

AMENDED BY THE BOARD OF COMMISSIONERS JUNE 2, 1999
WITH SUBSEQUENT AMENDMENTS AS NOTED

ARTICLE XXII

APPEALS

22.1. **PURPOSE.**

The purpose of this article is to establish procedures for appealing the strict application of regulations contained herein and conditions of zoning when those regulations impose a hardship on the development of the property, and to provide for interpretation of the text of this Resolution and the Official Zoning Map. Appeals are authorized herein to be considered by various bodies and individuals depending on the type of appeal and its relationship to applications for Use Permits or Rezoning. Variances apply to the development standards and district standards per the Zoning Resolution. Modifications apply to the approved conditions of zoning or use permit.

22.2. **DECISION MAKING AUTHORITY.**

The following are the powers and jurisdiction of the various decision makers and administrative bodies.

22.2.1. **BOARD OF COMMISSIONERS (BOC).** The Board of Commissioners (BOC) shall have the following powers and duties under the provisions of this Zoning Resolution:

- A. To hear and decide applications for rezonings, use permits, and modifications pursuant to Article 22 and Article 28;
- B. To hear and decide applications for concurrent variances in conjunction with applications for rezonings, use permits, and/or zoning modifications pursuant to Article 22 and Article 28; and
- C. To initiate a modification of approved zoning conditions.

22.2.2. **BOARD OF ZONING APPEALS (BZA).** The Board of Zoning Appeals (BZA) shall have the following powers and duties under the provisions of this Zoning Resolution:

- A. To hear and decide applications for primary variance requests;

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- B. To hear and decide appeals from the interpretation of any of the provisions of this Resolution by the Director of the Department in accordance with Section 22.2.3.;
- C. To hear and decide appeals when it is alleged that there is an error in any order, requirement, decision, or determination made by any Fulton County official in the enforcement of this Zoning Resolution and;
- D. To hear and decide appeals from a permitting or procedural decision of the Department Director or Deputy Director regarding minor or administrative variance requests.

22.2.3. **DIRECTOR OF THE DEPARTMENT.** The Director of the Department shall have the following jurisdiction, power and duties under the provisions of this Zoning Resolution:

- A. To determine the type of appeal application or land use process the property owner/agent is required to apply for;
- B. To consider and decide on minor variances to minimum yard requirements, not to exceed ten percent of such requirement, as long as property owners with standing do not object;
- C. To consider and decide on administrative minor variances of no more than 1 foot;
- D. To consider and decide on administrative variances;
- E. To consider and decide on administrative modifications to conditions of zoning;
- F. To interpret the provisions of the Zoning Resolution related to the following:
 - 1. Inconsistent, vague or obscure language;
 - 2. Provisions which are in conflict or are confusing; and
 - 3. Conflicting or redundant procedural requirements; and.
- G. To establish procedural requirements for review of appeal applications.

22.2.4. **LIMITATION ON AUTHORITY.** The authority and jurisdiction of Boards and individuals as provided herein shall be limited as outlined in the following.

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In exercising this jurisdiction, each hearing Board or individual shall have authority to determine whether it has jurisdiction.

- A. There shall be no variances to permitted uses or accessory uses as specified in the zoning district regulations, administrative/use permit or zoning conditions.
- B. There shall be no variances to the minimum lot area nor the minimum district size required in each zoning district.
- C. There shall be no variances to the minimum lot frontage on a street as required in designated zoning districts of the Zoning Resolution.
- D. There shall be no modification to increase the density or change the use approved under the rezoning case except to allow for the development of a conservation subdivision. (Amended 05/05/04)
- E. There shall be no modification to revise a site plan that, as determined by the Director of the Department results in a significant change in the approved concept. Such a site plan revision shall require rezoning pursuant to Article 28.
- F. There shall be no relief or variance from the standards of Article 22 or Article 28.

22.3. **VARIANCES.** A variance is a request for relief from the provisions of the Zoning Resolution. There are 6 types of variance applications. The type of variance necessary shall be determined by the Director of the Department. The different types of appeals are listed below and described in the following sections:

- A. Administrative Variance
- B. Minor Variance/Administrative Minor Variance
- C. Primary Variance
- D. Secondary Variance
- E. Interpretation
- F. Concurrent Variance

22.3.1. **VARIANCE CONSIDERATIONS.** Variances may be considered in all districts. Primary variances and concurrent variances shall only be granted upon showing that:

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- A. Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Resolution; or,
- B. The application of the particular provision of the Zoning Resolution to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public; or,
- C. Conditions resulting from existing foliage or structures bring about a hardship whereby a sign meeting minimum letter size, square footage and height requirements can not be read from an adjoining public road.

