

Public Hearing: YES ☒ NO ☐

Department: Planning & Sustainability

SUBJECT:

COMMISSION DISTRICT(S): 4, 5 & 7

Application of the Director of Planning & Sustainability for an amendment to the text of Section 27-3.37.9 and 27-3.37.10 of the Zoning Ordinance, regarding Tier 2 of the Hidden Hills Overlay District, to prohibit late-night establishments and for other purposes.

PETITION NO: N7. TA-21-1244945 (2021-2644)

PROPOSED USE: Late-night establishments in Tier 2 of HHOD as SLUPs.

LOCATION: Tier 2 of the Hidden Hills Overlay District

PARCEL NO. : N/A

INFO. CONTACT: Melora Furman, Sr. Planner

PHONE NUMBER: 404-371-4404

PURPOSE:

Application of the Director of Planning & Sustainability for an amendment to the text of Section 27-3.37.9 and 27-3.37.10 of the Zoning Ordinance, regarding Tier 2 of the Hidden Hills Overlay District, to prohibit late-night establishments and for other purposes.

RECOMMENDATION:

COMMUNITY COUNCIL: CC-4: Full Cycle Deferral; CC-5: Deferral.

PLANNING COMMISSION: 2-Cycle Deferral & Moratorium.

PLANNING STAFF: Two-Week Deferral.

STAFF ANALYSIS: Staff of the Department of Planning and Sustainability initially wrote a text amendment that would have simply prohibited late-night establishments in Tier 2 of the Overlay District, as requested. However, based on feedback from the W.O.M. (Women on a Mission) community group, residents' comments at the Districts 4 and 5 Community Council meetings, and comments at the Board of Commissioners' Planning, Economic Development, and Community Service (PECS) Committee, staff understands that some residents want late-night establishments. Staff has thus proposed that late-night establishments be allowed as long as they do not generate noise outside of the establishment, and as long as a proposal for a new late-night establishment is reviewed as a Special Land Use Permit. This permits community review of each request and allows for additional mitigation of potential adverse impacts based on conditions unique to each situation. Additionally, the Planning Commission had a number of concerns regarding late-night establishments including crime statistics, code enforcement activity, noise complaints, consideration of a distance separation provision, and a recommendation for a moratorium on the establishment of new late-night establishments in Tier 2 of the Hidden Hills Overlay District while further study is undertaken. We also had a meeting with members of the community who requested this proposal on July 13, 2021. The current proposal now includes 500-foot distance separation from residential uses and the requirement for adequate soundproofing. Outside of the overlay district, such establishments are permissible by-right in commercial and mixed-use districts if they are greater than 1,500 feet from residential uses. Those within 1,500 feet are subject to special land use permit (SLUP) approval and other supplemental regulations (Chapter 27, Sec. 4.2.32-Late-night Establishments). It is important to note that time is of the essence as it may be detrimental if additional establishments are permitted in the short-term while this item is under consideration. Any establishment permitted before this text amendment is approved will be a legal,

nonconforming use. Given the fluidity of this proposal, Staff recommends a “Two-week deferral” to permit another round of community engagement with residents of the Sherrington subdivision and the Hidden Hills community.

PLANNING COMMISSION VOTE: Two-Cycle Deferral 7-1-0 and recommendation for a moratorium.

April Atkins moved, Jon West seconded for a two-cycle deferral of this text amendment to the November zoning agenda, with a recommendation for a moratorium of late-night establishments in Tier 2, to expire on December 31, 2021. Motion passed 7-1-0; Tess Snipes opposed.

COMMUNITY COUNCIL VOTE/RECOMMENDATION: CC-4: Full Cycle Deferral 12-0-0 with the condition that there be one or two community meetings with the Planning Department involved to allow this text amendment to be fully vetted. **CC-5: Deferral 8-0-0.**



DeKalb County Department of Planning & Sustainability

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Decatur, GA 30030

(404) 371-2155 / plandev@dekalbcountyga.gov

Planning Commission Hearing Date: July 8, 2021

Board of Commissioners Hearing Date: July 29, 2021

TEXT AMENDMENT ANALYSIS

AGENDA NO.: N7

ZONING CASE NO.: TA-21-1244945

COMMISSION DISTRICTS: 4, 5, and 7

APPLICANT: Director of Planning & Sustainability

SECTIONS OF ZONING ORDINANCE AFFECTED BY AMENDMENTS: SECTION 27-3.37.9, TIER 2 PRINCIPAL USES AND STRUCTURES; SECTION 27-3.37.11, SPECIAL PERMITS IN TIER 2.

