

## ARTICLE XXII

### APPEALS

#### 22.1. PURPOSE.

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

#### 22.2. DECISION MAKING AUTHORITY.

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

##### 22.2.1. MAYOR AND CITY COUNCIL. The Mayor and 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, and modifications pursuant to Article 22 and Article 28;
- B. To hear and decide applications for concurrent variances in conjunction with applications for rezonings, use permits, and/or zoning modifications pursuant to Article 22 and Article 28; and
- C. To initiate a modification of approved zoning conditions.

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

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

## ZONING ORDINANCE OF THE CITY OF JOHNS CREEK

- B. To hear and decide appeals from the interpretation of any of the provisions of this Ordinance by the Director of the Department of 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 City of Johns Creek official in the enforcement of this Zoning Ordinance and;
- D. To hear and decide appeals from a permitting or procedural decision of the Department Director or Deputy Director regarding minor or administrative variance requests.

22.2.3. **DIRECTOR OF THE DEPARTMENT 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 or land use process the property owner/agent is required to apply for;
- B. To consider and decide on minor variances to minimum yard requirements, not to exceed ten percent of such requirement, as long as property owners with standing do not object;
- C. To consider and decide on administrative minor variances of no more than 1 foot;
- D. To consider and decide on administrative variances;
- E. To 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.
- F. To establish procedural requirements for review of appeal applications.

**ZONING ORDINANCE OF THE CITY OF JOHNS CREEK**

22.2.4. **LIMITATION ON AUTHORITY.** The authority and jurisdiction of Boards and individuals as provided herein shall be limited as outlined in the following. In exercising this jurisdiction, each hearing Board or individual shall have authority to determine whether it has jurisdiction.

- A. There shall be no variances to permitted uses or accessory uses as specified in the zoning district regulations, administrative/use permit or zoning conditions.
- B. There shall be no variances to the minimum lot area nor the minimum district size required in each zoning district.
- C. There shall be no variances to the minimum lot frontage on a street as required in designated zoning districts of the Zoning 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.
- F. There shall be no relief or variance from the standards of Article 22 or Article 28.

22.3. **VARIANCES.** A variance is a request for relief from the provisions of the Zoning Ordinance. There are 6 types of variance applications. 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
- 2 Minor Variance/Administrative Minor Variance
- 3 Primary Variance
- 4 Secondary Variance
- 5 Interpretation
- 6 Concurrent Variance

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

- 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 Ordinance to consider an Administrative Variance whenever a property owner maintains that a provision contained in Article 34, **DEVELOPMENT REGULATIONS**, as applied to a specific situation, is not in the best interest of the public health, safety and welfare; whenever there is a request for the alteration of the 10 foot improvement setback required along all buffers as required in the conditions of zoning and/or in Article 4.23.1 **MINIMUM LANDSCAPE STRIPS AND BUFFERS**; and whenever there is a request up to a 10% reduction in the number of required parking spaces per Article 18.2.4, **ADMINISTRATIVE REDUCTION OF SPACES CONSTRUCTED**.

The authority to grant an administrative variance pursuant to this Section and Section 22.5 and 22.6 is not mandatory. If a request for an administrative variance is submitted by an applicant and the Director of Community Development does not issue a decision within thirty (30) days from the date of submission, the request shall be deemed to have been denied and the applicant may request an appeal for a Secondary variance/interpretation pursuant to Section 22.8. At any time during the thirty (30) day period but prior to the issuance of a decision regarding the administrative variance, the applicant may request an appeal for a Primary variance pursuant to Section 22.7

Approval of an administrative variance is not guaranteed and shall require demonstration of a hardship as outlined in Section 22.3.1. or, if in the opinion of the Director of Community Development, the request would not present adverse impacts on adjacent properties.

