



Council Meeting- Zoom

August 10, 2020 at 7:00 p.m.

Dial (929) 205-6099
Meeting ID 917 9803 9589

Electronic Device
<https://zoom.us/j/91798039589>

The Honorable Mayor Elizabeth Carr-Hurst, Presiding

The Honorable Mayor Pro-Tem Ulysses J. Smallwood
The Honorable Linda J. Davis
The Honorable Alex Heath

The Honorable Hattie Portis-Jones
The Honorable Pat Pallend
The Honorable James Whitmore

Mr. Randy Turner

City Attorney

I. Meeting Called to Order:

The Honorable Mayor Carr-Hurst

II. Roll Call:

Arika Birdsong-Miller
City Clerk

III. Invocation:

Councilman James Whitmore

IV. Adoption of City Council Minutes:

Councilmembers

- July 27, 2020 Council Meeting Minutes (Zoom)
- July 27, 2020 Executive Session Minutes (Telephonic)
- August 4, 2020 Special Called Council Meeting Minutes (Telephonic)
- August 4, 2020 Executive Session Minutes (Telephonic)

V. Adoption of the City Council Agenda:

Councilmembers

VI. Public Hearing:

1. Text Amendment 2020029 Safeguard Landfill Management Section 80-220 Landfill, solid waste disposal(b)(11)(12).
2. Use Permit 2020083 Safeguard Landfill Section 80-220 Landfill, solid waste disposal.

VII. Discussion:

1. Mayor Carr-Hurst: Pandemic and Census Update

VIII. Council Comments

Councilmembers

IX. Executive Session

None

X. Adjournment

Councilmembers

*When an Executive Session is required, one will be called for the following issues:

(1) Personnel (2) Real Estate or (3) Litigation.



City of Fairburn
Mayor and Council Special Called Meeting- Zoom
July 27, 2020
7:00pm

- I. The meeting was called to order at 7:00pm by the Honorable Mayor Carr-Hurst.
- II. Roll Call was taken by City Clerk, Arika Birdsong-Miller with the following members present:

Mayor Elizabeth Carr-Hurst

The Honorable Mayor Pro-Tem Ulysses J. Smallwood
The Honorable Linda J. Davis
The Honorable Alex Heath

The Honorable Pat Pallend
The Honorable Hattie Portis-Jones
The Honorable James Whitmore

The attendance of Council constituted a quorum and the meeting proceeded.

City Attorney Randy Turner was also present.

- III. The invocation was led by Mayor Pro-Tem Ulysses J. Smallwood.
- IV. Adoption of City Council Minutes:
Motion to approve June 22, 2020, Council Meeting Minutes (Zoom) was made by Mayor Pro-Tem Smallwood and the second was provided by Councilwoman Davis.
Vote: 6-0: Motion Carried.

Motion to approve the June 22, 2020, Executive Session Minutes (WebEx) was made by Councilwoman Davis and the second was provided by Mayor Pro-Tem Smallwood.
Vote: 6-0: Motion Carried.

Motion to approve the July 8, 2020, Special Called Meeting Minutes (Zoom) was made by Mayor Pro-Tem Smallwood and Councilwoman Davis.
Vote: 6-0: Motion Carried.
- V. Adoption of the Council Agenda:
Attorney Randy Turner stated than an Item #2 needed to be added to the agenda regarding appointment of an EEO Officer. Motion to approve the Council Agenda with additions was made by Councilman Heath and the second was provided by Mayor Pro-Tem Smallwood.
Vote: 6-0: Motion Carried.

VI. Agenda Items:

1. Community Development

Mr. Lester Thompson

For Mayor and Council to approve the Fairburn Train Depot Parking Lot Expansion Project Contract Award in the amount of \$211,333.59. Mr. Thompson explained that after completion of the bid evaluation, it was determined that Summit Construction & Development was the lowest responsive and responsible bidder with a bid price of

\$211,333.59. Mr. Thompson project expenditures will come out of the GO Bond Economic Development account. Councilwoman Portis-Jones questioned the difference in the highest bid and the lowest bid. Mr. Thompson went through the bid tabulation by category to explain the price difference. Motion to approve the Fairburn Train Depot Parking Lot Expansion Project Contract Award in the amount of \$211,333.59 to Summit Construction & Development was made by Councilman Heath and the second was provided by Councilman Whitmore.

Vote: 5-1: Motion Carried.

Councilwoman Portis-Jones voted in opposition.

2. City Attorney

Attorney Randy Turner

For Mayor and Council approve the Engagement Letter for Outside Counsel for EEO Investigation with Jamala McFadden. Attorney Turner stated there was a complaint between two employees at City Hall of workplace harassment. Attorney Turner stated that the HR Director works closely with the two individuals and would like to utilize outside Counsel to do the investigation. Attorney Turner informed Mayor and Council that the rate for Attorney McFadden was \$270/hour. Motion to approve Engagement Letter for EEO Investigation with Attorney Jamala McFadden was made by Councilwoman Davis and the second was provided by Mayor Pro-Tem Smallwood.

Vote: 6-0: Motion Carried.

