

STATE OF GEORGIA  
COUNTY OF FULTON

**AN ORDINANCE TO AMEND CHAPTERS 10, 22, 38, 46, 103, 105, 109 AND 117 OF THE CODE OF THE CITY OF SANDY SPRINGS TO STANDARDIZE APPELLATE LANGUAGE WITH CHAPTER XXII OF THE CITY OF SANDY SPRINGS ZONING ORDINANCE.**

**BE IT ORDAINED** by the City Council of the City of Sandy Springs, GA while in regular session on October 20, 2009 at 6:00 p.m. as follows:

**SECTION 1.** Chapter 10, Article I, Section 10-6(a) Animal Control  
Chapter 22, Article II, Section 22-27(a) Fire Prevention and Protection  
Chapter 38, Article VII, Section 38-186 Litter Control  
Chapter 46, Article II, Section 46-22(c)(2) Solid Waste  
Chapter 103, Article III, Section 103-9(a) Development Ordinance Regulations  
Chapter 105, Article II, Section 111 International Property Maintenance Code  
Chapter 105, Article II, Section 105-48(e) Building and Building Regulations  
Chapter 109, Article II, Section 109-56 Floodplain Management Ordinance  
Chapter 109, Article V, Section 109-223 Stream Buffer Protection Ordinance  
Chapter 109, Article VI, Section 109-277 Soil Erosion and Sedimentation Control  
Chapter 109, Article VII, Section 109-373 Tree Conservation Ordinance

These revisions will standardize all appellate language contained within the separate sections of the Code of the City of Sandy Springs with existing appellate language found within Chapter 117, Article XXII of the Zoning Ordinance. Current appellate language found in these individual sections will be removed and reference made to the appeals process found in Chapter 117, Article XXII of the Zoning Ordinance. This definition will replace the current appellate language found in the afore mentioned sections of the ordinance, and is hereby adopted and approved; and is attached hereto as if fully set forth herein, and;

**SECTION 2.** All ordinances, parts of ordinances, or regulations in conflict herewith are repealed, and;

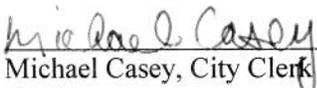
**SECTION 3.** That this Ordinance shall be effective October 20, 2009.

**ORDAINED** this the 20<sup>th</sup> day of October, 2009.

Approved:

  
\_\_\_\_\_  
Eva Galambos, Mayor

Attest:

  
\_\_\_\_\_  
Michael Casey, City Clerk  
(Seal)



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### ARTICLE XXII

#### APPEALS

##### 22.1. PURPOSE.

The purpose of this ~~article~~ **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 **Zoning** Ordinance and the ~~Official~~ **City** 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~~ **land use petitions**. Variances apply to the development standards and district standards per the Zoning Ordinance. Modifications apply to the approved conditions of zoning or use permits.

##### 22.2. DECISION MAKING AUTHORITY.

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

##### 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 ~~applications for rezonings, use permits~~ **land use petitions**, and modifications pursuant to Article 22 **XXII** and Article 28 **XXVIII**;
- B. To hear and decide ~~applications for~~ **requests for** concurrent variances in conjunction ~~with applications for rezonings, use permits~~ **land use petitions**, and/or zoning modifications pursuant to Article 22 **XXII** and Article 28 **XXVIII**; and
- C. To initiate a **land use petition or a** modification of approved zoning conditions.

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

- A. To hear and decide ~~applications~~ **petitions** for primary variance requests;
- B. To hear and decide appeals from the interpretation of any of the provisions of this **Zoning** Ordinance by the Director ~~of the Department of~~

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~~Community Development~~ in accordance with Section 22.2.3.-H.;

- 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 ~~Sandy Springs~~ **City** official in the enforcement of this Zoning Ordinance; ~~and;~~
- D. To hear and decide appeals from a permitting or procedural decision of the Director or Deputy Director of the ~~Department of Community Development~~ regarding minor or administrative variance requests; ~~and~~
- E. To hear and decide appeals from a decision of the City made pursuant to an ordinance subject to the appeals provisions of this Article.