22.4. **ADMINISTRATIVE VARIANCE.**

The Director of the Department is authorized by this Resolution to consider an Administrative Variance whenever a property owner maintains that a provision contained in Article 34, DEVELOPMENT REGULATIONS, as applied to a specific situation, is not in the best interest of the public health, safety and welfare; whenever there is a request for the alteration of the 10 foot improvement setback required along all buffers as required in the conditions of zoning and/or in Article 4.23.1 MINIMUM LANDSCAPE STRIPS AND BUFFERS; whenever there is a request up to a 10% reduction in the number of required parking spaces per Article 18.2.1, ADMINISTRATIVE REDUCTION OF SPACES CONSTRUCTED; and where the Director of the Department is given administrative authority to approve changes as specified in Article 12, Overlay Districts. (Amended 12/1/99, 09/2/09)

22.5. **ADMINISTRATIVE MINOR VARIANCE.**

The Director of the Department may grant an Administrative Minor Variance up to 1 foot from any minimum yard requirement.

22.6. **MINOR VARIANCE.**

The Director of the Department may grant minor variances to minimum yard requirements, not to exceed ten percent of such requirement, as long as no objection has been submitted in writing to the Director of the Department. An appeal to a minor variance decision must be filed as a Secondary Variance request.(Amended 12/1/99)

22.7. **PRIMARY VARIANCE.**

A request for a variance from any Zoning Resolution provision that is not being handled as a minor, administrative minor or concurrent variance and shall be heard and decided by the Board of Zoning Appeals in accordance with Section 22.3.1.

22.8. **SECONDARY VARIANCE/INTERPRETATION.**

The Board of Zoning Appeals shall consider appeals of variance decisions and interpretations made by any Department Director or Deputy Department Director authorized to grant a variance request or interpretation. This type of appeal is considered a secondary variance.

22.9. **CONCURRENT VARIANCES.**

The Board of Commissioners may consider a concurrent variance from any standards of the Zoning Resolution which shall be filed simultaneously with rezoning, use permit or zoning modification requests on the same property based on the conceptual plan submitted with the petition for the same agenda. The Community Zoning Board shall also hear and make recommendations on concurrent variances filed with rezonings or use permit applications. The Board of Commissioners shall consider such concurrent variance requests in accordance with the standards set forth in Section 22.3.1. Public notification shall be in accordance with Sections 22.13.9 and 28.3. (Amended 06/04/03)

22.9.1. **LIMITATIONS ON CONCURRENT VARIANCES.**

- A. The Board of Commissioners may only consider variance requests as part of, or in conjunction with, a rezoning, use permit or modification application.
- B. Deleted 11/03/04.
- C. If an application for a variance to the Board of Zoning Appeals duplicates a concurrent variance request denied by the Board of Commissioners, such an application shall not be accepted by the Director of the Department prior to the expiration of 6 months from the date of the Board of Commissioners' denial of the variance request. A variance request to the Board of Zoning Appeals cannot be considered simultaneously with the same variance request pending before the Board of Commissioners.

22.9.2. **APPLICATION FOR CONCURRENT VARIANCES.** Applications for a concurrent variance shall be submitted to the Director of the Department in accordance with the advertised filing deadlines for the Board of Commissioners

meetings. A regular variance fee shall be charged and the application shall comply with all advertising and notification requirements specified in Article 28, REZONING AND OTHER AMENDMENT PROCEDURES. One notice sign may serve for the rezoning, use permit, zoning modification, and concurrent variance request as long as the sign is marked to indicate all actions which are pending.

The variance case file number for each concurrent variance requested shall be included on the rezoning petition.

22.10. **MODIFICATIONS**. A modification is a request for relief from the conditions of zoning or use permit when a site development proposal does not comply with approved conditions. There are two different types of modifications which are listed below and described in the following sections:

A. Administrative Modification

B. Zoning Modification

22.10.1. **APPLICATION FOR MODIFICATION**. A request to modify a condition of zoning or Use Permit may be initiated by the property owner, the Planning Commission or the Board of Commissioners. Applications shall be submitted to the Director of the Department in accordance with the deadline schedule adopted by the Board of Commissioners. A modification application shall include a legal description of the property for which the modification is requested and a written explanation of the circumstances upon which the requested change of condition is based including the reason why development or use of the property, as approved, cannot be accomplished without the modification of a condition. Applicants shall submit a revised site plan illustrating the requested modification. The type of modification necessary is determined by the Director of the Department.

