



To: Planning Commission

From: Michelle Alexander, Director of Community Development

Date: April 21, 2016

Subject: TA16-0004 - An Ordinance to Amend Article 22, Appeals, of the Sandy Springs Zoning Ordinance

Department of Community Recommendation:

APPROVAL of an amendment to Article 22, Appeals, of the Sandy Springs Zoning Ordinance.

Background:

Article 22, Appeals, of the Sandy Springs Zoning Ordinance outlines the processes the Board of Appeals, the Department of Community Development, petitioners, and the public must follow as it relates to variances and appeals. The intent is to simplify and modernize the ordinance.

Discussion:

The major elements of the amendment drafted by Staff are as follows:

Sec. 22.3.1. Variance Considerations: The evaluation criteria for variances are clarified; the notion of “hardship” is narrowed. The criteria apply to both administrative variances and variances going through a public hearing.

Sec. 22.4. et seq. Administrative Variance: The three types of administrative variances are consolidated into one.

Sec. 22.10.1. Petition for Modification: Evaluation criteria are established.

Sec. 22.14.1. Membership: Residency within the City limits and professional background are new criteria for membership on the BOA.

Amendment Schedule:

Planning Commission Public Hearing – April 21, 2016

City Council Public Hearing – May 19, 2016

Attachments:

Draft Mark-up

Draft Ordinance

COMMUNITY DEVELOPMENT

MARKED-UP FOR AMENDMENT

REVISED VERSION ADOPTED BY MAYOR AND CITY COUNCIL, OCTOBER 20, 2009

ARTICLE XXII

VARIANCES, MODIFICATIONS AND APPEALS

22.1.

PURPOSE.

The purpose of this Article is to establish procedures for ~~appealing~~ 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 ~~interpretation of the text of this Zoning Ordinance and the City Zoning Map~~ appealing administrative decisions. Appeals Relief petitions are authorized herein to be considered by various bodies and individuals depending on the type of ~~appeal~~ relief requested and its relationship to 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.~~ 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 ~~primary~~ variances ~~requests~~;
- ~~B. To hear and decide appeals from the interpretation of any of the provisions of this Zoning Ordinance by the Director 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 City official in the enforcement of this Zoning Ordinance;
- D. To hear and decide appeals from a permitting or procedural decision of the Director or Deputy Director regarding minor or administrative variance requests; and
- E. To hear and decide appeals from an administrative decision of the City made 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 appeal relief petition or land use process the property owner/agent petitioner is required to 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;
 3. Conflicting or redundant procedural requirements.
- G. To establish procedural requirements for review of appeal petitions.

22.2.4. **LIMITATION ON AUTHORITY.** The authority and jurisdiction of hearing bodies and individuals as provided herein shall be limited as outlined in the following. In exercising this jurisdiction, each hearing 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 results in a significant change in the approved concept. Such a site plan revision shall require rezoning pursuant to Article XXVIII.~~
- ~~F. There shall be no relief or variance from the standards of Article XXII or Article XXVIII.~~

22.3.

VARIANCES. A variance is a request for relief from the provisions of the Zoning Ordinance.

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.

The type of variance necessary shall be determined by the Director or designee. There are six (6) three (3) types of variances, which are listed below and described in the following sections:

1. Administrative variance;
2. ~~Minor variance/administrative minor variance;~~
3. Primary variance;
4. ~~Secondary variance;~~
5. ~~Interpretation; and~~
6. Concurrent variance.

A request for a variance may be initiated by the property owner of the subject property or its agent.

22.3.1.

VARIANCE CONSIDERATIONS. Variances may be considered in all districts.

~~Primary~~ variances, administrative 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~~
- 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; and
 - 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; and
 - 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 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.
- 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:**

 - ~~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.~~
- 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.3.1 of this zoning ordinance if they cannot meet the criteria of Paragraph A. above.**

22.4.

ADMINISTRATIVE VARIANCE.