22.2.3.

~~DIRECTOR OF THE DEPARTMENT OF COMMUNITY DEVELOPMENT.~~

The Director of the ~~Department of Community Development~~ shall have the following jurisdiction, power and duties under the provisions of this Zoning Ordinance:

- A. To determine the type of appeal ~~application~~ **petition** or land use process the property owner/agent is required to ~~apply for~~ **utilize**;
- B. To consider and decide on minor variances to minimum yard requirements, not to exceed ten percent **(10%)** 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 **one (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 Ordinance 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~~ **petitions**.

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22.2.4.

LIMITATION ON AUTHORITY. The authority and jurisdiction of ~~Boards~~ **hearing bodies** and individuals as provided herein shall be limited as outlined in the following. In exercising this jurisdiction, each hearing ~~Board~~ **body** 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 Ordinance.
- 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.
- E. There shall be no modification to revise a site plan that, as determined by the Director ~~of the Department of Community Development~~ results in a significant change in the approved concept. Such a site plan revision shall require rezoning pursuant to Article ~~28~~ **XXVIII**.
- F. There shall be no relief or variance from the standards of Article ~~22~~ **XXII** or Article ~~28~~ **XXVIII**.

22.3.

VARIANCES. A variance is a request for relief from the provisions of the Zoning Ordinance. **The type of variance necessary shall be determined by the Director or designee. There are six (6) types of variance applications petitions, which are listed below and described in the following sections:** ~~The type of variance necessary shall be determined by the Director of the Department of Community Development. The different types of appeals are listed below and described in the following sections:~~

- 1. ~~Administrative Variance~~ **variance;**
- 2. ~~Minor Variance~~ **variance/**~~Administrative Minor Variance~~ **administrative minor variance;**
- 3. ~~Primary Variance~~ **variance;**
- 4. ~~Secondary Variance~~ **variance;**
- 5. ~~Interpretation;~~ **and**

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### 6. Concurrent ~~Variance~~ 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:

- 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 Ordinance; or,
- B. The application of the particular provision of the Zoning Ordinance 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 of Community Development~~ is authorized by this Zoning Ordinance to consider an ~~Administrative Variance~~ administrative variance whenever;

- 1. A property owner maintains that a provision contained in ~~Article 34, the DEVELOPMENT REGULATIONS~~ City's Development Regulations Ordinance, as applied to a specific situation, is not in the best interest of the public health, safety and welfare;
- 2. whenever ~~There is a request for the alteration of the ten (10) foot improvement setback required along all buffers as required in the conditions of zoning and/or in Article Section 4.23.1, MINIMUM LANDSCAPE STRIPS AND BUFFERS;~~ and
- 3. whenever ~~There is a request up to a ten percent (10%) reduction in the number of required parking spaces per Article Section 18.2.4, ADMINISTRATIVE REDUCTION OF SPACES CONSTRUCTED.~~

### 22.5. ADMINISTRATIVE MINOR VARIANCE.

The Director of the ~~Department of Community Development~~ may grant an ~~Administrative Minor Variance~~ administrative minor variance up to one (1) foot from any minimum yard requirement.

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### 22.6. MINOR VARIANCE.

The Director of the Department of Community Development may grant minor variances to minimum yard requirements, not to exceed ten percent (10%) of such requirement, as long as no objection has been submitted in writing to the Director of Department of Community Development. An appeal to a minor variance decision must be filed as a Secondary Variance secondary variance request.

### 22.7. PRIMARY VARIANCE.

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

### 22.8. SECONDARY VARIANCE/INTERPRETATION.

The Board of Appeals BOA 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 City Council may consider a concurrent variance from any standards of the Zoning Ordinance which shall be filed simultaneously with rezoning, use permit land use petitions or zoning modification requests 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 rezonings or use permit applications 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 Sections 22.13.9 and 28.3.

