

STATE OF GEORGIA
COUNTY OF FULTON

AN ORDINANCE TO AMEND ARTICLE 22, APPEALS, AND SEVERAL SUB-
SECTIONS OF SECTION 3.1, DEFINITIONS, OF THE SANDY SPRINGS ZONING
ORDINANCE

WHEREAS, the Mayor and City Council of the City of Sandy Springs find that from time to time it is necessary to amend sections of the Zoning Ordinance to correct, clarify, and update the provisions of the Ordinance; and

WHEREAS, the Mayor and City Council of Sandy Springs have determined that revision of the variances, modifications and appeals procedures provisions and their associated definitions is required for use of the ordinance by staff, citizens, and the development community; and

NOW, THEREFORE, to accomplish the foregoing, the Mayor and City Council of the City of Sandy Springs, Georgia, pursuant to their authority, do hereby adopt the following Ordinance:

1.

Article 22, *Appeals*, of the City of Sandy Springs Zoning Ordinance is hereby amended by the deletion of said article in its entirety and the following inserted therefore:

ARTICLE XXII

VARIANCES, MODIFICATIONS AND APPEALS

22.1.

PURPOSE.

The purpose of this Article is to establish procedures for requesting relief from the strict application of regulations contained herein and conditions of zoning when those regulations impose a hardship on the development of property, and to provide for appealing administrative decisions. Relief petitions are authorized herein to be considered by various bodies and individuals depending on the type of relief requested and its relationship to land use petitions. In this text requests for variances, modifications of conditions of zoning and appeals of administrative decisions are referred to together as "relief petitions".

22.2.

DECISION-MAKING AUTHORITY.

The following are the powers and jurisdiction of the various decision-makers and administrative bodies in regards to this chapter.

22.2.1.

CITY COUNCIL. The City Council shall have the following powers and duties under the provisions of this Zoning Ordinance:

- a. To hear and decide land use petitions, and zoning modifications pursuant to Article XXII and Article XXVIII;

- b. To hear and decide requests for concurrent variances in conjunction with land use petitions, and/or zoning modifications pursuant to Article XXII and Article XXVIII; and
- c. To initiate a land use petition or a modification of approved zoning conditions.

22.2.2. BOARD OF APPEALS (BOA). The BOA shall have the following powers and duties under the provisions of this Zoning Ordinance:

- a. To hear and decide petitions for variances; and
- b. To hear and decide appeals from an administrative decision or interpretation made by the City pursuant to an ordinance subject to the appeals provisions of this Article.

22.2.3. DIRECTOR. The Director shall have the following jurisdiction, power and duties under the provisions of this Zoning Ordinance:

- a. To determine the type of relief petition the petitioner is required to utilize;
- b. To consider and decide on administrative variances;
- c. To consider and decide on administrative modifications to conditions of zoning; and
- d. To establish procedural requirements for review of appeal petitions.

22.3. VARIANCES. A variance is a request for relief from the provisions of the Zoning Ordinance. A request for a variance may be initiated by the property owner of the subject property or his/her agent.

Limitations.

- a. There shall be no variances to the minimum lot area nor the minimum district size required in each zoning district;
- b. There shall be no variances to the minimum lot frontage on a street or the minimum lot width as required in designated zoning districts of the Zoning Ordinance;
- c. There shall be no variances on uses permitted in zoning districts; and
- d. There shall be no relief or variance from the standards of Article XXII or Article XXVIII.

Types. There are three (3) types of variances, which are listed below and described in the following sections:

- a. Administrative variance;
- b. Variance;
- c. Concurrent variance.

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

- a. For new development (including the expansion of an existing development):
 - 1. The application of the Zoning Ordinance would create an unnecessary hardship, and not merely an inconvenience to the petitioner; or

2. There are extraordinary and exceptional conditions due to the size, shape, or topography, which are specific to the subject property and not generally found in similar properties;

Further, the application shall demonstrate that:

3. Such conditions are not the result of action or inaction of the current property owner; and
 4. The variance request would provide the minimum relief necessary to make possible the reasonable use of the property; and
 5. The variance request would result in development that is consistent with the general intent of the Zoning Ordinance, with the Comprehensive Plan policies, and would not be detrimental to the public good, safety and welfare.
- b. For variances regarding stream buffers and associated impervious setback, refer to Article V. Stream Buffer Protection of the Land Development Regulations Ordinance
 - c. For signs, pursuant to Article XXXIII:
Conditions resulting from existing foliage or structures bring about a hardship whereby a sign meeting minimum letter size, square footage and height requirements cannot be read from an adjoining public road.
 - d. Variances, administrative variances and concurrent variances requesting relief from the requirements of the Sandy Springs Overlay District of Article XII shall be brought before the Planning Commission for design review, and shall be subject to the review criteria enumerated under Section 12B.3.A.1 of this Zoning Ordinance if they cannot meet the criteria of paragraph a. above.