VII. Council Comments:

Mayor Pro-Tem Smallwood thanked everyone for attending the Council Meeting.

Councilwoman Portis-Jones congratulated Planning and Zoning Director Tarika Peeks on the article in the Atlanta Business Chronicle.

Councilwoman Davis congratulated Ms. Tarika Peeks on the article written in the Atlanta Business Chronicle.

Councilman Pallend had no comment.

Councilman Whitmore congratulated Ms. Peeks on the article in the Atlanta Business Chronicle and Chief Stoney Mathis on his election victory in Georgia Association of Chiefs of Police 4th Vice President.

Councilman Heath congratulated Ms. Peeks on her accomplishment.

Mayor Carr-Hurst informed Council that there will be a This Is It Food Truck event on July 30th on Lightning Street. Mayor Carr-Hurst also congratulated Ms. Peeks and Chief Stoney Mathis for their accomplishment.

VIII.. Executive Session: At 8:09pm a Motion to enter Executive Session for Litigation was made by Councilman Whitmore and the second was provided by Mayor Pro-Tem Smallwood.

At 8:22pm a Motion to reconvene the Regular Meeting was made by Councilman Whitmore and the second was provided by Councilman Heath.

- IX. Adjournment: At 8:24pm, with no further business of the City of Fairburn, the Motion to adjourn was made by Councilwoman Davis and the second was provided by Councilman Heath.

Vote: 6-0: Motion Carried.

Arika Birdsong-Miller, City Clerk

Elizabeth Carr-Hurst, Mayor



City of Fairburn
Mayor and Council Special Called Meeting- Telephonic
August 4, 2020
7:00pm

- I. The meeting was called to order at 7:00pm by the Honorable Mayor Carr-Hurst.
- II. Roll Call was taken by City Clerk, Arika Birdsong-Miller with the following members present:

Mayor Elizabeth Carr-Hurst

The Honorable Mayor Pro-Tem Ulysses J. Smallwood
The Honorable Linda J. Davis
The Honorable Alex Heath

The Honorable Pat Pallend
The Honorable Hattie Portis-Jones
The Honorable James Whitmore

The attendance of Council constituted a quorum and the meeting proceeded.

City Attorney Randy Turner was also present.

- III. Executive Session: At 7:01pm a Motion to enter Executive Session for Litigation was made by Councilman Whitmore and the second was provided by Mayor Pro-Tem Smallwood.

At 7:33pm a Motion to reconvene the Regular Meeting was made by Councilwoman Davis and the second was provided by Councilman Heath.

- IV. Adjournment: At 7:36pm, with no further business of the City of Fairburn, the Motion to adjourn was made by Mayor Pro-Tem Smallwood and the second was provided by Councilwoman Davis.

Vote: 6-0: Motion Carried.

Arika Birdsong-Miller, City Clerk

Elizabeth Carr-Hurst, Mayor



CITY OF FAIRBURN

CITY COUNCIL AGENDA ITEM

**SUBJECT: TEXT AMENDMENT 2020029 SAFEGUARD LANDFILL MANAGEMENT
SECTION 80-220 LANDFILL, SOLID WASTE DISPOSAL(b)(11)(12)**

() AGREEMENT () POLICY / DISCUSSION () CONTRACT
() ORDINANCE () RESOLUTION (X) OTHER

Planning and Zoning Commission: 07/07/2020

Council Meeting: 08/10/2020

DEPARTMENT: Community Development/Planning and Zoning Office

BUDGET IMPACT: None

PUBLIC HEARING: (X) Yes (X) No

PURPOSE: For the Mayor and Council to approve the continuance of the public hearing to consider the amendments to Section 80-220 Landfill, solid waste disposal(b)(11)(12).

HISTORY: This text amendment was initiated by Safeguard Landfill Management. The Zoning Ordinance, Section 80-296 Application for or initiation of an amendment, allows a property owner to initiate an amendment to the City's Zoning Ordinance. In 2004, the petitioner's (Safeguard Management Landfill) original landfill tract was annexed into the City of Fairburn and zoned M-2 (Heavy Industrial). In 2008, landfills were added to the list of permitted uses in the M-2 (Heavy Industrial) zoning district. In 2012, the Zoning Ordinance was amended to remove landfills as a permitted use for M-2 (Heavy Industrial) zoned properties. The current zoning regulations now require a use permit for landfills and includes separate use permit standards. As a result of the 2012 amendment to the Zoning Ordinance, the petitioner's landfill became a legal non-conforming use.

FACTS AND ISSUES:

The proposed text amendment to Section 80-220 Landfill, solid waste disposal, initiated by the petitioner, seeks to remove the current prohibition of expanded landfills located within a one-mile radius of a residentially zoned or used property. Further, the proposed text amendment will remove the current regulation prohibiting an expanded use within the boundaries of an expanded landfill or location. If the proposed text amendment is approved, it will allow the expansion of an existing landfill onto an additional +/-28.17 acres on five (5) parcels with frontage on Roosevelt Highway. Currently, the City's Zoning Ordinance prohibits existing landfills to expand. The 2012 amendment to the city's Zoning Ordinance, which removed landfills as a permitted use from M-2 (Heavy Industrial) zoning district and made it subject to a use permit was implemented by the city to regulate the negative impact of landfills on the surrounding residential properties. The landfill use permit standards specifically address the location

and potential expansion of new or existing landfill(s), stating “expanded landfills can not include any expanded use within a parcel boundary or location”. The intent and purpose of the Zoning Ordinance is clearly stated, in restricting any further expansion of existing landfills.

