

**AN ORDINANCE TO AMEND THE CITY OF JOHNS CREEK CODE OF
ORDINANCES, APPENDIX – ZONING TO ENSURE COMPLIANCE WITH THE
STATE ZONING PROCEDURES LAW AND THE SUPERIOR AND STATE COURT
APPELLATE PRACTICE ACT**

WHEREAS, the City of Johns Creek is a Georgia municipal corporation and the Mayor and Council is the governing authority of the City; and

WHEREAS, the Mayor and City Council desires to protect the health, safety, and general welfare of its residents through the City’s Zoning Ordinance; and

WHEREAS, the Johns Creek Zoning Ordinance has been prepared and considered in accordance with the Georgia Zoning Procedures Law, O.C.G.A. §36-66; and

WHEREAS, House Bill 1405 and House Bill 916 was adopted by the state legislature to amend the Georgia Zoning Procedures Law and the Superior and State Court Appellate Practice Act, respectively; and

WHEREAS, Georgia municipalities must adopt the new regulations into the local ordinance to ensure compliance before July 1, 2023; and

WHEREAS, the City recognizes the Zoning Ordinance should be amended to ensure compliance with HB 1405 and HB 916.

NOW THEREFORE, the Mayor and Council of the City of Johns Creek hereby ordain that the Appendix A – Zoning, Article III “Definitions”, Article XXII “Appeals” and Article XXVIII “Rezoning and Other Amendment Procedures” are amended 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 rezoning or use permit application. 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 Section 28.3.

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.

Section 22.13.9. Public Notification.

- A. For applications requiring a public hearing (Primary Variances and Secondary Variances), the Community Development Department shall ensure:
 - 1. A notice of the public hearing is published in a newspaper of general circulation at least 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 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 30th day before the scheduled hearing date will be administratively removed from the agenda. The sign will remain posted on-site until final decision 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 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 a petition for review filed with the Superior Court of Fulton County within 30 days of the date of the decision. 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.

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.

Article XXII. REZONING AND OTHER AMENDMENT PROCEDURES

Section 28.2. Land Use Petitions.

Land use petitions may be initiated by the property owner or the Mayor and City Council on forms available from the Department.

No final decision shall be taken on a rezoning affecting the same parcel more often than once every 12 months when the petition is initiated by the property owner.

At any time, the Mayor and City Council may initiate a land use petition on property which was previously rezoned. However, a six-month waiting period from the date of final Mayor and City Council decision is required when a rezoning and/or use permit request was previously denied.

If a petition was previously denied, the owner must demonstrate that the proposed land use petition is significantly different from the previous denial to the satisfaction of the Mayor and City Council before it can be considered for a reinitiation. A significant difference includes, but is not limited to a change in zoning district, use, density, height, buffers or other methods of screening, or other items which were discussed at a public hearing.

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 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 and all other initial filings with the Superior Court shall be served upon the named defendants/respondents as provided by law.

Upon filing such appeal, the Clerk of Superior Court shall give immediate notice thereof to the Director, and within 30 days from the date of such notice, the Director shall cause to be filed with the Clerk of Superior Court a certified copy of the proceedings before the Mayor and City Council and the decision of the Mayor and City Council.

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.

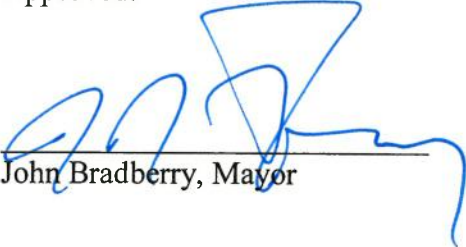
Notice by regular mail to all property owners within 300 feet of the boundaries of the subject property who appear on the tax records of Fulton County as retrieved by the City's Geographic Information System. The notices shall be mailed a minimum of 15 days prior to the hearing date. Renotification by 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).

SO ORDAINED, this _____ day of June, 2023.

Approved:


John Bradberry, Mayor

ATTEST:

Approved as to Form:


Allison Tarpley, City Clerk


Richard Carothers, City Attorney