#### 22.9.1. LIMITATIONS ON CONCURRENT VARIANCES.

- A. The City Council may only consider variance requests as part of, or in conjunction with, a rezoning, use permit land use petition or modification application petition.
- B. OPEN.
- C. If an application a petition for a variance to the Board of Appeals BOA duplicates a concurrent variance request denied by the City Council, such

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~~an application~~ **petition** shall not be accepted by the Director ~~of the Department of Community Development~~ 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 ~~Board of Appeals~~ **BOA** cannot be considered simultaneously with the same variance request pending before the City Council.

- 22.9.2. APPLICATION **PETITION** FOR CONCURRENT VARIANCES. ~~Applications~~ **Each petition** for a concurrent variance shall be submitted to the Director ~~of the Department of Community Development~~ in accordance with the advertised filing deadlines for the City Council meetings. A regular variance fee shall be charged and the ~~application~~ **petition** shall comply with all advertising and notification requirements specified in Article 28 **XXVIII, REZONING AND OTHER AMENDMENT PROCEDURES.** One notice sign may serve for both the ~~rezoning, use permit~~ **land use petition**, 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 ~~a~~ zoning or use permit when a site development proposal does not comply with approved conditions. There are two **(2)** different types of modifications which are listed below and described in the following sections:

1. ~~Administrative Modification~~ **modification; and**
2. ~~Zoning Modification~~ **modification.**

- 22.10.1. APPLICATION **PETITION** FOR MODIFICATION. A request to modify a condition of zoning or Use Permit **use permit** may be initiated by the property owner, the Planning Commission or the City Council. ~~Applications~~ **Petitions** shall be submitted to the Director ~~of the Department of Community Development~~ in accordance with the deadline schedule adopted by the City Council. A modification **petition** ~~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~~ **Petitioners** shall submit a revised site plan illustrating the requested modification. The type of modification necessary is determined by the Director ~~of the Department of Community Development~~.

- 22.11. ADMINISTRATIVE MODIFICATION. ~~An Administrative Modification~~

Zoning Ordinance  
City of Sandy Springs

Text revised to incorporate amendments through 08/31/09

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~~administrative modification application~~ ~~petition~~ may be filed if the Director of the Department of Community Development 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 shall send the administrative modification decision to the City Council for confirmation at the next appropriate regular meeting.

22.11.1. APPEAL OF AN ADMINISTRATIVE MODIFICATION DECISION. If an applicant ~~a petitioner~~ wishes to appeal the decision of the Director of the Department of Community Development regarding an Administrative Modification ~~administrative modification~~, or if it is determined by the Director that a request will involve a matter of public interest, the applicant ~~petitioner~~ must file a separate ~~application~~ ~~petition~~ requesting a Zoning Modification ~~zoning modification~~ on forms available from the Department of Community Development.

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

22.13. GENERAL PROCEDURES.

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

22.13.1. APPLICATIONS PETITIONS. All ~~applications~~ ~~petitions~~ for variances, interpretations and modifications shall be filed with the Director of the Department of Community Development on forms available in ~~from~~ the Department. The type of ~~application~~ ~~petition~~ process necessary to accomplish the change requested by the applicant ~~petitioner~~ shall be determined by the Director of the Department of Community Development. The Director 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~~ ~~petition~~ - A request for a modification may be initiated by the property owner or its agent, the Planning Commission or

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the City Council;

- B. Variance Petition **petition** - A request for a variance may be initiated by the property owner of **the** 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 **three hundred (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 of Community Development~~ may be requested by any individual.

22.13.3. FILING DEADLINES.

- A. ~~Applications~~ **Petitions** 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 Ordinance.
- B. Concurrent **Variance** ~~applications~~ **petitions** shall be filed in accordance with the filing deadline for ~~the parent petition of either a use permit, rezoning~~ **a land use petition**, or zoning modification request in accordance with Section 28.2.3 of the Zoning Ordinance.
- C. The Director of the ~~Department of Community Development~~ has the discretion to extend the filing deadline by two **(2) days or more, when deemed necessary by the Director**, for all ~~applications~~ **petitions** except ~~a~~ **Administrative** ~~m~~ **Minor** and ~~m~~ **Minor** **Variance** ~~Applications~~ **petitions**. A letter from the ~~applicant~~ **petitioner** explaining the delay in filing shall be submitted prior to the close of the filing deadline.