22.11. **ADMINISTRATIVE MODIFICATION**. An Administrative Modification application may be filed if the Director of the Department determines that the modification request is not prohibited by Section 22.2.4 LIMITATION ON AUTHORITY and, will constitute only a technical change and does not involve significant public interest, or public interest has been addressed by letters expressing no objections from property owner(s) with standing and/or neighborhood associations. The Director of the Department shall send the administrative modification decision to the Board of Commissioners for confirmation at the next appropriate regular meeting.

22.11.1. **APPEAL OF AN ADMINISTRATIVE MODIFICATION DECISION**. If an applicant wishes to appeal the decision of the Director of the Department regarding an Administrative Modification, or if it is determined by the Director that a request will involve a matter of public interest, the applicant must file a

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separate application requesting a Zoning Modification on forms available from the Department.

22.12. **ZONING MODIFICATION.** A Zoning Modification application shall be filed if an approved zoning condition cannot be met and it is determined by the Director of the Department that the application involves significant public interest and is in compliance with Section 22.2.4 **LIMITATION ON AUTHORITY.** The Zoning Modification request shall be presented to the Board of Commissioners for consideration in a public hearing.

22.13. **GENERAL PROCEDURES.**

This section contains basic steps common to all variances and modifications.

22.13.1. **APPLICATIONS.** All applications for variances, interpretations and modifications shall be filed with the Director of the Department on forms available in the Department. The type of application process necessary to accomplish the change requested by the applicant shall be determined by the Director of the Department. The Director of the Department shall transmit the petition and all documents constituting the record to the appropriate hearing body or individual.

22.13.2. **STANDING.** Standing refers to a party or parties allowed to initiate a request for variances or modifications which are limited to the following:

- A. **Modification Petition** - A request for a modification may be initiated by the property owner or its agent, the Planning Commission or the Board of Commissioners;
- B. **Variance Petition** - A request for a variance may be initiated by the property owner of subject property or its agent;
- C. **Secondary Variance Petition** - A request for a secondary variance appeal may be initiated by the property owner of the subject property or its agent, or the owner of other real property within 300 feet of the boundaries of the subject property; and
- D. **Interpretation Petition** - A request for an interpretation of a decision of the Director of the Department may be requested by any individual.

22.13.3. **FILING DEADLINES.**

- A. Applications for variances, interpretations and modifications shall be submitted in accordance with the advertised filing deadlines, depending on the type of petition in accordance with Section 28.2.3 of the Zoning

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Resolution.

- B. Concurrent Variance applications shall be filed in accordance with the filing deadline for the parent petition of either a use permit, rezoning, or zoning modification request in accordance with Section 28.2.3 of the Zoning Resolution.
- C. The Director of the Department has the discretion to extend the filing deadline by two days for all applications except Administrative Minor and Minor Variance Applications. A letter from the applicant explaining the delay in filing shall be submitted prior to the close of the filing deadline.

22.13.4. **WITHDRAWAL OF APPLICATION.**

- A. An application may be withdrawn by the applicant in writing at any time before the public hearing notice advertisement is published and /or the notice of the hearing is posted on the property.
- B. Applications which do not require a public hearing may be withdrawn at any time before notification of a decision is mailed.
- C. Once the public hearing has been properly advertised, the request for withdrawal of the application must be placed on the public hearing agenda and the appropriate decision-making body shall act on the withdrawal request.

22.13.5. **FEES.** At the time of application, applicants shall pay fees as established by the Board of Commissioners. Fees paid are not refundable except where the Director of the Department determines that an application was accepted in error, or the fee paid exceeded the amount due, in which case the amount of the overpayment will be refunded to the applicant.

22.13.6. **LEGAL ACTION STAYED.** The filing of an appeal authorized by this Article shall operate as a stay of any enforcement proceedings by Fulton County until final resolution of the appeal. No Board of Commissioners or Board of Zoning Appeals action shall be taken on any property which is the subject of any litigation pending in state or federal court wherein Fulton County or its agents or officials are parties.