The Director is authorized by this Zoning Ordinance to consider an administrative variance ~~whenever~~; 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.
-
1. ~~A property owner maintains that a provision contained in the 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. ~~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 Section 4.23.1, MINIMUM LANDSCAPE STRIPS AND BUFFERS; and~~
 3. ~~There is a request up to a ten percent (10%) reduction in the number of required parking spaces per Section 18.2.4, ADMINISTRATIVE REDUCTION OF SPACES CONSTRUCTED.~~

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.

The Department shall issue a decision no later than twenty-one (21) working days after the date of filing a complete application.

22.5. ADMINISTRATIVE MINOR VARIANCE, OPEN

~~The Director may grant an administrative minor variance up to one (1) foot from any minimum yard requirement.~~

22.6. MINOR VARIANCE.

~~The Director 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. An appeal to a minor variance decision must be filed as a 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 administratively~~ or is not a concurrent variance shall be heard and decided by the BOA ~~in accordance with Section 22.3.1.~~

22.8. SECONDARY VARIANCE/INTERPRETATION, OPEN

~~The 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 land use petitions or zoning modification ~~requests 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 Sections ~~22.13.9 and~~ 28.3 of this ordinance.

Additional concurrent variances, requested after the deadline established by the Director to amend a filed the land use petition or zoning modification petition, 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.

22.9.2.

~~PETITION FOR CONCURRENT VARIANCE. Each petition for a concurrent variance shall be submitted to the Director in accordance with the advertised filing deadlines for the City Council meetings. A regular variance fee shall be charged and the petition shall comply with all advertising and notification requirements specified in Article XXVIII, REZONING AND OTHER AMENDMENT PROCEDURES. One notice sign may serve for both the 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; and

2. Zoning modification.

A request for a modification may be initiated by the property owner or its agent, the Planning Commission or the City Council.

22.10.1. ~~PETITION 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 City Council. Petitions shall be submitted to the Director in accordance with the deadline schedule adopted by the City Council. A modification petition 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. Petitioners shall submit a revised site plan illustrating the requested modification. The type of modification necessary is determined by the Director.

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.~~ An administrative modification petition may be filed if the Director determines that:

- A. The modification will constitute only a technical change, and
- B. 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 notify the City Council of the approved administrative modifications at the end of each year, at one of their regularly scheduled meetings. ~~send the administrative modification decision to the City Council for confirmation at the next appropriate regular meeting.~~

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.

The Director shall issue a decision no later than twenty-one (21) working days after the date of filing a complete application.

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

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 ~~and is in compliance with Section 22.2.4, LIMITATION ON AUTHORITY. The zoning modification request shall be presented to the City Council for consideration in a public hearing.~~ Zoning modification petitions shall be considered land use petitions and shall follow the procedures enumerate in Article XIX.

22.13. GENERAL PROCEDURES.

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

22.13.1. PETITIONS. All petitions for variances, interpretations 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 shall be accepted each month. Those in excess shall be placed on the next available BOA regular agenda, in order in which they are received.

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

B. Variance petition

C. Secondary variance petition ~~A request for a secondary variance 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 may be requested by any individual.

22.13.3. **FILING DEADLINES AND AMENDMENTS.**

A. ~~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.~~

~~Petitions for primary 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 ~~request~~ petition in accordance with Section 28.2.3 of the Zoning Ordinance.

C. ~~The Director has the discretion to extend the filing deadline by two (2) days or more, when deemed necessary by the Director, for all petitions except administrative minor and minor variance petitions. A letter from the petitioner explaining the delay in filing shall be submitted prior to the close of the filing deadline.~~

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

22.13.6. **LEGAL ACTION STAYED.** The filing of ~~an appeal~~ a petition authorized by this Article shall operate as a stay of any enforcement proceedings by the City until final resolution ~~of the appeal~~. 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 ~~appeal~~ 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 which shall summarize the hardship or justification reported by the petitioner as related 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. **NOTICE OF DECISIONS.**

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 ~~those variance petitions which require a public hearing (primary variances, secondary variances, concurrent variances, and zoning modifications)~~, 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.~~if applicable (secondary variances may not always be property specific).~~ Re-notification is not required when a petition is deferred by ~~the City Council or~~ the BOA.