CURRENT ORDINANCE

Section 80-220 Landfill, solid waste disposal

(a) Required district: M-2 (Heavy Industrial)

(b) Standards:

- (1) No access shall be allowed from local streets.
- (2) Access streets shall be paved and shall be able to withstand maximum load limits established by the state as approved by the director of public works.
- (3) No portion of a new landfill shall be located within a three-mile radius of the property lines of an existing landfill.
- (4) The waste disposal boundary of a landfill shall be located at least 500 feet from all property lines, except adjacent to M-1 (light industrial) and M-2 (heavy industrial) zoned districts.
- (5) A minimum 200-foot buffer and ten-foot improvement setback shall be required along all property lines except public rights-of-way.
- (6) A minimum 50-foot buffer and ten-foot improvement setback shall be required along all public rights-of-way.
- (7) A minimum six-foot high solid fence or wall shall be located on property lines or interior to the required buffers and improvement setbacks.
- (8) Limit hours of operation from 6:00 a.m. to 6:00 p.m., Monday through Saturday.
- (9) The owner shall provide the zoning administrator a current copy of all applicable permits from the state department of natural resource upon application for a land disturbance permit.
- (10) Vehicles shall be allowed into a landfill site only if waste is covered to prevent blowing of material from the vehicle.
- (11) No portion of a new or expanded landfill shall be located within a one-mile radius of the property lines of a residentially zoned or used property.
- (12) An expanded landfill shall not include any expanded use within the parcel boundaries of an existing site or location.
- (13) The landfill shall be sited and operated in accordance with the Rules of Georgia, Department of Natural Resources, Environmental Protection Division, Chapter 391-3-4 Solid Waste Management, O.C.G.A. § 12-8-20 Georgia Comprehensive Solid Waste Management Plan, and 40 CFR Part 258 (Subtitle D of RCRA).

PETITIONER'S PROPOSED AMENDMENTS TO (b)(11)(12)

- (11) No portion of a new ~~or expanded~~ landfill shall be located within a one mile radius of the property lines of a residentially zoned or used property.
- (12) ~~An expanded landfill shall not include any expanded use within the parcel boundaries of an existing site or location.~~ [Delete standard #12]

Final version of the amended text to (b)(11)(12)

- (11) No portion of a new landfill shall be located within a one mile radius of the property lines of a residentially zoned or used property.
- (12) *Deleted*

PLANNING AND ZONING COMMISSION RECOMMENDATION:

On Tuesday, July 7, 2020, the Planning and Zoning Commission reviewed the text amendment application and recommended denial of the petition.

STAFF RECOMMENDATION:

The applicant has submitted a written request to continue the application to amend Section 80-220 Landfill, solid waste disposal(b)(11)(12). The city's zoning ordinance, Section 80-299 Public hearing and action by mayor and council, allows the mayor and council to continue a public hearing to the next regular meeting date and for additional meeting dates without further legal notice. Therefore, staff is recommending a **CONTINUANCE** of the public hearing to consider the petitioner's request to amend Section 80-220 Landfill, solid waste disposal(b)(11)(12) to Monday, August 24, 2020.

ATTACHMENTS:

Proposed Text Amendments to Section 80-220 Landfill, solid waste disposal
Deferral Letter



Elizabeth Carr-Hurst, Mayor



G. Douglas Dillard
404-665-1241

E-mail:
ddillard@dillardsellers.com

August 4, 2020

Via Email: tpeeks@fairburn.com

Tarika Peeks, Planning & Zoning Director
City of Fairburn
56 Malone Street
Fairburn, GA 30213

**Re: 2020029 Text Amendment by Safeguard Landfill Management
Deferral from August City Council Hearing**

Dear Tarika:

On behalf of my client, Applicant in the above-referenced text amendment application, please accept this letter as the Applicant's request for deferral of the City Council hearing on this matter, respectively scheduled for August 10, 2020.

We request a deferral until such time as the Applicant's related use permit application (2020083) with variance request amendment (as submitted on August 4, 2020) may be heard together with the text amendment application. The Applicant's submissions to City Council are inextricably linked. In order to appropriately consider these materials, the Applicant requests that City Council consideration of the text amendment be deferred until the use permit with variance request amendment receives a recommendation from the Planning and Zoning Commission and is before City Council for a public hearing.

Please do not hesitate to contact me with any questions.