22.4.

ADMINISTRATIVE VARIANCE.

- a. The Director is authorized by this Zoning Ordinance to consider an administrative variance on petitions requesting:
 1. A reduction no greater than ten percent (10%) of a development standard, pursuant to Articles V through XI, and subject to the limitations of Section 22.3; or
 2. A reduction no greater than ten percent (10%) of the landscape areas, zoning buffers and improvement setbacks listed in Table 4.23.1.
- b. The Department shall issue a decision no later than twenty-one (21) working days after the date of filing a complete application.
- c. A denied petition for an administrative variance by the Director may be presented to the Board of Appeals as a regular variance, following the general procedures herein.

22.5.

OPEN

22.6.

OPEN

22.7.

VARIANCE.

A request for a variance from any Zoning Ordinance provision that is not being handled administratively or is not a concurrent variance shall be heard and decided by the BOA.

22.8. OPEN

22.9. CONCURRENT VARIANCES.

The City Council may consider a concurrent variance from any standards of the Zoning Ordinance which shall be filed simultaneously with land use petitions or zoning modification petitions on the same property based on the conceptual plan submitted with the petition for the same agenda. The Planning Commission shall also hear and make recommendations on concurrent variances filed with land use petitions. The City Council 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 Section 28.3 of this Ordinance.

Additional concurrent variances, requested after the deadline to amend a filed the land use petition or zoning modification petition (which is established by the Director), shall be brought before the Board of Appeals after a final action was rendered by City Council, or the petition amended with the additional concurrent variances shall be re-advertised by the petitioner, in accordance with Section 28.3 of this Ordinance.

22.9.1. LIMITATIONS ON CONCURRENT VARIANCES.

- a. The City Council may only consider variance requests as part of, or in conjunction with, a land use petition or zoning modification petition.
- b. OPEN.
- c. If a petition for a variance to the BOA duplicates a concurrent variance request denied by the City Council, such petition shall not be accepted by the Director prior to the expiration of six (6) months from the date of the City Council's denial of the variance request. A variance request to the BOA cannot be considered simultaneously with the same variance request pending before the City Council.

22.10. MODIFICATIONS.

A modification is a request for relief from the conditions of a zoning or use permit when a site development proposal does not comply with approved conditions. A request for a modification may be initiated by the property owner or its agent, the Planning Commission or the City Council.

There are two (2) different types of modifications which are listed below and described in the following sections:

- a. Administrative modification; and
- b. Zoning modification.

22.10.1 MODIFICATION CONSIDERATIONS. Modifications shall only be granted upon showing that:

- a. There are clear and compelling reasons, which are not purely financial, demonstrating that the conditions of zoning cannot be met; and

- b. The modification requested would result in consistency with the original intent of the zoning action; and
- c. The modification requested would result in consistency with the general intent of the Zoning Ordinance, with the Comprehensive Plan policies, and would not be detrimental to the public good, safety and welfare.

22.10.2 LIMITATIONS ON MODIFICATIONS.

- a. There shall be no modification to increase the density of the development, to increase the height of buildings, or to change the use(s) approved under the rezoning case.
- b. There shall be no modification to revise a site plan that, as determined by the Director, results in a significant change in the approved concept. Such a site plan revision shall require rezoning pursuant to Article XXVIII.

22.11. ADMINISTRATIVE MODIFICATION.

- a. An administrative modification petition can be filed in accordance with the limitations of Section 22.10.2, and if the Director determines that:
 - 1. The modification will constitute only a technical change (such as but not limited to the reorientation of a building or the reconfiguration of a parking lot on the site plan approved at the rezoning), and
 - 2. Does not involve significant public interest (such as but not limited to public safety and quality of life).
- b. The Director shall issue a decision no later than twenty-one (21) working days after the date of filing a complete application.
- c. A denied petition for an administrative modification by the Director may be submitted as a regular zoning modification to the City Council, following the procedures of Article XXII and XXVIII.
- d. The Director shall notify the City Council of the approved administrative modifications at the end of each year, at one of their regularly scheduled meetings.

22.12. ZONING MODIFICATION. A zoning modification petition shall be filed if an approved zoning condition cannot be met and it is determined by the Director that the petition involves significant public interest.

22.13. GENERAL PROCEDURES.

This section contains basic steps common to all variance and modification requests.