REASON FOR REQUEST: To regulate late-night establishments in Tier 2 of the Hidden Hills Overlay District in a manner that will mitigate negative impacts on nearby residential properties.

BACKGROUND: Tier 2 of the Greater Hidden Hills Overlay District includes properties along both sides of South Hairston Road, a major thoroughfare, for approximately eight tenths of a mile, both north and south of the intersection of South Hairston Road with Redan Road along with additional nodes at the intersection of Young Road and Panola Road and Redan and Panola Road. Land uses in this tier include shopping centers, free-standing commercial buildings, civic/religious/institutional uses, and a multifamily residential development.

A late-night establishment appears to have been operating at 1273 South Hairston Road as early as 2008. County records indicate that it was called "Hairstons" in 2008; more recently, the establishment was called "Tapas." Single-family residential properties are located immediately to the west of Tier 2 along South Hairston Road. Several hundred homes are located within ¼ mile of the western boundary, thirty of which adjoin the boundary line itself. The building for the late-night establishment, a one-story, 7,479 square foot building constructed in 1986, is located approximately 360 feet from the Sherrington subdivision.

The County has received complaints from neighbors about noise from the late-night establishment; the earliest record dates from 2008. Complaints intensified in 2017, leading to revocation of the business license for the establishment. The building is currently vacated and boarded up.

RECOMMENDATION(S): 2-week deferral for additional community engagement.

Staff of the Department of Planning and Sustainability initially wrote a text amendment that would have simply prohibited late-night establishments in Tier 2 of the Overlay District, as requested. However, based on feedback from the W.O.M. (Women on a Mission) community group, residents' comments at the Districts 4 and 5 Community Council meetings, and comments at the Board of Commissioners' Planning, Economic Development, and Community Service (PECS) Committee, staff understands that some residents want late-night establishments. Staff has thus proposed that

late-night establishments be allowed as long as they do not generate noise outside of the establishment, and as long as a proposal for a new late-night establishment is reviewed as a Special Land Use Permit. This permits community review of each request and allows for additional mitigation of potential adverse impacts based on conditions unique to each situation.

Additionally, the Planning Commission had a number of concerns regarding late-night establishments including crime statistics, code enforcement activity, noise complaints, consideration of a distance separation provision, and a recommendation for a moratorium on the establishment of new late-night establishments in Tier 2 of the Hidden Hills Overlay District while further study is undertaken. We also had a meeting with members of the community who requested this proposal on July 13, 2021. The current proposal now includes 500-foot distance separation from residential uses and the requirement for adequate soundproofing. Outside of the overlay district, such establishments are permissible by-right in commercial and mixed-use districts if they are greater than 1,500 feet from residential uses. Those within 1,500 feet are subject to special land use permit (SLUP) approval and other supplemental regulations (Chapter 27, Sec. 4.2.32-Late-night Establishments). It is important to note that time is of the essence as it may be detrimental if additional establishments are permitted in the short-term while this item is under consideration. Any establishment permitted before this text amendment is approved will be a legal, nonconforming use. Given the fluidity of this proposal, Staff recommends a 2-week deferral to permit another round of community engagement with residents of the Sherrington subdivision and the Hidden Hills community.

We, the residents of The Sherrington Neighborhood Association, are writing in regard to a problem we are experiencing with late night establishments in our community, District 5 along Redan and South Hairston Roads.

According to the Greater Hidden Hills Overlay, which this area falls under, night clubs are prohibited but not late-night establishments. These types of businesses operate like a night club, with the exception of the lack of a dance floor. However, a dance floor is not needed to dance, play loud music, have live bands or get inebriated which interferes with our quality of life.

As taxpayers of DeKalb County, we feel our quality of life is being compromised due to lack of sleep. It's very hard to function throughout the day when suffering from sleep deprivation. According to research, sleep is a vital part of living a healthy lifestyle; therefore, if sleep is frequently interrupted, quality sleep is lacking. Research further shows that people who sleep so little over many nights don't perform as well on complex mental tasks as do people who get closer to seven hours of sleep a night. It is unfair that not only is this music permeating throughout our neighborhood, but inside our dwellings as well, even with windows and doors closed. We want to be able to sleep at night and enjoy our homes inside and out.