2. ~~Posting of notice~~ Sign posting - The petitioner ~~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 ~~twenty (20)~~
~~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.~~

~~The sign shall be mounted and posted as specified by the Department.~~
Property that is not posted on the ~~twentieth (20th)~~ 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.

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

When the BOA defers a petition, the petitioner is required to post an updated sign with new hearing dates ~~twenty (20)~~
~~fifteen (15)~~ days prior to the next scheduled hearing date. ~~When the City Council defers a petition, an updated sign is not required.~~

~~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.~~

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.

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. ~~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 whose names appear on the current tax records of Fulton County as retrieved by the City's Geographic Information System.~~

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.

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 City Council~~ or the BOA.

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

- B. For administrative variance and administrative modification petitions ~~for administrative modification~~, 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 ~~City Council, BOA, and the Director~~, 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. ~~Hold~~ **Defer** the petition for ~~further study~~ not less than thirty (30) days; or
- E. Withdraw the petition.

22.13.11. **BOA DECISION ON SECONDARY VARIANCES/INTERPRETATIONS.** The 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 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 Zoning Ordinance, and definitions contained in the most current edition of the Merriam Webster Collegiate Dictionary.~~

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 following authority~~:

- A. ~~The Director shall provide written notification of the BOA's decisions;~~
- B. ~~The Director 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 shall provide, with respect to zoning modifications and concurrent variances, written notification of the City Council's decisions.~~

22.13.13. **RECONSIDERATION OF DENIED PETITION.** If a variance ~~or modification~~ petition is denied by ~~the Director, the City Council~~ or the BOA, 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 a petition is denied by the Director, the 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 Section 28.2 as related to decisions regarding land use petitions.~~

22.13.14. **APPEALS TO OF ADMINISTRATIVE DECISIONS.**

~~Appeals can be filed by any individual aggrieved by an administrative decision rendered by the Department or the Director.~~

- A. Appeal to BOA of Administrative Decisions. Any person aggrieved by a decision of the ~~City~~ Director or the Department 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) calendar days of the ~~City's~~ decision. ~~The appropriate appeal form may be obtained from the Department.~~

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 to Superior Court 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 **fails to**
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. ~~In connection with a variance,~~ 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.

~~22.13.19. 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 STRUCTURE AND OPERATION.

22.14.1. MEMBERSHIP. The BOA shall consist of seven (7) members appointed 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. ~~The chairperson may serve an unlimited number of one (1) year terms. Members shall serve no more than three consecutive terms.~~

~~Members shall be owner of 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.

1
2 TA16-0004
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
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:

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

8 22.2.2. **BOARD OF APPEALS (BOA)**. The BOA shall have the following powers and duties
9 under the provisions of this Zoning Ordinance:

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

13 22.2.3. **DIRECTOR**. The Director shall have the following jurisdiction, power and duties
14 under the provisions of this Zoning Ordinance:

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

20 22.3. **VARIANCES**. A variance is a request for relief from the provisions of the Zoning
21 Ordinance.

22 **Limitations**.

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

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

- 32 a. Administrative variance;
- 33 b. Variance;
- 34 c. Concurrent variance.

35 A request for a variance may be initiated by the property owner of the subject property or
36 its agent.

37 22.3.1. **VARIANCE CONSIDERATIONS**. Variances may be considered in all districts.