22.13.1. PETITIONS.

All petitions for variances and modifications shall be filed with the Director on forms available from the Department. The type of petition process necessary to accomplish the change requested by the petitioner shall be determined by the Director. The Director shall transmit the petition and all documents constituting the record to the appropriate hearing body or individual.

No more than five (5) new and complete applications for variances shall be accepted each month. Those in excess shall be placed on the next available BOA regular agenda,

in the order in which they are received. Modifications are regulated under Article XXVIII regarding this matter.

22.13.2. OPEN

22.13.3. FILING DEADLINES AND AMDENDMENTS.

- a. Petitions for variances shall be filed in accordance with the filing deadlines approved by City Council. No petition for a variance shall be amended less than twenty-one (21) calendar days prior to the BOA hearing date.
A petition amended beyond this deadline shall be put on administrative hold until the following regularly scheduled BOA public hearing, and the petitioner shall be responsible to re-advertise according to Sec. 23.13.9.
- b. Administrative requests may be filed at any time.
- c. Concurrent variance petitions shall be filed in accordance with the filing deadline for a land use petition, or zoning modification petition in accordance with Section 28.2.3 of the Zoning Ordinance.

22.13.4. WITHDRAWAL OF PETITION.

- a. A petition may be withdrawn by the petitioner 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. A petition which does 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 petition 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 filing a petition, a petitioner shall pay fees as established by the City Council. Fees paid are not refundable except where the Director determines that a petition 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 petitioner.

If consideration of a petition is postponed or delayed due to the petitioner's failure to comply with any of the provisions of this Article, the Director shall assess additional fees to recover the additional administrative costs associated with such postponement or delay.

22.13.6. LEGAL ACTION STAYED.

The filing of a petition authorized by this Article shall operate as a stay of any enforcement proceedings by the City until final resolution. No City Council or BOA action shall be taken on any property which is the subject of any litigation pending in state or federal court wherein the City 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 petition 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 City Council.

Public hearings are not required for administrative 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 which shall summarize the hardship or justification reported by the petitioner as it relates to the petition 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.

22.13.9.

PUBLIC NOTIFICATION.

The failure of a petitioner to notify by mail and/or posting a sign according to the provisions below shall result in an administrative hold of the petition and its removal from the BOA agenda until the petitioner properly produces notice.

a. For variance petitions, notice shall be given as follows:

1. Publication of notice. The Director shall publish notice of the public hearing in a newspaper of general circulation at least fifteen (15) days, but no more than forty-five (45) days prior to the public hearing at which a petition will be heard. The published notice shall contain the time, place and purpose of the hearing and the location of the property. Re-notification is not required when a petition is deferred by the BOA.
2. Sign posting. The petitioner shall post a sign as issued by the Department in a conspicuous location on each public street frontage of the subject site, at least fifteen (15) days, but not more than forty-five (45) days, prior to the public hearing at which a petition will be heard. The posted sign shall contain the date, time, place and purpose of the hearing.

Property that is not posted on the fifteenth (15th) 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 BOA defers a petition, the petitioner is required to post an updated sign with new hearing dates fifteen (15) days prior to the next scheduled hearing date.

The failure of a petitioner or agent on two (2) consecutive occasions to post notice as provided in this Section, in connection with a petition, shall be considered willful disregard of the petitioner's obligation to comply with this Zoning Ordinance. In such event, the petition shall be denied pursuant to

Section 22.13.10 herein, and shall be subject to all provisions relating to denied petitions.

It is the petitioner's responsibility to remove or cause to be removed any public notice sign required to be posted pursuant to this Article. If any sign required by this Article to be posted by the petitioner is not removed within forty-eight (48) hours of final action by the appropriate hearing body, it shall constitute a violation of this Article and the Director shall issue a citation. Any violation of this Article shall be an offense and the violator shall be subject to the penalty provisions set forth in Article XXIX.

Signs regulated under this section are exempt from the provisions of Article XXXIII. Signs.

3. Notice by mail. The petitioner shall give notice by regular mail to all property owners within five hundred (500) feet of the boundaries of the subject property who appear on the Fulton County tax records as retrieved by the City's Geographic Information System (GIS). The notices shall be postmarked a minimum of fifteen (15) calendar days prior to the meeting date. If the subject property is located within five hundred (500) feet of a City limit, the applicant shall notify the adjacent jurisdictions' Clerk or equivalent to Director of Community Development.

The mailed notices shall contain the time, place, and purpose of the scheduled meeting, the location of the subject property, and the variance requested. Notice shall not be considered inadequate if the mail is not delivered.

Re-notification by mail is not required when a petition is deferred by the BOA.