22.13.4. WITHDRAWAL OF APPLICATION **PETITION.**

- A. ~~An application~~ **petition** may be withdrawn by the ~~applicant~~ **petitioner** in writing at any time before the public hearing notice advertisement is published ~~and/or~~ **and/or** the notice of the hearing is posted on the property.
- B. ~~Applications~~ **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 ~~application~~ **petition** must be placed on the public

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hearing agenda and the appropriate decision-making body shall act on the withdrawal request.

- 22.13.5. FEES. At the time of application ~~filing a petition~~, applicants ~~a petitioner~~ shall pay fees as established by the City Council. Fees paid are not refundable except where the Director of the Department of Community Development determines that an application ~~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~~ applicant.

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 as may be determined by the Department to be the additional administrative costs associated with such postponement or delay.

- 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 Sandy Springs ~~the City~~ until final resolution of the appeal. No City Council or Board of Appeals ~~BOA~~ action shall be taken on any property which is the subject of any litigation pending in state or federal court wherein Sandy Springs ~~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 appeal ~~application~~ 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, minor variances, 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 of Community Development which shall summarize the hardship or justification reported by the applicant ~~petitioner~~ as related to the application ~~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. NOTICE OF DECISIONS.

- 22.13.9. PUBLIC NOTIFICATION.

- A. For those applications ~~petitions~~ requiring which require a public hearing (pPrimary vVariances, sSecondary vVariances, cConcurrent vVariances, and zZoning mModifications), the Director of the Department of

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~~Community Development shall~~ notice shall be given as follows:

1. ~~Publication of notice – The Director shall p~~ 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 ~~an application a petition~~ 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). Re-~~notification is~~ notification is not required when a petition is deferred by the City Council or the ~~Board of Appeals BOA~~.
2. ~~Posting of notice - The applicant petitioner~~ or agent shall post a sign as issued by the Department of ~~Community Development~~ in a conspicuous location on each public street frontage of the subject site, at least ~~twenty (20) days, but not more than forty-five (45) days, prior to the public hearing at which an application a petition~~ will be heard.

The sign shall be mounted and posted as specified by the Department of ~~Community Development~~. Property that is not posted on the ~~twentieth (20<sup>th</sup>) 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 Appeals BOA~~ defers a petition, the ~~applicant petitioner~~ is required to post an updated sign with new hearing dates ~~twenty (20) days~~ prior to the next scheduled hearing date. When the City Council defers a petition, an updated sign is not required.

The posted sign shall contain the date, time, place and purpose of the hearing.

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.

~~It is the petitioner's responsibility to remove or cause to be removed any public notice sign required to be posted pursuant to~~

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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.

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 herein relating to denied petitions.

3. Notice of the public hearing shall be postmarked **fifteen (15)** days prior to the hearing date and shall be given by regular mail to all property owners within **three hundred (300)** feet of the boundaries of the property ~~who~~ **whose names** appear on the current tax records of Fulton County as retrieved by the **City's County's** Geographic Information System. Re-notification is not required when a petition is deferred by the City Council or the ~~Board of Appeals~~ **BOA**.

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

- B. ~~For those applications~~ **petitions** for administrative modification, the Director shall determine what notification, if any, is reasonable on a case by case basis. ~~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 of Community Development shall determine what notification, if any, is reasonable on a case-by-case basis.
4. ~~Administrative Minor Variance:~~ No written notification is

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required.