22.13.7. **PUBLIC HEARING.** A public hearing shall be conducted by the stated hearing body of each appeal application before taking action thereon except those authorized to be considered administratively. The schedule of public hearings and deadlines for the filing of an appeal shall be established by the Board of Commissioners.

Public hearings are not required for administrative variances, minor variances,

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administrative minor variances and administrative modifications; however, notification in accordance with Section 22.13.9 B is required.

22.13.8. **EVALUATIONS AND REPORTS.** The hearing body shall have before it, at the time of hearing, a report from the Director of the Department which shall summarize the hardship or justification reported by the applicant as related to the application and background information for variances, modifications, and interpretations, and any other information requested by the hearing body. The hearing body shall, hear, analyze, consider, and make a written report of its decision in accordance with Section 22.13.12 **NOTICE OF DECISIONS.**

22.13.9. **PUBLIC NOTIFICATION.** (Amended 09/05/01, 10/02/02, 06/04/03, 03/03/04, 02/04/15, 02/04/15)

A. For those applications requiring a public hearing (Primary Variances, Secondary Variances, Concurrent Variances, and Zoning Modifications), the Director of the Department shall:

1. Publish notice of the public hearing in a newspaper of general circulation at least 15 days, but no more than 45 days prior to the public hearing at which an application will be heard. The published notice shall contain the time, place and purpose of the hearing and the location of the property if applicable (secondary variances may not always be property specific). Renotification is not required when a petition is deferred by the Board of Commissioners or the Board of Zoning Appeals
2. The applicant or agent shall post a sign as issued by the Department in a conspicuous location on each public street frontage of the subject site, at least 20 days, but not more than 45 days, prior to the public hearing at which an application will be heard.

The sign shall be mounted and posted as specified by the Department. Property that is not posted on the 20th day before the scheduled hearing date will be administratively removed from the agenda. The sign will remain posted on-site until final action by the appropriate hearing body is taken.

When the Board of Zoning Appeals defers a petition, the applicant is required to post an updated sign with new hearing dates 20 days prior to the next scheduled hearing date. When the Board of Commissioners defers a petition, an updated sign is not required. The posted sign shall contain the date, time, place and purpose of the hearing.

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For zoning modifications, all notices shall contain all of the items listed in the previous sentence, the location of the property, the zoning and/or use permit case number to be modified and the condition number(s) to be modified.

The posting of a sign is not required when a secondary variance is not requested by the property owner or owner's representative.

3. Notice of the public hearing shall be postmarked 15 days prior to the hearing date and shall be given by regular mail to all property owners within a quarter mile of the boundaries of the property who appear on the current tax records of Fulton County as retrieved by the County's Geographic Information System. Renotification is not required when a petition is deferred by the Board of Commissioners or the Board of Zoning Appeals.

The mailing of public notices is not required when a secondary variance is sought by other than the property owner.

- B. For those applications not requiring a public hearing, notification shall be provided as follows:

1. Administrative Variance: The owners of property adjacent and contiguous across the right-of-way of the subject site shall be notified in accordance with Section 22.13.9(A)(3).
2. Minor Variance: The owners of property adjacent and contiguous across the right-of-way of the subject site shall be notified in accordance with Section 22.13.9(A)(3).
3. Administrative Modification: The Director of the Department shall determine what notification, if any, is reasonable on a case by case basis.
4. Administrative Minor Variance: No written notification.

- C. Applicants requesting a modification of zoning from the Board of Commissioners or a variance from the Board of Zoning Appeals are required to comply with Article 28.4.7 Public Participation Plan and Report.

22.13.10. **DECISIONS**. The Board of Commissioners, Board of Zoning Appeals, and the Director of the Department in considering applications under this Article shall do one of the following:

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- A. Approve or partially approve
- B. Approve and impose conditions related to the application being considered (Amended 04/03/02)
- C. Deny
- D. Hold for further study not less than 30 days
- E. Withdraw

22.13.11. **BOARD OF ZONING APPEALS DECISION ON SECONDARY VARIANCES/INTERPRETATIONS.** The Board of Zoning Appeals may take the following actions pursuant to a secondary variance and/or an interpretation appeal:

- A. Affirm an order, requirement, or decision, wholly or partly.
- B. Reverse an order, requirement, or decision, wholly or partly.
- C. Clarify. Present an interpretation of the text in the form of a statement of clarification. Such statement shall not contain substitute language, but shall rely upon language and definitions contained in the Fulton County Zoning Resolution, and definitions contained in Merriam-Webster Collegiate Dictionary, tenth edition.