- 22.5. **ADMINISTRATIVE MINOR VARIANCE.**  
The Director of Community Development may grant an Administrative Minor Variance up to 1 foot from any minimum yard requirement. Approval of an administrative minor variance is not guaranteed and shall require demonstration of a hardship as outlined in Section 22.3.1. or, if in the opinion of the Director of Community Development, the request would not present adverse impacts on adjacent properties.
- 22.6. **MINOR VARIANCE.**  
The Director of Community Development may grant minor variances to minimum yard requirements, not to exceed ten percent of such requirement, as long as no objection has been submitted in writing to the Director of Community Development. An appeal to a minor variance decision must be filed as a Secondary Variance request. Approval of a minor variance is not guaranteed and shall require demonstration of a hardship as outlined in Section 22.3.1. or, if in the opinion of the Director of Community Development, the request would not present adverse impacts on adjacent properties.
- 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 Zoning Appeals in accordance with Section 22.3.1..
- 22.8. **SECONDARY VARIANCE/INTERPRETATION.**  
The Board of Zoning Appeals shall consider appeals of variance decisions and interpretations made by any Department Director or Deputy Department Director authorized to grant a variance request or interpretation. This type of appeal is considered a secondary variance.
- 22.9. **CONCURRENT VARIANCES.**  
The Mayor and City Council may consider a concurrent variance from any standards of the Zoning Ordinance which shall be filed simultaneously with rezoning, use permit or zoning modification requests on the same property based on the conceptual plan submitted with the petition for the same agenda. The Planning Commission shall also hear and make recommendations on concurrent variances filed with rezonings or use permit applications. The Mayor and 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.

**ZONING ORDINANCE OF THE CITY OF JOHNS CREEK**

22.9.1. **LIMITATIONS ON CONCURRENT VARIANCES.**

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

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

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

22.10 **MODIFICATIONS.** A modification is a request for relief from the conditions of zoning or use permit when a site development proposal does not comply with approved conditions.

22.10.1. **APPLICATION FOR MODIFICATION.** A request to modify a condition of zoning or Use Permit may be initiated by the property owner, the Planning Commission or the Mayor and City Council. The application to modify conditions of a rezoning or Use Permit will require a rezoning action pursuant to the submission and hearing requirements of Article XXVIII.

22.13. **GENERAL PROCEDURES.**

This section contains basic steps common to all variances.

22.13.1. **APPLICATIONS.** All applications for variances, and interpretations shall be filed with the Director of the Department of Community Development on forms available in the Department. The type of application process necessary to accomplish the change requested by the applicant shall be determined by the Director of 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. Variance Petition - A request for a variance may be initiated by the property owner of subject property or its agent;
- B. Secondary Variance Petition - A request for a secondary variance appeal may be initiated by the property owner of the subject property or its agent, or the owner of other real property within 300 feet of the boundaries of the subject property; and
- C. 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 for variances, interpretations requiring public hearings 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 shall be filed in accordance with the filing deadline for the parent petition of either a use permit, rezoning, or zoning modification request in accordance with Section 28.2.3 of the Zoning Ordinance.
- C. The Director of the Department of Community Development has the discretion to extend the filing deadline by two days for all applications. A letter from the applicant explaining the delay in filing shall be submitted prior to the close of the filing deadline.

22.13.4. **WITHDRAWAL OF APPLICATION.**

- A. An application may be withdrawn by the applicant in writing at any time before the public hearing notice advertisement is published and /or the notice of the hearing is posted on the property.

- B. Applications which do not require a public hearing may be withdrawn at any time before notification of a decision is mailed.
- C. Once the public hearing has been properly advertised, the request for withdrawal of the application must be placed on the public hearing agenda and the appropriate decision-making body shall act on the withdrawal request.

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

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

22.13.7. **PUBLIC HEARING.** A public hearing shall be conducted by the stated hearing body of each appeal application before taking action thereon except those authorized to be considered administratively. The schedule of public hearings and deadlines for the filing of an appeal shall be established by the Mayor and 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 as related to the application and background information for variances, modifications, and interpretations, and any other information requested by the hearing body. The hearing body shall, hear, analyze, consider, and make a written report of its decision in accordance with Section 22.13.12 **NOTICE OF DECISIONS.**

**ZONING ORDINANCE OF THE CITY OF JOHNS CREEK**

22.13.9. **PUBLIC NOTIFICATION.**

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

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

When the Board of Zoning Appeals defers a petition, the applicant is required to post an updated sign with new hearing dates 20 days prior to the next scheduled hearing date. When the Mayor and 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.