- 22.13.10. DECISIONS. The City Council, ~~Board of Appeals~~ BOA, and the Director, ~~of the Department of Community Development~~ in considering applications ~~applications~~ 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 application being considered~~ the petition;
  - C. Deny the petition;
  - D. Hold the petition for further study not less than thirty (30) days; or
  - E. Withdraw the petition.
- 22.13.11. ~~BOARD OF APPEALS~~ BOA DECISION ON SECONDARY VARIANCES/INTERPRETATIONS. The ~~Board of Appeals~~ BOA 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 an order, requirement, or decision, wholly or partly, by presenting. ~~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 Sandy Springs Zoning Ordinance, and definitions contained in the most current edition of the 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 ~~applicant~~ petitioner by regular mail within seven (7) working days from the date of the decision by the following authority:
- A. The Director ~~of the Department of Community Development~~ shall provide written notification of the ~~Board of Appeals'~~ BOA's decisions;
  - B. The Director ~~of the Department of Community Development~~ 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 City Clerk ~~to the City Council~~ shall provide, with respect to zoning modifications and concurrent variances, provide written notification of the

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City Council's decisions.

22.13.13. RECONSIDERATION OF DENIED APPLICATION PETITION. If a variance or modification application petition is denied by an authorized Department the Director, the City Council or the Board of Appeals BOA, an application a petition for the same variance or modification 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.

If an application a petition is denied by the Director of the Department of Community Development, the applicant petitioner 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 Section 28.2 as related to decisions regarding rezonings and/or use permits land use petitions.

**22.13.14. APPEALS.**

A. Appeal to BOA. Any person aggrieved by a decision of the City made pursuant to an ordinance subject to the appeals provisions of this Article may submit an appeal in writing to the Department within thirty (30) days of the City's decision. The appropriate appeal form may be obtained from the Department.

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) days after the filing of an appeal with the Department.

B. Appeal to Superior Court. 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) days of the date of the decision in accordance with applicable provisions of Georgia law.

~~22.13.14. TIME LIMITATION ON APPEALS TO SUPERIOR COURT. The decision of the Board of 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 initials filings with the Superior Court shall be served upon the named defendants/respondents in accordance with O.C.G.A. Section 9-11-4.~~

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

~~Appeals of decisions (Secondary Variances/Interpretation) of the Director of the Department of Community Development, or the Director of Public Works 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, either by the hearing body or the Director. Extensions may be sought under the provisions for Expiration and Extensions in article 28, Rezoning and Other Amendment Procedures.~~ A variance shall expire unless 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 fails to secure 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 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

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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. In connection with a variance, the Director is authorized to grant, in writing, an extension 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) 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

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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.

22.13.19. NOTICE OF EXPIRATION. At least ninety (90) days prior to the expiration of a variance, the Director shall send by certified mail a notice of expiration to each owner of record as shown in the tax records.

22.14. BOA.

22.14.1. MEMBERSHIP. The ~~Sandy Springs Board of Appeals~~ BOA shall consist of seven (7) members appointed by the City Council of ~~Sandy Springs~~. The members shall serve terms concurrent with the terms of the ~~Sandy Springs~~ Planning Commission. Members shall not hold any other public office or position in ~~Sandy Springs~~ the City. Annual elections shall be held by the ~~Board of Appeals~~ BOA to elect one of its members as chairperson for a one- (1) year term. The chairperson may serve an unlimited number of one- (1) 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 City

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Council upon written charges and after a public hearing.

- 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. Fees to be paid to the members of the Sandy Springs Board of Appeals for attending official meetings shall be fixed from time to time by the City Council of Sandy Springs.
- 22.14.5. SECRETARY. The Director of the Department of Community Development shall serve as Secretary to the Board of Appeals 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 Sandy Springs Board of Appeals BOA shall adopt and publish policies, procedures and rules in keeping with the provisions of this Ordinance. Such shall be available in the Department of Community Development.
- 22.14.7. MEETINGS. Meetings of the Board of Appeals BOA shall be held at least once each month to dispose of matters scheduled. Additional meetings may be called by the chairman. The Board of Appeals S scheduled meetings of the BOA, including places and dates, and deadlines for the filing of applications petitions, shall be approved by the City Council and published by the Director of the Department of Community Development.