38 **Variances, administrative variances** and concurrent variances shall only be granted
39 upon showing that:

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

- 1 2. There are extraordinary and exceptional conditions due to the size, shape, or
2 topography, which are specific to the subject property and not generally found in
3 similar properties; and
4 3. Such conditions are not the result of action or inaction of the current property
5 owner; and
6 4. The variance request would provide the minimum relief necessary to make
7 possible the reasonable use of the property; and
8 5. The variance request would result in consistency with the general intent of the
9 Zoning Ordinance, with the Comprehensive Plan policies, and would not be
10 detrimental to the public good, safety and welfare
11 b. For variances regarding stream buffers and associated impervious setback, refer to
12 Article V. Stream Buffer Protection of the Land Development Regulations Ordinance
13 c. For signs, pursuant to Article XXXIII:
14 Conditions resulting from existing foliage or structures bring about a hardship
15 whereby a sign meeting minimum letter size, square footage and height requirements
16 can not be read from an adjoining public road.
17 d. Variances, administrative variances and concurrent variances requesting relief from
18 the requirements of the Sandy Springs Overlay District of Article XII shall be
19 brought before the Planning Commission for design review, and shall be subject to
20 the review criteria enumerated under Section 12B.3.A.1 of this zoning ordinance if
21 they cannot meet the criteria of paragraph a. above.

22 **22.4.**

ADMINISTRATIVE VARIANCE.

The Director is authorized by this Zoning Ordinance to consider an administrative variance on petitions requesting:

- a. 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
- b. A reduction no greater than ten percent (10%) of the landscape areas, zoning buffers and improvement setbacks listed in Table 4.23.1.

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.

The Department shall issue a decision no later than twenty-one (21) working days after the date of filing a complete application.

38 **22.5.**

OPEN

40 **22.6.**

OPEN

42 **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.

46 **22.8.**

OPEN

48 **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 established by the Director to amend a filed the land use petition or zoning modification petition, 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. 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.

A request for a modification may be initiated by the property owner or its agent, the Planning Commission or the City Council.

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.

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

7 **22.11.**

8 **ADMINISTRATIVE MODIFICATION.** An administrative modification petition may
9 be filed if the Director determines that:

- 10 a. The modification will constitute only a technical change, and
11 b. Does not involve significant public interest.

12 The Director shall notify the City Council of the approved administrative modifications
13 at the end of each year, at one of their regularly scheduled meetings.

14 A denied petition for an administrative modification by the Director may be submitted as a
15 regular zoning modification to the City Council, following the procedures of Article XXII
16 and XXVIII.

17 The Director shall issue a decision no later than twenty-one (21) working days after the
18 date of filing a complete application.

19 **22.12.**

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

23 **22.13.**

24 **GENERAL PROCEDURES.**

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

27 **22.13.1.**

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

33 No more than five (5) new and complete applications shall be accepted each month.
34 Those in excess shall be placed on the next available BOA regular agenda, in order in
35 which they are received.

36 **22.13.2.**

37 **OPEN**

38 **22.13.3.**

39 **FILING DEADLINES AND AMENDMENTS.**

- 40 a. Petitions for variances shall be filed in accordance with the filing deadlines
41 approved by City Council. No petition for a variance shall be amended less than
42 twenty-one (21) calendar days prior to the BOA hearing date.

1 A petition amended beyond this deadline shall be put on administrative hold until
2 the following regularly scheduled BOA public hearing, and the petitioner shall be
3 responsible to re-advertise according to Sec. 23.13.9.

- 4
- 5 b. Administrative requests may be filed at any time.
6
- 7 c. Concurrent variance petitions shall be filed in accordance with the filing deadline
8 for a land use petition, or zoning modification **petition** in accordance with Section
9 28.2.3 of the Zoning Ordinance.

10 22.13.4. **WITHDRAWAL OF PETITION.**

- 11
- 12 a. A petition may be withdrawn by the petitioner in writing at any time before the
13 public hearing notice advertisement is published and/or the notice of the hearing
14 is posted on the property.
15 b. A petition which does not require a public hearing may be withdrawn at any time
16 before notification of a decision is mailed.
17 c. Once the public hearing has been properly advertised, the request for withdrawal
18 of the petition must be placed on the public hearing agenda and the appropriate
19 decision-making body shall act on the withdrawal request.