We are reaching out to the DeKalb County Commissioners and any and all DeKalb County Officials for help in modifying the Greater Hidden Hills Overlay to prohibit late night establishments. Moving forward, DeKalb County Planning and Zoning should consider the impact businesses in C-1 areas, especially with the use of music, have on residential areas that are in close proximity before approval of commercial businesses.

This petition is to address change to the Greater Hidden Hills Overlay to extract late night establishment use from The Greater Hidden Hill Overlay District in Tier 2.

The signatures below signifies that we are in agreement with the above statements.

FILE ACTIVITY SHEET

CLAIM NUMBER	
DATE	
1	MARTHA CLARK MCLARK7273@aol.com
2	Athena Dorsey sunreld@gmail.com
3	Chadwick Dorsey trucutta trucutta38@gmail.com
4	Devin Gilliam devic.gilliam@hhs.gov
5	CATHERINE GILWARD trailblazing@comcast.net
6	Moneque Felt moneekfelt@gmail.com
7	Kyle Fulton Kyle Kyle.fulton1@gmail.com
8	Jimmy Scott
9	Carol Ann Murphy murphy_c@bellSouth.net
10	SEAN GARNET FLAZZY@HOTMAIL.COM
11	CORNELIUS JOHNSON this bod 4u 1975@g.mail.com
12	Shani Scott Shani.scott2010@gmail.com
13	
14	
15	

FILE ACTIVITY SHEET

CLAIM NUMBER		
DATE		
1	Myrica Jackson 4794 Bexley Dr.	mejack65@hotmail.com
2	Karen Clarke 1274 Bexley Ct	KClarke@gmail.com
3	Mendy Carpenter 4583 Bexley Dr.	rmentie@gmail.com
4	Emerson Knight 4583 Bexley Dr.	EmersonKnight4@gmail.com
5	Derek McKay 4586 Bexley Dr.	DerekMcKay@comcast.net
★ 6	Julie McKay 4586 Bexley Dr.	ladyjmac@comcast.net
7	Lula H. Thomas 4586 Bexley Dr.	
8	Cassandra Upstait 4586 Bexley Dr.	
9	Ken Wutt 4586 Bexley Dr.	KenWBenz1290@gmail.com
10	Curtis Jamerson	cjamerson20@gmail.com
11	Onalia Jamerson	melsaida@comcast.net
12	Leslie Jamerson	swankeyja@gmail.com
13	Giselle Jamerson	gizjamerson@gmail.com
14	Ruby Mill James	

FILE ACTIVITY SHEET

CLAIM NUMBER	
DATE	
1	Yolanda B. King-Adams (y-adams98@yahoo.com) 4642 Bexley Dr. Stone Mtn. GA 30083 Adams
2	Kenny Horneell-Scott +Horneell@comcast.net 4751 Bexley Dr. STN. MTN. GA 30083
3	LAMECO Daniel 4658 Bexley DR. STN. MTN. 30083 (lamecod77@gmail.com)
4	Dante Baker / DanteBaker7009@gmail.com
5	Wilma Byrd @ wbyrd0821@bellsouth.net
6	Rod Arthur rdrcarthur@gmail.com
7	Eugene Douse douse603@bellsouth.net
8	Tayata Tucker @bellsouth.net
9	Seanethe Wockhart
10	ZyDine Zdepezer@hotmail.com
11	Budgett Carey B.Sivari105@yahoo.com
12	LARRY WELSH larrywelsh25@yahoo.com
13	Roderick Bridger Crystal E. Hollinger hollingercrystal@bellsouth.net
14	John L. L... 4552 BEXLEY DR

FILE ACTIVITY SHEET

CLAIM NUMBER

DATE

1	5/24	A. C. Hall Sr
2	5/24	Emmie Hughes - emmychaz1@gmail.com
3	5/24	Charles R. Hughes - emmychaz1@gmail.com
4	5/24	Bob Perkins - sup272000@yahoo.com
5	5/24	Bob Perkins
6	5/24	Bob Perkins
7	5/24	Andre Waddell
8	5/24	Danyella Waddell
9	5/24	Wade Parham writercord@gmail.com
10	5/24	Paris Calhoun
11	5/24	Kimberly Harris LKDK Harris@ADL.COM
12	5/24	Hope Roberts Westley Griffin westleygriffin88@gmail.com
13	5/24	Carlos Hamer 4577 Boylston Way, Stone, HI, GA
14	5/24	Carlos hamer@comcast.net
15	5/24/21	IRA IRVING = Celelino@aol.com
16	5-24-2021	Panel Golsen - PanelGolsen@yahoo.com
17	5-24-21	Justin Bright JustinBright77@hotmail.com
18	5-24-21	Olive Wheatly 4
19		
20		
21		
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25		
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27		
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FILE ACTIVITY SHEET