Sincerely,

/s/ G. Douglas Dillard
G. Douglas Dillard
R. Baxter Russell

cc: Valerie Ross (vross@lawtrg.com)

1 Re: AMENDMENT TO ZONING ORDINANCE TA-2020029

2
3 **AN ORDINANCE TO AMEND CHAPTER 80. ZONING, ARTICLE IV.-**
4 **ADMINISTRATIVE PERMITS AND USE PERMITS, SECTION 80-220.- LANDFILL,**
5 **SOLID WASTE DISPOSAL; TO PROVIDE FOR SEVERABILITY; TO REPEAL**
6 **CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE AND FOR**
7 **OTHER PURPOSES**

8
9 BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF FAIRBURN,
10 GEORGIA, AND IT IS HEREBY ORDAINED BY AUTHORITY OF THE SAME THAT:

11
12 **Whereas,** zoning ordinance amendments are important in order to continue the realization of the
13 vision, goal and policies set forth by Staff and the community in the most recent Comprehensive
14 Land Use Plan update; and

15
16 **Whereas,** pursuant to the requirements of the Zoning Procedures Act and the City Zoning
17 Ordinance, a properly advertised public hearing on the text amendment to the zoning ordinance
18 was held not less than 15 nor more than 45 days from the date of publication of notice, and which
19 public hearing was held on the 10th day of August, 2020; and

20
21 **Whereas,** in accordance with the requirements of the Zoning Ordinance, the Planning and Zoning
22 Commission of the City of Fairburn has forwarded its recommendation to the Mayor and City
23 Council that the amendment to Chapter 80. Zoning. Article IV. Administrative Permits and Use
24 Permits, Section 80-220.- Landfill, Solid Waste Disposal be denied in order to maintain the
25 prohibition of expanded landfills within a one-mile radius of the property lines of residentially
26 used or zoned property as found in Section 80-220 (11), as well as maintain the prohibition of an
27 expanded use within the parcel boundaries of an existing expanded landfill as found in Section 80-
28 220 (12); and

29
30 **Whereas,** pursuant to the requirements of the Zoning Procedures Act and the City Zoning
31 Ordinance, a properly advertised public hearing was held not less than 15 nor more than 45 days
32 from the date of publication of notice, and which public hearing was held on the 10th day of August,
33 2020, and continued to August 24, 2020, pursuant to Section 80-299 of the City of Fairburn Zoning
34 Ordinance; and

35
36 **Whereas,** after the aforementioned public hearing, the Mayor and City Council have determined
37 that continuing the proposed amendment to Article IV – Administrative Permits and Use Permits,
38 Section 80-220. – Landfill, Solid Waste Disposal (11) and (12) would be in the best interest of
39 residents, property owners, businesses and citizens of the City of Fairburn; and

40
41 **NOW, THEREFORE, BE IT ORDAINED,** by the Mayor and City Council of the City of
42 Fairburn, Georgia, and it is hereby ordained by the authority of same that the proposed
43 amendment to Article IV – Administrative Permits and Use Permits, Section 80-220. –
44 Landfill, Solid Waste Disposal, (11) and (12) be continued until August 24, 2020, pursuant to
45 Section 80-299 of the City of Fairburn Zoning Ordinance in order to consider the
46 amendment as follows:

1 **Section 1.** (11) *No portion of a new landfill shall be located within a one-mile radius of the*
2 *property lines of a residentially zoned or used property.*

3 (12) *Deleted.*
4

5 **Section 2.** In the event any section, subsection, sentence, clause, or phrase of this Ordinance shall
6 be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect
7 the previously existing provisions of the other sections, subsections, sentences, clauses or phrases
8 of this Ordinance, which shall remain in full force and effect as if the section, subsection, sentence,
9 clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part
10 thereof. The City Council declares that it would have passed the remaining parts of this Ordinance
11 or retained the previously existing Ordinance if it had known that such part of parts hereof would
12 be declared or adjudicated invalid or unconstitutional.
13

14 **Section 3.** This Ordinance shall become effective on the 10th day of August, 2020.
15

16 **Section 4.** All Ordinances and parts of Ordinances in conflict with this Ordinance are repealed to
17 the extent of the conflict.
18

19 APPROVED this 10th day of August, 2020, by the Mayor and Council of the City of Fairburn,
20 Georgia.
21

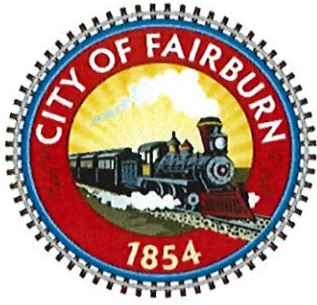
22
23 _____
24 Elizabeth Carr-Hurst, Mayor
25

ATTEST:

26 _____
27 Arika Birdsong-Miller, City Clerk
28

29 APPROVED AS TO FORM:
30

31 _____
32 William R. (Randy) Turner, City Attorney
33



CITY OF FAIRBURN

CITY COUNCIL AGENDA ITEM

SUBJECT: USE PERMIT 2020083 SAFEGUARD LANDFILL SECTION 80-220 LANDFILL, SOLID WASTE DISPOSAL

() AGREEMENT () POLICY / DISCUSSION () CONTRACT
() ORDINANCE () RESOLUTION (X) OTHER

Planning and Zoning Commission: 07/07/2020

Council Meeting: 08/10/2020

DEPARTMENT: Community Development/Planning and Zoning Office

BUDGET IMPACT: None

PUBLIC HEARING: (X) Yes () No

PURPOSE: For the newly amended use permit application to be advertised in order to comply with the Zoning Procedure Law and the City's Zoning Ordinance.