20

21 22.13.5. **FEES.** At the time of filing a petition, a petitioner shall pay fees as established by the
22 City Council. Fees paid are not refundable except where the Director determines that a
23 petition was accepted in error, or the fee paid exceeded the amount due, in which case the
24 amount of the overpayment will be refunded to the petitioner.

25

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

29

30 22.13.6. **LEGAL ACTION STAYED.** The filing of **a petition** authorized by this Article shall
31 operate as a stay of any enforcement proceedings by the City until final resolution. No
32 City Council or BOA action shall be taken on any property which is the subject of any
33 litigation pending in state or federal court wherein the City or its agents or officials are
34 parties.

35

36 22.13.7. **PUBLIC HEARING.** A public hearing shall be conducted by the stated hearing body of
37 each petition before taking action thereon except those authorized to be considered
38 administratively. The schedule of public hearings and deadlines for the filing of an
39 appeal shall be established by the City Council.

40

41 Public hearings are not required for administrative variances, and administrative
42 modifications; however, notification in accordance with Section 22.13.9.B is required

43

44 22.13.8. **EVALUATIONS AND REPORTS.** The hearing body shall have before it, at the
45 time of hearing, a report from the Director which shall summarize the hardship or
46 justification reported by the petitioner as related to the petition and background
47 information for variances, modifications, and interpretations, and any other
48 information requested by the hearing body. The hearing body shall hear, analyze,

1 consider, and make a written report of its decision in accordance with Section
2 22.13.12. NOTICE OF DECISIONS.

3
4 22.13.9. **PUBLIC NOTIFICATION.**

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

8
9 a. For variance petitions, notice shall be given as follows:

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

21
22 Property that is not posted on the **fifteenth (15th)** day before the scheduled
23 hearing date will be administratively removed from the agenda. The sign will
24 remain posted on-site until final action by the appropriate hearing body is taken.

25
26 When the BOA defers a petition, the petitioner is required to post an updated
27 sign with new hearing dates **fifteen (15)** days prior to the next scheduled
28 hearing date.

29
30 The failure of a petitioner or agent on two (2) consecutive occasions to post
31 notice as provided in this Section in connection with a petition shall be
32 considered willful disregard of the petitioner's obligation to comply with this
33 Zoning Ordinance. In such event, the petition shall be denied pursuant to
34 Section 22.13.10 herein, and shall be subject to all provisions herein relating to
35 denied petitions.

36
37 It is the petitioner's responsibility to remove or cause to be removed any public
38 notice sign required to be posted pursuant to this Article. If any sign required by
39 this Article to be posted by the petitioner is not removed within forty-eight (48)
40 hours of final action by the appropriate hearing body, it shall constitute a
41 violation of this Article and the Director shall issue a citation. Any violation of
42 this Article shall be an offense and the violator shall be subject to the penalty
43 provisions set forth in Article XXIX.

44
45 Signs regulated under this section are exempt from the provisions of Article
46 XXXIII. Signs.

- 1
2 3. Notice by mail. The petitioner shall give notice by regular mail to all property
3 owners within five hundred (500) feet of the boundaries of the subject property
4 who appear on the Fulton County tax records as retrieved by the City's
5 Geographic Information System (GIS). The notices shall be postmarked a
6 minimum of fifteen (15) calendar days prior to the meeting date.
7

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

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

- 12
13 b. For **administrative variance and administrative modification** petitions, the Director
14 shall determine what notification, if any, is reasonable on a case by case basis.
15
16 c. For concurrent variances and zoning modifications petitions, notice shall be given
17 according to Article XXVIII.