- b. For administrative variance and administrative modification petitions, the Director shall determine what notification, if any, is reasonable on a case by case basis.
- c. For concurrent variances and zoning modifications petitions, notice shall be given according to Article XXVIII.

22.13.10. DECISIONS. The BOA, in considering petitions under this Article, shall do one (1) of the following:

- a. Approve or partially approve the petition;
- b. Approve and impose conditions related to the petition;
- c. Deny the petition;
- d. Defer the petition not less than thirty (30) days; or
- e. Withdraw the petition.

22.13.11. OPEN

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 petitioner by regular mail within seven (7) working days from the date of the decision by the Department.

22.13.13. RECONSIDERATION OF DENIED PETITION. If a variance petition is denied by the BOA, a petition for the same variance item shall not be considered until:

- a. At least six (6) 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 six (6) month period is waived by the hearing body.

22.13.14. APPEALS OF DECISIONS.

a. Appeal of Administrative Decisions. Any person aggrieved by a decision of the Director or the Department made pursuant to an ordinance subject to the provisions of this Article may submit an appeal in writing to the Department within thirty (30) calendar days of the decision.

Such decisions include, but are not limited to, the interpretation of a section of this Zoning Ordinance and a decision regarding the issuance of an administrative permit.

The appeal shall be heard by the BOA in accordance with the rules and regulations of the BOA and as set forth in this Code. The hearing shall take place not more than ninety (90) calendar days after the filing of an appeal with the Department.

b. Appeal of BOA Decisions. The decision of the BOA is a final decision. Any appeal of such a decision shall be pursued by petition for writ of certiorari filed with the Superior Court of Fulton County within thirty (30) calendar days of the date of the decision in accordance with applicable provisions of Georgia law.

22.13.15. EXPIRATION OF VARIANCE.

A variance or administrative variance shall expire unless:

- a. The property owner takes action to vest the variance in accordance with Section 22.13.16. within a period of thirty-six (36) months from the date it is granted by the hearing body or the Director, or
- b. The property owner secures an approved extension in accordance with Section 22.13.18.

The filing of a request for extension authorized by this Article shall operate as a stay of the expiration of a variance until a decision is made by the Department.

22.13.16. VESTING OF VARIANCE.

Upon the occurrence of one (1) of the three (3) conditions listed immediately below, a variance shall be considered vested.

- a. Prior to the expiration of a Land Disturbance Permit pursuant to applicable provisions of the Land Development Regulations Ordinance, a vesting determination may be made by the Department that substantial progress, as defined in Section 22.13.17., has been made toward the completion of on-site construction depicted on the site plan approved with the variance.

- b. The issuance of a certificate of occupancy and/or certificate of completion and/or structure specified in the approved conditions.
- c. The issuance of a business license for the approved use, but only when no new construction or land disturbance is approved and/or required as a condition of rezoning.

22.13.17. SUBSTANTIAL PROGRESS.

To demonstrate substantial progress for purposes of vesting a variance, the Department shall approve a construction schedule for a Land Disturbance Permit which includes at least fifty percent (50%) of the public improvements for a specified phase. Substantial progress shall have been demonstrated when, within one (1) year of the date of issuance of the Land Disturbance Permit, the Department observes a level of accomplishment or expenditures on the project which produces measurable and verifiable evidence that the activities undertaken comply with those objectives and representations of the approved construction schedule.

Refusal to certify that substantial progress has been achieved may be appealed in accordance with this Article.

22.13.18. EXTENSIONS.

- a. Extension by Director. The Director is authorized to grant once, in writing, an extension of a variance or administrative variance for a maximum period of twelve (12) months, subject to the qualifying conditions listed in this Section. To request an extension by the Director, the property owner must submit a petition to the Department at least thirty (30) calendar days prior to the expiration of the variance.

No more than one (1) twelve (12) month extension per variance may be granted by the Director for any of the qualifying conditions listed in this Section (except a court action delay).

- b. Extension by the BOA. Any additional requests for extension of a variance beyond the twelve (12) month extension granted by the Director may be considered by the BOA, subject to the qualifying conditions listed in this Section.

To request an extension by the BOA, the property owner must submit a petition to the Department at least thirty (30) days prior to the expiration of the twelve (12) month extension period granted by the Director pursuant to this Section.

The Department shall prepare an analysis and recommendation as to whether the documentation in the petition is sufficient based on one (1) of the four (4) qualifying conditions which may validate an extension request by the BOA. The Department shall submit its recommendation to the BOA.