PLANNING AND ZONING COMMISSION RECOMMENDATION:

On Tuesday, July 7, 2020, the Planning and Zoning Commission reviewed the use permit petition and recommended denial of the petition.

STAFF RECOMMENDATION:

On Tuesday, August 4, 2020, the applicant submitted an amendment to its use permit application in order to apply for a concurrent variance. This amendment to the use permit is to allow Safeguard Landfill to expand its existing use to adjacent property. Because of the newly proposed concurrent variance to the use permit, the amended use permit application must be re-advertised in order to comply with the Zoning Procedures Law and the City's Zoning Ordinance. Further, the amended use permit application must be submitted to the Planning and Zoning Commission for its review and recommendation. The Planning and Zoning Commission's recommendation will be presented to the Mayor and Council at a future public hearing for their consideration.

APPLICATION INFORMATION

Use Permit Petition 2020083

APPLICANT/PETITIONER INFORMATION

Property Owners:

Safeguard Landfill Management

Petitioner:

Safeguard Landfill Management
c/o Dillard Sellers

PROPERTY INFORMATION

Address:

Parcels 07290001551516, 07260001540876, 07290001551185,
07290001551540, 07290001551557 [7700 Roosevelt Hwy]

Land Lot and District:

Land Lot 154 & 155, District 7th

Frontage:

Roosevelt Highway/Highway 29

Area of Property:

+/- 28.17 acres

Existing Zoning and Uses:

M-2 (Heavy Industrial District)

Overlay District:

Not applicable

**2035 Comprehensive Future
Land Use Map Designation:**

Industrial

MEETING AND HEARING DATES

Planning and Zoning Commission Meeting
July 7, 2020

City Council Public Hearing
August 10, 2020

INTENT

A request for a use permit to allow the expansion of the existing Safeguard Landfill onto an additional +/-28.17 acres.

EXISTING ZONING AND LAND USE OF ABUTTING PROPERTIES

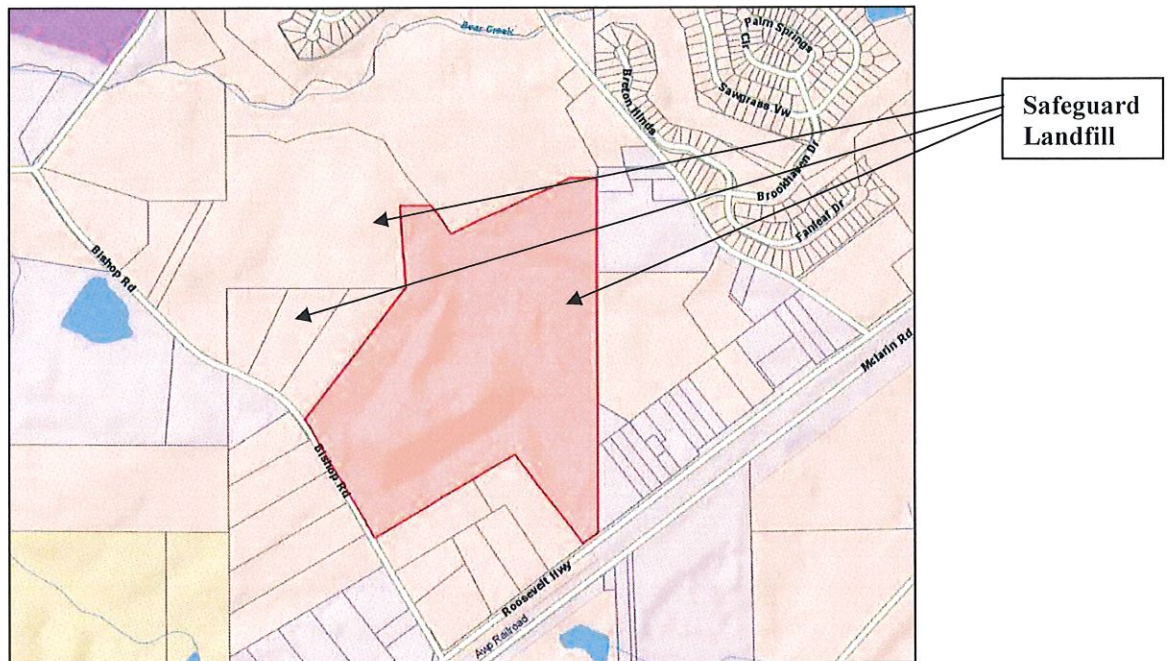
North: M-2 (Heavy Industrial District), AG (Agricultural) and PD (Planned Development District)

East: M-2 (Heavy Industrial District), City of South Fulton and PD (Planned Development)