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

3. Notice of the public hearing shall be postmarked 15 days prior to the hearing date and shall be given by regular mail to all property owners within 300 feet of the boundaries of the property who appear on the current tax records of Fulton County as retrieved by the County's Geographic Information System. This mailing is the responsibility of the Applicant. A parcel list and certificate of mailing verifying said requirement has been satisfied shall be provided to the Community Development department confirming the mailing. Renotification is not required when a petition is deferred by the Mayor and City Council or the Board of Zoning Appeals.

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

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

- 1 Administrative Variance: The owners of property adjacent and contiguous across the right-of-way of the subject site shall be notified in accordance with Section 22.13.9(A)(3).
- 2 Minor Variance: The owners of property adjacent and contiguous across the right-of-way of the subject site shall be notified in accordance with Section 22.13.9(A)(3).
- 3 Administrative Minor Variance: No written notification.

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

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

**ZONING ORDINANCE OF THE CITY OF JOHNS CREEK**

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

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

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

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

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

- A. At least six months has elapsed from the date of the decision; or

**ZONING ORDINANCE OF THE CITY OF JOHNS CREEK**

- B. New information pertinent to the subject, not previously considered, is submitted by the petitioner and the 6-month period is waived by the hearing body.
- C. If an application is denied by the Director of the Community Development Department, the applicant may appeal the decision to the appropriate hearing body depending on the type of petition.

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

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

Upon filing such an appeal, the Clerk of Superior Court shall give immediate notice thereof to the Director of the Community Development Department, and within 30 days from the date of such notice, the Director 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 Zoning Appeals.

Appeals of decisions (Secondary Variances/Interpretation) of the Director of the Community Development Department, 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.

22.14 **BOARD OF ZONING APPEALS.**

22.14.1. **MEMBERSHIP.** The City of Johns Creek Board of Zoning Appeals shall consist of seven members appointed by the Mayor and City Council of the City of Johns Creek. The

**ZONING ORDINANCE OF THE CITY OF JOHNS CREEK**

members shall serve terms concurrent with the terms of the City of Johns Creek Planning Commission. Members shall not hold any other public office or position in the City of Johns Creek. Annual elections shall be held by the Board of Zoning Appeals to elect one of its members chairperson for a one-year term. The chairperson may serve an unlimited number of one-year terms.

- 22.14.2. **VACANCIES**. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.
- 22.14.3. **REMOVAL OF MEMBERS**. Members may be removed for cause by the Mayor and City Council of the City of Johns Creek upon written charges and after a public hearing.
- 22.14.4. **PAY**. Fees to be paid to the members of the City of Johns Creek Board of Zoning Appeals for attending official meetings shall be fixed from time to time by the Mayor and City Council of the City of Johns Creek.
- 22.14.5. **SECRETARY**. The Director of the Department of Community Development shall serve as Secretary to the Board of Zoning Appeals. The Secretary shall keep minutes of proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; and shall keep records of evidence, examinations and official actions, all of which shall be filed and shall be a public record.
- 22.14.6. **POLICIES AND PROCEDURES**. The City of Johns Creek Board of Zoning Appeals shall adopt and publish policies, procedures and rules in keeping with the provisions of this ordinance. Such shall be available in the Community Development Department.
- 22.14.7. **MEETINGS**. Meetings of the Board of Zoning Appeals shall be held at least once each month to dispose of matters scheduled. Additional meetings may be called by the chairman. The Board of Zoning Appeals scheduled meetings, places and dates, and deadlines for the filing of applications shall be approved by the Mayor and City Council and published by the Director of the Community Development Department.

**ZONING ORDINANCE OF THE CITY OF JOHNS CREEK**