22.13.12. **NOTICE OF DECISIONS.** Written notice of all decisions shall be placed in the official case file and shall be forwarded to the applicant by regular mail within 7 working days from the date of the decision by the following authority:

- A. The Director of the Department shall provide written notification of the Board of Zoning Appeals' decisions;
- B. The Director of the Department shall, with respect to minor variances, administrative variances, and administrative modifications provide written notification of such decisions. The approval of a building permit shall constitute notice of approval for an administrative minor variance; and
- C. The Clerk to the Board of Commissioners shall, with respect to zoning modifications and concurrent variances, provide written notification of the Board of Commissioners' decisions.

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22.13.13. **RECONSIDERATION OF DENIED APPLICATION.** If a variance or modification application is denied by an authorized Department Director, Board of Commissioners or the Board of Zoning Appeals, an application for the same variance or modification item shall not be considered until:

- A. At least six months has elapsed from the date of the decision; or
- B. New information pertinent to the subject, not previously considered, is submitted by the petitioner and the 6-month period is waived by the hearing body.

If an application is denied by the Director of the Department, the applicant may appeal the decision to the appropriate hearing body depending on the type of petition.

This provision is not intended to supersede provisions of Article 28.2 as related to decisions regarding rezonings and/or use permits.

22.13.14. **TIME LIMITATION ON APPEALS TO SUPERIOR COURT.** (Amended 12/1/99) The decision of the Board of Zoning Appeals is a final decision; therefore, any appeal of such a decision shall be pursued by application for writ of certiorari filed with the Superior Court of Fulton County within 30 days of the date of the decision. The applicant's petition, application for writ of certiorari, the writ of certiorari and any other initial filings with the Superior Court shall be served upon the named defendants/respondents in accordance with O.C.G.A. Section 9-11-4.

Upon filing such an appeal, the Clerk of Superior Court shall give immediate notice thereof to the Director of the Department, and within 30 days from the date of such notice, the Director shall cause to be filed with the Clerk of Superior Court a certified copy of the proceedings and the decision of the Board of Zoning Appeals.

Appeals of decisions (Secondary Variances/Interpretation) of the Director of the Department, or the Director of Public Works/ General Services Department or future name as adopted by the Board of Commissioners shall be brought within 30 days from the date of the decision.

22.13.15. **EXPIRATION OF VARIANCE.** If not used, a variance shall be valid only for a period of 36 months from the date it is granted. Extensions may be sought under the provisions of Article 28, **REZONING AND OTHER AMENDMENT PROCEDURES,** Section 28.6 **EXPIRATION AND EXTENSIONS OF ZONINGS.**

- 22.14. **BOARD OF ZONING APPEALS.**
- 22.14.1. **MEMBERSHIP.** The Fulton County Board of Zoning Appeals shall consist of seven members appointed by the Board of Commissioners of Fulton County. The members shall serve terms concurrent with the terms of the Fulton County Planning Commission. Members shall not hold any other public office or position in Fulton County. Annual elections shall be held by the Board of Zoning Appeals to elect one of its members chairperson for a one-year term. The chairperson may serve an unlimited number of one-year terms.
- 22.14.2. **VACANCIES.** Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.
- 22.14.3. **REMOVAL OF MEMBERS.** Members may be removed for cause by the Board of Commissioners of Fulton County upon written charges and after a public hearing.
- 22.14.4. **PAY.** Fees to be paid to the members of the Fulton County Board of Zoning Appeals for attending official meetings shall be fixed from time to time by the Board of Commissioners of Fulton County.
- 22.14.5. **SECRETARY.** The Director of the Department shall serve as Secretary to the Board of Zoning Appeals. The Secretary shall keep minutes of proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; and shall keep records of evidence, examinations and official actions, all of which shall be filed and shall be a public record.
- 22.14.6. **POLICIES AND PROCEDURES.** The Fulton County Board of Zoning Appeals shall adopt and publish policies, procedures and rules in keeping with the provisions of this resolution. Such shall be available in the Department.
- 22.14.7. **MEETINGS.** Meetings of the Board of Zoning Appeals shall be held at least once each month to dispose of matters scheduled. Additional meetings may be called by the chairman. The Board of Zoning Appeals scheduled meetings, places and dates, and deadlines for the filing of applications shall be approved by the Board of Commissioners and published by the Director of the Department.

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