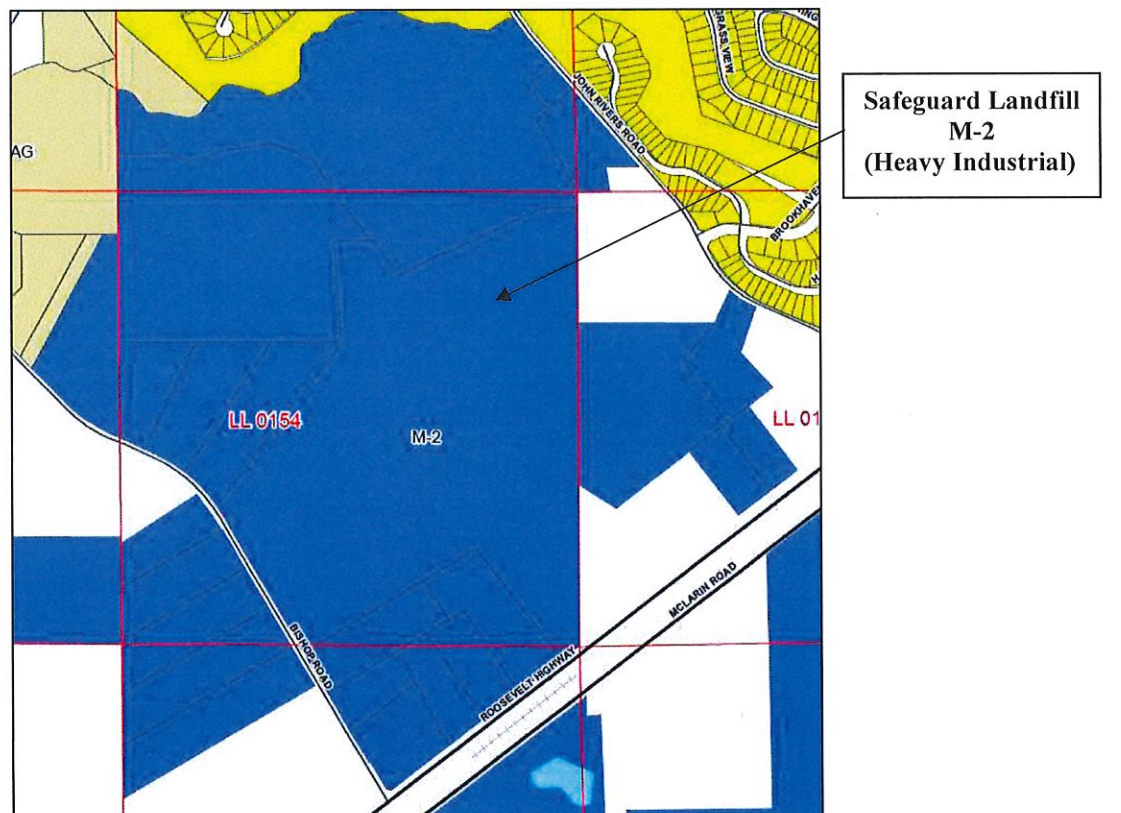
South: M-2 (Heavy Industrial District)

West: M-2 (Heavy Industrial District) and City of South Fulton

PARCEL MAP



ZONING MAP



ARIEL CONCEPTUAL SITE MAP



Landfill
expansion area
(+/- 28.17 acres)

PUBLIC PARTICIPATION

Due to the COVID-19 public health pandemic, the applicant hosted a community conference call instead of an in-person meeting. The conference call was held on Thursday, June 25, 2020 at 6:00 p.m. One (1) property owner participated in the conference call.

The following issues and concerns were expressed:

- Nasal ranger reports and odor testing results
 - What did the testing show? Can we discuss these reports and results further?
- Expansion Area
 - Can you further explain the location of the expansion in relation to the residential neighborhoods located north of the subject property?

The petitioner's response to the issues and concerns were as follows:

- Nasal ranger and odor testing occur twice daily; reports and testing can determine presence of off-site odors. The petitioner will provide follow-up on specific results.
- Expansion is located along Roosevelt Hwy/Hwy 29; the expansion will not occur in the direction of the neighborhoods. The applicant will follow-up regarding a site visit to further demonstrate the expansion location.

USE PERMIT CRITERIA

Section 80-172 Use Permit Considerations: Staff has reviewed said items pertaining to the subject use, and offers the following comments:

1. Whether the proposed use is consistent with the Comprehensive Land Use Plan adopted by the City Council;

Staff is of the opinion that the proposed use is consistent with the Future Land Use Map and the 2035 Comprehensive Plan. The property is in the Office/Industrial Character Area. The Office/Industrial Character Area consist of a mix of light and heavy industrial uses, as well as office uses. Industrial uses may include manufacturing, processing plants, factories, and warehouses.

The Office/Industrial Character Area recommends the following development strategies:

- Create centers of work and innovation;
- Develop true business parks, with a mix of industrial and office uses;
- Functional traffic flow for all modes of traffic, including large trucks on well-designed streets with curbs and landscaping;
- Buffers to provide transition to surrounding, lower intensity surrounding development; and
- Appropriate screening for outdoor storage and activity areas.