CLAIM NUMBER

DATE 1

Joanene Proctor Joanene Proctor

joaneproc2@gmail.com

2

Datsy Harry

datsy2harry@gmail.com

3

Pearline Burney

4

Lynette Dallas goldcodAI/4546@gmail.com

5

Charles W. Dallas

6

Bob Thompson

cisco.lark@gmail.com

7

Ryan Brown

ryan.brown@gmail.com

8

Mimi

9

Mamie Williams

10

Paula Brown

11

Tara B. Rai

Tara

12

Jegvani Suro

Jegvani Suro

13

Angelica Navarrete

Angelica Navarrete

angie-0792@yahoo.com

14

Shelley

15

Shelley Brown

FILE ACTIVITY SHEET

[illegible]

AN ORDINANCE TO AMEND CHAPTER 27 OF
THE CODE OF DEKALB COUNTY, GEORGIA,
AND FOR OTHER PURPOSES.

WHEREAS, the Board of Commissioners is authorized to exercise zoning powers to protect and promote the County's health, safety, and general welfare;

WHEREAS, late night establishments are allowed in Tier 2 of the Hidden Hills Overlay District,

WHEREAS, late-night establishments in Tier 2 of the Hidden Hills Overlay District, when inappropriately sited and operated, could disrupt the use and enjoyment of adjoining residential land uses by generating objectionable noise levels and other off-site effects;

WHEREAS, late night establishments, when appropriately sited and operated, could provide residents of the County and of Tier 2 of the Hidden Hills Overlay District opportunities for relaxation and enjoyment;

NOW THEREFORE, BE IT ORDAINED by the Governing Authority of DeKalb County, Georgia, and be it hereby ordained by the Authority of same, that Chapter 27 of the Code of DeKalb County, as revised in 2015, is hereby amended as follows:

PART I. ENACTMENT

By amending the Section 27-3.37 to delete late night establishments as a permitted use and add it as a special use, as follows:

Section 27-3.37.9 Tier 2 principal uses and structures.

N. Restaurant ~~and late night establishment~~.

Section 27-3.37.11 B - Special permits in Tier 2.

B. Special land use permit from the board of commissioners:

8. Late night establishment, not legally established and in operation as of August 10, 2021, provided that:

- a. music from the late night establishment is inaudible outside of the building when the doors and windows of the building are closed;
- b. when music is involved, the detection of bass tones or vibrations shall be sufficient to be considered audible sound;
- c. the operator shall take adequate measures to soundproof the facility to mitigate off-site sound impacts in order to comply with subsections a and b;
- d. the doors and windows of the building shall be kept closed when the establishment

is in operation except when necessary to allow persons to exit and enter the building; and

e. No late night establishment shall be located within five hundred (500) feet of the property line of a property that contains a residential use.

1. Every special land use permit application for a late-night establishment shall include a scaled drawing of the location of the proposed premises, showing the distance measured in feet from the boundary line of the property proposed to be used as a late-night establishment to the property line of the closest residential use. For shopping plazas or mixed-use developments, the distance will be measured from the property line adjacent to the suite/unit of the proposed establishment. Such drawing shall be certified by a land surveyor or professional engineer registered in the State of Georgia.

PART II. EFFECTIVE DATE

This ordinance shall become effective immediately on the date of adoption by the board of commissioners and approval by the chief executive officer.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this____day of _____, 2021.

STEVE BRADSHAW
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of De4Kalb County, this____day of _____, 2021

ATTEST:

MICHAEL THURMOND
Chief Executive Officer
DeKalb County, Georgia

BARBARA SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners
and Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

VIVIANE H. ERNSTES
Chief Legal Officer
DeKalb County, Georgia

ANDREW A. BAKER
Planning Director
DeKalb County, Georgia