PC districts);
- Cottage courts (also known as “bungalow courts” and “pocket neighborhoods”);
- Multiplexes (also known as “walk-up flats” and “big houses”);
- Live-work buildings; and
- Senior housing (such as assisted living, congregate living, continuing care retirement community).

A recommendation to incorporate additional housing options into the zoning ordinance should not be interpreted as a call to include them in all districts, but rather that an expanded range of options be available through in some districts or zoning techniques and the applicable standards that apply to such housing types be clearly stated.

## 6. Form and Character

Though expressed in different ways and in varying contexts, many of the individuals who have offered suggestions for the new ordinance have expressed a desire for additional emphasis on the “form” of new buildings and development and the degree to which such development positively contributes to existing or planned character.

Some of the newer provisions of the Brookhaven ordinance include provisions intended to promote desirable urban form and high-quality place-making. The Peachtree Road overlay, for example, goes far beyond the typical array of use, setback, and height controls and focuses instead on transitioning the corridor into a more vibrant, walkable, mixed-use and transit-supportive environment.

In order to address such comprehensive plan priorities as infill compatibility, community identity and appearance, walkability, bikeability, and transit-orientation, the updated zoning ordinance will need to include additional provisions addressing form and character.

## 7. Nonconformities

In zoning parlance, “nonconformities” are buildings, uses, and lots that were established in compliance with regulations in existence at that time, but that no longer comply with applicable rules because the rules were changed—or were first instituted—after such situations were established. Nonconforming status could be related to virtually anything now addressed by current controls, including failure to meet current zoning setback, building height, lot coverage or stream buffer standards.

Some people confuse “nonconforming” with “illegal.” A more apt description might be “previously conforming,” because it more clearly indicates that such situations did comply with applicable rules at one point in time. The stigma of nonconforming status sometimes results in all nonconforming situations being treated alike, as is the case with the “Nonconforming Uses” section (Article V, Division 5) of Brookhaven’s current zoning ordinance.

Some early project discussions have indicated that there are fairly widespread “nonconforming” situations in some older areas of Brookhaven—most often residential lots that don’t comply with minimum size (area or width) regulations or detached houses that don’t meet zoning setback or stream buffer requirements. To address the types of issues raised, existing lot and building patterns should be analyzed to determine the extent of the issue and whether: (a) existing lot size and setback regulations should be adjusted; (b) one or more new districts should be created for areas that don’t fit existing classifications; or (c) some other technique could be employed to reduce or eliminate the nonconformities.

In addition, the existing nonconformity regulations should be substantially rewritten to address issues of clarity—i.e., more clearly distinguishing among

the regulations that apply to nonconforming lots, uses and structures—and to allow greater flexibility in dealing with nonconforming situations that are not likely to cause substantial adverse impacts on the surrounding area.

Care will be need to be taken to ensure that any new or modified regulations do not create needless nonconformities or pose a significant stumbling block to context-appropriate redevelopment activities in the city. One specific issue that will need to be addressed within the rewritten nonconforming section is a clearer definition of what constitutes increasing “the degree of nonconformity,” which is language used in the current ordinance (27-939) to limit the extent to a nonconforming situation may be modified.

## 8. Procedures

Article V of the current zoning ordinance includes the review and approval procedures for various zoning-related matters (e.g., rezonings, special land use permits and variances) as well as provisions establishing the planning commission and zoning board of appeals.

### 8.1 Organization

The existing zoning approval procedures are poorly organized and sometimes confusing. The clarity of the procedural provisions could be markedly improved through heavy editing, reorganization and use of parallel construction. As part of the rewrite, the procedural provisions should be restated to be clear, consistent and efficient. There should be a logical flow of development reviews and permits, from beginning to end. Under the proposed general outline presented on page 9, all existing (and new) zoning review procedures will be included in a single “procedures” article, with administrative powers and duties included in an “administration” article.

### 8.2 Variances

The city’s zoning variance procedures are typical of those seen in other ordinances. The zoning board of appeals is authorized to hear and decide property

owner requests to deviate from strict compliance with ordinance standards.

Like many local governments in Georgia and other states Brookhaven authorizes the granting of certain administrative (staff-approved) variances and special exceptions that have little potential for far-reaching adverse impacts. This type of streamlined procedure is a positive feature of the current ordinance. Opportunities to expand on its use in addressing minor matters will be investigated as the project moves forward.

## 8.3 Enforcement

The zoning ordinance’s enforcement provisions are found in Article VI. These provisions suggest but do not expressly spell out a “progressive enforcement” process. Progressive systems typically begin with informal contact by code enforcement staff, proceed (if necessary) to written notice from the city, stop-work orders issued by the city and court-mandated penalties and enforcement activities. The basics of this type of system should be clearly set out in the text of the ordinance—with remedies outlined in the order in which they would typically be used.

## 9. Measurements & Exceptions

Many of the early discussions regarding the zoning update have centered around topics related to measurements, definitions and exceptions to otherwise general rules of compliance. Perhaps the most talked about example relates to setback regulations for infill development, or “setback averaging.” Discussions to-date have focused mainly on whether such regulations are needed or desirable and, if so, how the contextual average setback of an area should be determined. One thing nearly everyone seems to agree on is that “front” setback requirements should not apply to both lot frontages on a corner lot.

Other examples of measurement-related issues that will need to be addressed include:

- What counts towards determining the amount of coverage on a lot and whether lot coverage for the purpose of zoning compliance is or should be the same as impervious coverage for the purpose of addressing stormwater runoff

and environmental protection.?

- How is the size and character of residential accessory structures determined?
- How is building height measured?
- What types of features are allowed within required setback areas?
- How is retaining wall and fence height measured?

These and other rules of measurements, exceptions and definition issues will be addressed in the proposed final article of the new zoning ordinance.

## 10. Customization Tools

No matter how modern and comprehensive the new zoning ordinance is, it will not be able to anticipate the challenges posed by *every* development site, the creativity of *every* developer or the uniqueness of *every* neighborhood. For this reason, consideration should be given to including zoning tools that allow for custom-tailoring of zoning regulations in unique circumstances. Examples of customization techniques that should be considered are neighborhood character overlays and planned development zoning.

Neighborhood character overlay zoning is a tool that can be used to customize base zoning regulations to:

- Protect unique development, building or land use patterns in areas when such patterns are not adequately addressed by citywide regulations;
- Promote reinvestment and redevelopment in

areas where change is desired and when existing zoning regulations hinder achievement of the desired change; or

- Help implement neighborhood plans or planning studies.

While neighborhood character overlays are often thought of as imposing an additional layer of requirements, the regulations of an neighborhood character overlay can actually be more or less restrictive than the underlying zoning.

Planned development zoning (sometimes referred to as planned unit developments or master planned developments) can come in the form of a base zoning district or overlay zoning district that is crafted to accommodate a site-specific development proposal. The zoning technique is intended to accommodate development that would be difficult or impossible to carry out under otherwise applicable zoning regulations, and usually geared toward developments that would provide greater public benefits than could be achieved using conventional zoning regulations. The process of establishing PD zoning typically involves far more upfront planning and public involvement than does a standard rezoning.

Both neighborhood character overlays and planned development zoning have potential downsides. Over-reliance on either tool can result in zoning that is complex and difficult to administer and enforce. However, if reserved for use in truly unique circumstances with high potential for public benefits, the potential upside may outweigh the risks.