



AGENDA REPORT

To: Planning Commission

From: Ben Song, Community Development Director

Agenda: May 31, 2023 Planning Commission Meeting

Item: **Zoning Ordinance Text Amendment (A-23-001) to Comply with Amendments to the Georgia Zoning Procedures Law and Updated Appeals Process**

Item Summary

Staff proposes amending the Johns Creek Zoning Ordinance to ensure compliance with the recent amendments made by the State legislatures to the Georgia Zoning Procedures Law (HB 1405) and Superior Court Appellate Practice Act (HB 916 – “updated appeals process”).

Background

In Georgia, local jurisdictions are vested by the state’s Constitution with the power to control land use and zoning. In order to ensure that due process is afforded to the general public by the local government when exercising zoning power, the Official Code of Georgia Annotated (O.C.G.A.) §36-66-1 et seq. (“The Zoning Procedures Law”) establishes minimum zoning procedures that govern the exercise and judicial review of local zoning power.

The Superior and State Court Appellate Practice Act establishes through legislation a unified procedure for appealing decisions of a lower judiciary to a superior or state court. This updated appeals process is intended to provide a single, modern and uniform procedure called a “petition for review” for appealing a decision made by a lower judiciary to a superior or state court, as authorized by the laws and the Constitution of Georgia.

These two bills, HB 1405 and HB 916, recently adopted by the state legislature, affect the City’s Zoning Ordinance as it relates to zoning, variance and appeals procedure. Georgia municipalities must now incorporate these new legal requirements into their local ordinances before July 1, 2023.

Staff Analysis

Summary of major changes impacting the City’s zoning regulations pursuant to HB 1405:

- 1. New public hearing and notice requirements for zoning applications that are initiated by the City related to: a) allowing multi-family uses in a single-family residential (SFR) zoning district; b) abolishing SFR classifications; or c) allowing properties to deviate from existing zoning requirements in SFR zoning districts.**

- **Public Meeting:** The zoning decision shall be adopted at two regular meetings scheduled at least 21 days apart.
- **Public Hearing:** Prior to the first public meeting, two public hearings shall be held at least three months and not more than nine months prior to the date of final action on the zoning decisions. At least one hearing shall be held between the hours of 5 p.m. and 8 p.m.
- **Sign Posting:** If more than 500 parcels are affected by the zoning decision, signs must be posted every 500 feet in the affected area.
- **Newspaper Advertisement:** The published notice in the newspaper shall be at least nine column inches in size and not be located in the classified advertising section of the newspaper.
- **Hard Copy Availability:** Notice shall state that a copy of the proposed amendment is on file in the office of the City Clerk and in the office of the Clerk of Fulton County Superior Court, for the purpose of examination and inspection by the public. The City shall furnish anyone, upon written request, a copy of the proposed amendment at no cost.

Staff notes that this requirement does not apply to rezoning of properties from a single-family residential zoning district to a multi-family zoning district when the rezoning is initiated by the property owner or their authorized agent.

2. New public notice requirements for quasi-judicial proceedings.

O.C.G.A. §36-66-4 originally required all hearing notices to be published in a newspaper of general circulation within the City, at least 15 days and not more than 45 days prior to the date of the hearing. HB 1405 changes the notification requirement for quasi-judicial proceedings to 30-days prior to the date of the hearing. Additionally, notice of the hearing has to be mailed to the “owner of the property that is the subject of the proposed action.” Staff would note that the only the Board of Zoning Appeals, which is a quasi-judicial board would be subject to this notification change.

Summary of impact to the City’s Zoning Ordinance pursuant to HB 916:

1. Establishes a new and uniform process for appealing municipal zoning decisions to Superior Court.
2. Rather than requiring a “writ of certiorari,” appeals to Superior Court of municipal zoning decisions are to be made in the form of a “petition for review.”

Recommendation

To comply with the requirements of HB 1405 and HB 916, Staff proposes amending the following sections of the Zoning Ordinance, as follows:

Article III DEFINITIONS

Section 3.3.26.Z.

Zoning Decision. Final legislative actions which result in: 1) the adoption or repeal of a Zoning Ordinance; 2) the adoption of an amendment to the Zoning Ordinance; 3) the approval or denial of a rezoning, special use permit, and/or concurrent variances; 4) the adoption or denial of an amendment to the Zoning Ordinance to zone property to be annexed into the City.

Article XXII. APPEALS

Section 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 a 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.

Article XXII. APPEALS

Section 22.13.9. Public Notification.