2. Compatibility with land uses and zoning districts in the vicinity of the property for which the Use Permit is proposed;

The area consists of M-2 (Heavy Industrial District), AG (Agricultural District) and PD (Planned Development District) to the north; M-2 (Heavy Industrial District), City of South Fulton and PD (Planned Development District) is to the east, M-2 (Heavy Industrial District) to the south and M-2 (Heavy Industrial District) and City of South Fulton to the west. Heavy industrial (M-2) uses surround the property. A conservation area which is owned by the City of Fairburn is located to the north-east of the subject property. Residential zoned and used properties are located within a one-mile radius of the subject property.

3. Whether the proposed use may violate local, state and/or federal statutes, ordinances or regulations governing land development;

If the petitioner's text amendment petition is not approved, the expansion of the landfill is not allowed due to the use permit standards in Section 80-220 Landfills, solid waste disposal(b)(11)(12) of the City's Zoning Ordinance which prohibits an expanded landfill from locating within a one-mile radius of residentially zoned or use property and expanded landfills to expand within the parcel boundaries of an existing site or location. The landfill is subject to state and federal regulations and guidelines.

4. The effect of the proposed use on traffic flow, vehicular and pedestrian, along adjoining streets;

The proposed use is not expected to generate many additional hourly trips. There should be limited to no impact on traffic flow along adjacent streets.

5. *The location and number of off-street parking spaces;*

The applicant is proposing no additional parking spaces with the expansion. The petitioner will be maintaining its current level of operations.

6. *The amount and location of open space;*

As stated in the petitioner's application, approximately 84 acres of the 207 acre landfill site will exist as undisturbed buffer space.

7. *Protective screening;*

The site currently has a 200-ft undisturbed buffer around the perimeter of the existing landfill boundary. The 200-ft buffer requirement will be imposed on the expanded area as well. There is a 500-ft residential buffer at the northwest corner of the site. The applicant will also be required to install a 6' high opaque fence around the site.

8. *Hours and manner of operation;*

The landfill hours and manner of operations will not change as a result of the proposed expansion. The current operating hours are Monday - Friday 6:00 a.m.- 5:00 p.m., Saturday 6:00 a.m. to 12:00 p.m. and Closed on Sunday.

9. *Outdoor lighting; and*

As stated in the petitioner's application, outdoor lightning on the property will be internally focused and controlled. No negative impact from the site lightning will be imposed on surrounding property owners.

10. *Ingress and egress to the property*

The landfill has two ingress/egress points, one on Roosevelt Highway/Hwy 29 and one on Bishop Road. No additionally ingress/egress points will be added to the subject property.

STAFF RECOMMENDATION

On Tuesday, August 4, 2020, the applicant submitted an amendment to its use permit application in order to apply for a concurrent variance. This amendment to the use permit is to allow Safeguard Landfill to expand its existing use to adjacent property. Because of the newly proposed concurrent variance to the use permit, the amended use permit application must be re-advertised in order to comply with the Zoning Procedure Law and the City's Zoning Ordinance. Further, the amended use permit application must be submitted to the Planning and Zoning Commission for its review and recommendation. The Planning and Zoning Commission's recommendation will be presented to the Mayor and Council at a future public hearing for their consideration.

ATTACHMENTS

Letter of Intent/Impact Analysis
Use Permit Considerations
Conceptual Site Plan



Elizabeth Carr-Hurst, Mayor

Updated on June 17, 2020
In accordance with the October 2019 Zoning Ordinance Amendments

Letter of Intent and Impact Analysis

Fairburn, GA

Text Amendment Application
Use Permit Application

Applicant:
Safeguard Landfill Management
c/o G. Douglas Dillard, Esq.

Property:
7700 Roosevelt Highway
PARCEL ID#: 07-260001350359
PARCEL ID#: 07-260001540892
PARCEL ID#: 07- 260001540736
PARCEL ID#: 07- 260001540744
PARCEL ID#: 07- 260001540751
PARCEL ID#: 07- 290001551516
PARCEL ID#: 07- 260001540876
PARCEL ID#: 07- 290001551557
PARCEL ID#: 07- 290001551540
PARCEL ID#: 07- 290001551185

Submitted for Applicant by:

G. Douglas Dillard
R. Baxter Russell
DILLARD SELLERS
1776 Peachtree Street, Suite 390N
Atlanta, Georgia 30309
(404) 665-1241
ddillard@dillardsellers.com

additional traffic, noise, or odor to affect surrounding residents and property owners. The Applicant's landfill expansion will not create additional site entrances off either Roosevelt Highway or Bishop Road. The Applicant's landfill expansion will include additional buffering along the site's exterior boundary, with total site buffering including approximately 84 acres on the Property. Finally, the Applicant's proposed use permit will comply with all use permit standards for landfills, as modified under the requested zoning ordinance text amendment.

For these reasons and the justification outlined below, the Applicant respectfully requests approval of the proposed text amendment and use permit applications in order to continue its operations as a productive and beneficial commercial and industrial business partner for the City of Fairburn.

II. PROPOSED TEXT AMENDMENT LANGUAGE

"Sec. 80-220. - Landfill, solid waste disposal.

(a) *Required districts:* M-2.