- 18
19 22.13.10. **DECISIONS.** The BOA, in considering petitions under this Article, shall do one (1) of
20 the following:
21 a. Approve or partially approve the petition;
22 b. Approve and impose conditions related to the petition;
23 c. Deny the petition;
24 d. **Defer** the petition not less than thirty (30) days; or
25 e. Withdraw the petition.

- 26
27 22.13.11. **OPEN**

- 28
29 22.13.12. **NOTICE OF DECISIONS.** Written notice of all decisions shall be placed in the official
30 case file and shall be forwarded to the petitioner by regular mail within seven (7)
31 working days from the date of the decision **by the Department**.

- 32
33 22.13.13. **RECONSIDERATION OF DENIED PETITION.** If a variance petition is denied by the
34 BOA, a petition for the same variance item shall not be considered until:
35 a. At least six (6) months has elapsed from the date of the decision; or
36 b. New information pertinent to the subject, not previously considered, is submitted
37 by the petitioner and the six (6) month period is waived by the hearing body.

- 38
39 22.13.14. **APPEALS OF DECISIONS.**

- 40
41 a. **Appeal of Administrative Decisions.** Any person aggrieved by a decision of the
42 **Director or the Department** made pursuant to an ordinance subject to the provisions
43 of this Article may submit an appeal in writing to the Department within thirty (30)
44 calendar days of the decision.

45
46 Such decisions include, but are not limited to, the interpretation of a section of this
47 Zoning Ordinance and a decision regarding the issuance of an administrative permit.

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

- 4
- 5 b. **Appeal of BOA Decisions.** The decision of the BOA is a final decision. Any appeal
6 of such a decision shall be pursued by petition for writ of certiorari filed with the
7 Superior Court of Fulton County within thirty (30) **calendar** days of the date of the
8 decision in accordance with applicable provisions of Georgia law.

9

10 22.13.15. **EXPIRATION OF VARIANCE.** A variance **or administrative variance** shall expire
11 unless:

- 12
- 13 a. **The property owner takes action to vest the variance in accordance with Section**
14 **22.13.16.** **within a period of thirty-six (36) months from the date it is granted by the**
15 **hearing body or the Director, or**
16 b. **The property owner secures** an approved extension in accordance with Section
17 **22.13.18.**

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

20

21 22.13.16. **VESTING OF VARIANCE.** Upon the occurrence of one (1) of the three (3)
22 conditions listed immediately below, a variance shall be considered vested.

- 23
- 24 a. Prior to the expiration of a Land Disturbance Permit pursuant to applicable provisions
25 of the **Land** Development Regulations Ordinance, a vesting determination may be
26 made by the Department that substantial progress, as defined in Section 22.13.17.,
27 has been made toward the completion of on-site construction depicted on the site plan
28 approved with the variance.
29 b. The issuance of a certificate of occupancy and/or certificate of completion and/or
30 structure specified in the approved conditions.
31 c. The issuance of a business license for the approved use, but only when no new
32 construction or land disturbance is approved and/or required as a condition of
33 rezoning.

34 22.13.17. **SUBSTANTIAL PROGRESS.** To demonstrate substantial progress for purposes of
35 vesting a variance, the Department shall approve a construction schedule for a Land
36 Disturbance Permit which includes at least fifty percent (50%) of the public
37 improvements for a specified phase. Substantial progress shall have been demonstrated
38 when, within one (1) year of the date of issuance of the Land Disturbance Permit, the
39 Department observes a level of accomplishment or expenditures on the project which
40 produces measurable and verifiable evidence that the activities undertaken comply with
41 those objectives and representations of the approved construction schedule.

42

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

45

46 22.13.18. **EXTENSIONS.**

- 47
- 48 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 appointed 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 consecutive terms.**

Members shall be owner of 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.

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

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

ORDAINED this the 17th day of May, 2016.

Approved:

Russell K. Paul, Mayor

Attest:

1 _____
2 Michael Casey, City Clerk
3 _____
4 (Seal)
5 _____
6 _____