- c. Qualifying conditions. In every petition for an extension of a variance, the property owner shall provide an affidavit documenting at least one (1) of the following:

1. A delay resulting from court action involving the variance or a previous extension on the subject property for which an extension is sought. Extensions approved in connection with court action shall remain valid for one (1) year beyond the granting of an order or the expiration of an appeal period before any court with jurisdiction.
2. Non-availability of utilities or facilities resulting from government inaction. In those instances where wastewater facilities are available for a fraction of the desired capacity, or when capacity was available at some time during the one (1) year period, but not during the sixty (60) days prior to expiration, the Director or the BOA, as applicable, shall evaluate such case's qualifications for an extension on its individual merits considering any evidence that might indicate a diligent effort to proceed with development.
3. A delay in development resulting from wetlands regulatory procedures requires the petitioner to provide a copy of the petition acknowledgment letter from the Savannah Regulatory Branch of the Corps of Engineers as documented evidence. Said petition should have been filed at least six (6) months before the expiration of the variance.
4. An inability to obtain financing, despite documentation of the property owner's efforts during the three (3) months prior to the petitioner seeking an extension and continuing until one (1) week prior to consideration of the extension request by the Director or the BOA, as applicable. Documentation shall consist of two (2) official denials signed by officers of two (2) different lending institutions who have final jurisdiction over such financing transactions.

22.14. BOA STRUCTURE AND OPERATION.

22.14.1 MEMBERSHIP.

The BOA shall consist of seven (7) members nominated by the Mayor and confirmed by the City Council. The members shall serve terms concurrent with the terms of the Planning Commission. Members shall not hold any other public office or position in the City. Annual elections shall be held by the BOA to elect one of its members as chairperson for a one- (1) year term. Members shall serve no more than three (3) consecutive terms.

Members shall be own property within the City of Sandy Springs, and have been so for at least one (1) year prior to serving on the Board.

At least four (4) members of the BOA shall have demonstrated professional experience in land development, engineering, architecture, landscape architecture, urban planning or a closely related discipline.

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 City Council upon written charges and after a public hearing. Any member absent for three (3) consecutive regular meetings, or for a total of four (4) regular meetings within a calendar year, shall be automatically removed from the Board.
- 22.14.4. PAY.
Members of the BOA shall serve without compensation for their services on the BOA, but may be paid for any necessary expenses incurred in the performance of duties authorized by the BOA, as may be fixed from time to time by the City Council.
- 22.14.5. SECRETARY.
The Director or his/her designee shall serve as Secretary to the BOA. 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 BOA shall adopt and publish policies, procedures and rules in keeping with the provisions of this Ordinance. Such shall be available in the Department.
- 22.14.7. MEETINGS.
Meetings of the BOA shall be held at least once each month to dispose of matters scheduled, unless there is lack of business. Additional meetings may be called by the chairman. Scheduled meetings of the BOA, including places and dates, and deadlines for the filing of petitions, shall be approved by the City Council and published by the Director.

2. Section 3.1, *Definitions*, of the City of Sandy Springs Zoning Ordinance is hereby added, amended or deleted as indicated therefore:

ARTICLE III

DEFINITIONS

- 3.3.1. A
Appeal. A request to a specific hearing body to review an interpretation or a decision rendered by another party, pursuant to Article XXII.
- 3.3.5. E
Extenuating Circumstances. Circumstances outside the control of the property owner that may prohibit compliance with this Ordinance.

3.3.8. H

Hardship. The existence of extraordinary and exceptional conditions pertaining to the size, shape, or topography of a particular property.

3.3.22 V

Variance. A request for relief from a provision of this Zoning Ordinance pursuant to Article XXII.

Variance, Administrative. A variance type that can be granted by the Director pursuant to Article XXII.

~~Variance, Administrative Minor [deleted]~~

~~Variance, Minor [deleted]~~

~~Variance, Primary [deleted]~~

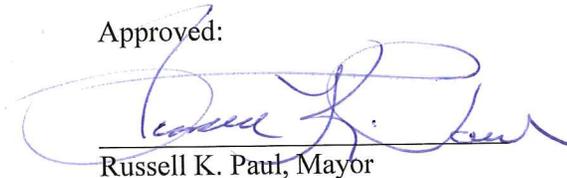
~~Variance, Secondary [deleted]~~

3.

This Ordinance is effective July 1, 2016; and

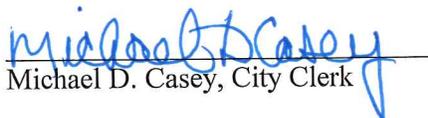
APPROVED AND ADOPTED this the 17th day of May, 2016.

Approved:



Russell K. Paul, Mayor

Attest:



Michael D. Casey, City Clerk

(Seal)