(b) *Standards:*

- (1) No access shall be allowed from local streets.
- (2) Access streets shall be paved and shall be able to withstand maximum load limits established by the state as approved by the director of public works.
- (3) No portion of a new landfill shall be located within a three-mile radius of the property lines of an existing landfill.
- (4) The waste disposal boundary of a landfill shall be located at least 500 feet from all property lines, except adjacent to M-1 (light industrial) and M-2 (heavy industrial) zoned districts.
- (5) A minimum 200-foot buffer and ten-foot improvement setback shall be required along all property lines except public rights-of-way.
- (6) A minimum 50-foot buffer and ten-foot improvement setback shall be required along all public rights-of-way.
- (7) A minimum six-foot high solid fence or wall shall be located on property lines or interior to the required buffers and improvement setbacks.
- (8) Limit hours of operation from 6:00 a.m. to 6:00 p.m., Monday through Saturday.
- (9) The owner shall provide the zoning administrator a current copy of all applicable permits from the state department of natural resource upon application for a land disturbance permit.
- (10) Vehicles shall be allowed into a landfill site only if waste is covered to prevent blowing of material from the vehicle.
- (11) No portion of a new ~~or expanded~~ landfill shall be located within a one-mile radius of the property lines of a residentially zoned or used property.
- (12) ~~An expanded landfill shall not include any expanded use within the parcel boundaries of an existing site or location.~~

4) The effects of the proposed use on traffic flow, vehicular and pedestrian, along adjoining streets?

The Applicant's current use of the Property and the proposed expansion of the C&D landfill use will not have any adverse effect on the traffic flow along either Roosevelt Highway or Bishop Road. As shown on the submitted site plan, the Applicant does not propose any new entrances or points of ingress/egress on the Property. Additionally, the Applicant's landfill operations will not substantially increase traffic in the area, as the Applicant submits these zoning requests in order to maintain its current level of operations on the Property.

5) The location and number of off-street parking spaces?

The Applicant proposes no additional parking spaces with these land use and zoning requests, as the Applicant will maintain its current level of operations on the Property.

6) The amount and location of open spaces?

The Applicant currently maintains extensive open space on the Property, including in the buffer areas along the perimeter of the site. As shown on the proposed site plan, approximately 84 acres of the 207-acre landfill site will exist as undisturbed buffer space.

7) Protective screening?

As shown on the proposed site plan, extensive buffering exists along the perimeter of the Property. Applicant will also comply with all additional screening requirements for the landfill use, as described in the use permit requirements.

8) Hours and manner of operation?

Applicant will not expand its hours and manner of operation beyond its current use. Applicant will also comply with all related requirements for the landfill hours and manner operation, as described in the use permit requirements.

9) Outdoor lighting?

Any outdoor lighting on the Property will be internally focused and controlled so as not to disturb or affect surrounding residences and adjacent property owners.

10) Ingress and egress to the property?

The Applicant's current landfill operations employ one ingress/egress point on Roosevelt Highway and one ingress/egress point on Bishop Road. As shown on the proposed site plan, ingress and egress on the Property will remain unchanged. No additionally ingress/egress points will be added with this use permit.

Exhibit A

REQUIRED CONSTITUTIONAL AND ANTE LITEM NOTICE

Georgia law and the procedures of the City of Fairburn require us to raise Federal and State constitutional objections during the public hearing application process. While the Applicant anticipates a smooth application process, failure to raise constitutional objections at this stage may mean that the Applicant will be barred from raising important legal claims later in the process. Accordingly, we are required to raise the following constitutional objections at this time:

The portions of the Fairburn Zoning Ordinance, facially and as applied to the Property, which restrict the Property to any uses, land use designations, conditions, development standards, or to any zoning districts other than that proposed by the Applicant are unconstitutional in that they would destroy the Applicant's property rights without first paying fair, adequate and just compensation for such rights, in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The application of the Fairburn Zoning Ordinance, facially and as applied to the Property, which restricts the Property to any uses, conditions, land use designations, development standards, or to any zoning classifications other than in accordance with the application as proposed by the Applicant is unconstitutional, illegal, null and void, constituting a taking and inverse condemnation of Applicant's Property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States; Article I, Section I, Paragraph I, and Section III, Paragraph I of the Constitution of the State of Georgia of 1983; and the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States denying the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

A denial of this Application would be unconstitutional under the Takings Clause of the Fifth Amendment to the Constitution of the United States and the Just Compensation Clause of Article I, Section III, Paragraph I of the Constitution of the State of Georgia of 1983. A refusal by the City of Fairburn to grant the application as requested would constitute a taking of the Applicant's property and inverse condemnation. Because of this unconstitutional taking, the City of Fairburn would be required to pay just compensation to the Applicant.

A denial of this Application would constitute an arbitrary and capricious act by the Fairburn Mayor and City Council, without any rational basis therefore constituting an abuse of discretion in violation of Article I, Section I, Paragraph I and Section III, Paragraph I of the Constitution of the State of Georgia of 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. A refusal to grant the requested text amendment and/or use permit would lack objective justification and would result only from neighborhood opposition, which would constitute an unlawful delegation of the zoning power to non-legislative bodies in violation of the Georgia Constitution, Article IX, Section II, Paragraph 4.