- A. For applications requiring a public hearing (Primary Variances, ~~and~~ Secondary Variances, ~~Concurrent Variances~~), the Community Development Department shall ensure:
1. A notice of the public hearing is published in a newspaper of general circulation at least ~~45~~30 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.;
 2. A sign is posted in a conspicuous location on each public street frontage of the subject site, at least ~~20~~30 days, but not more than 45 days, prior to the public hearing at which an application will be heard;
 3. Property that is not posted on the ~~20th~~30th 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.
 4. If the Board of Zoning Appeals defers a petition for more than 20 days, an updated sign is required to be posted with new hearing dates. If a petition is deferred by the Board of Zoning Appeals for less than 20 days, posting an updated sign is not required.
 5. The posted sign shall contain the date, time, place and purpose of the hearing,
 6. The posting of a sign is not required when a secondary variance is not requested by the property owner or owner's representative;
 7. Notice of the public hearing shall be postmarked ~~45~~30 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 the City of Johns Creek as retrieved by the City's Geographic Information System. Renotification is not required when a petition is deferred by the Mayor and City Council or the Board of Zoning Appeals; and
 8. The mailing of public notices is not required when a secondary variance is sought by other than the property owner.
 9. A notice shall be mailed to the owner of the property that is the subject of the variance. Such notice is only required when the variance is heard by a quasi-judicial officer, board or agency.

Article XXII. APPEALS

Section 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~~ a petition for review 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. When a petition for review is filed, the Board of Zoning Appeals and the City must be designated the respondent in the petition for review. The secretary of the Board of Zoning Appeals is authorized to acknowledge service of a copy of the petition for review on behalf of the Board of Zoning Appeals, as respondent. Service upon the city as respondent must be as provided by law.

Article XXVIII. REZONING AND OTHER AMENDMENT PROCEDURES

Section 28.2. Land Use Petitions.

Appeals to Superior Court. Any appeal of, or other legal challenge to, a Mayor and City Council's final decision regarding a use permit petition shall be pursued by petition for ~~writ of certiorari~~ review filed with the Superior Court of Fulton County within 30 days of the date of the Mayor and City Council's decision. The applicant's petition for review and all other initial filings with the Superior Court shall be served upon the named respondent ~~in accordance with O.C.G.A. § 9-11-4~~ as provided by law.

Article XXVIII. REZONING AND OTHER AMENDMENT PROCEDURES

Section 28.3. Public Hearing and Notice Requirements.

Before adopting any change to the Zoning Maps or text of the Zoning Ordinance, the Mayor and City Council shall hold a public hearing following the public hearing by the Planning Commission where a recommendation was made on the petition.

Notice of the Planning Commission and Mayor and City Council hearings shall be given simultaneously at least 15 days but not more than 45 days prior to the date of the Mayor and City Council's public hearing and shall be published in a newspaper of general circulation. Renotification is not required when a petition is deferred by the Mayor and City Council.

A sign shall be posted in a conspicuous location on each public street frontage of the subject property not later than on the 20th day prior to the Planning Commission Hearing.

If the Planning Commission or the Mayor and City Council defers a petition for more than 20 days, an updated sign is required to be posted with new hearing dates. If a petition is deferred for less than 20 days, posting an updated sign is not required.

Notice by regular mail to all property owners within 300 feet of the boundaries of the subject property who appear on the tax records of Fulton County as retrieved by the City's Geographic Information System. The notices shall be mailed a minimum of 15 days prior to the hearing date. Renotification by mail is not required when a petition is deferred.

The published and mailed notices shall contain the time, place, and purpose of the hearing, the location of the property, and the present and proposed zoning classifications and/or requested use permit. The posted sign shall include all of the items required in the published notice except the location of the property. Notice shall not be considered inadequate if the mail is not delivered.

When a proposed zoning decision is related to an amendment of the Zoning Ordinance, initiated by the City of Johns Creek, that revises a) one or more zoning classification or definitions related to single-family residential uses to allow multi-family uses to such single-family residential zoning classification; b) abolish

single-family residential classifications; or c) allow properties to deviate from existing zoning requirements in single-family residential zoning district, the City of Johns Creek shall comply with the zoning decision procedures set forth in O.C.G.A. §36-66-4(h)(1). Owner initiated applications are exempt from the procedures of O.C.G.A. §36-66-4(h)(1).

Attachments

1. Proposed Ordinance to Amend the Zoning Ordinance
2. House Bill 1405
3. House Bill 916