

## ARTICLE XIV

## BOARD OF APPEALS

SECTION 14.1 [RESERVED]SECTION 14.2 PROCEEDINGS OF THE BOARD OF APPEALS.

- A) The Board of Appeals shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of the Zoning Ordinance. The Board of Appeals shall conduct its regular meetings on the Second Tuesday of each month and at such other times as the chairperson or board shall determine, with the chairperson or board having the right to re-schedule or cancel any meeting. The Chairperson, or in his absence, the vice-chairperson, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.
- B) The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records to its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board.

SECTION 14.3 HEARINGS, APPEALS, NOTICE.

- A) Appeals to the Board of Appeals concerning interpretation or administration of the Zoning Ordinance may be taken by any person aggrieved or by any officer or bureau of the governing body of the city affected by any decision of a staff member of the Planning and Development Department. Appeals shall be filed with the Planning and Development Department within thirty (30) days of said decision, as described in this Article. The Planning and Development Director shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. Appeals to the Board of Appeals concerning the interpretation or administration of the Development Regulations shall be administered in the manner set forth in Article 13 of the Development Regulations for the City of Snellville.
- B) The Board of Appeals shall hear and act upon within 45 days of receipt and give public notice thereof. At the hearing, any party may appear in person or by agent or attorney. Recourse from the decisions of the Board of Appeals shall be to the courts as provided by law.

SECTION 14.4 [RESERVED]SECTION 14.5 POWERS AND DUTIES. The Board of Appeals shall have the following powers and duties:

- I. Administrative Review: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by a staff member of the Planning and Development Department in the enforcement of the ordinance.

2. Zoning Variances; Waivers from the Development Regulations; Conditions Governing Applications; Procedures. To authorize upon appeal in specific cases such variance from the terms of the Zoning Ordinance or waiver from the Development Regulations (in the manner set forth in Article 13 of the Development Regulations) as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Zoning Ordinance or Development Regulations would result in unnecessary hardship. A variance from the terms of the Zoning Ordinance or waiver from the terms of the Development Regulations shall not be granted by the Board of Appeals unless and until:
- a) A written application for a variance or waiver is submitted demonstrating:
    - 1) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other land, structures, or buildings in the same district;
    - 2) That literal interpretation of the provisions of the Zoning Ordinance or Development Regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Zoning Ordinance or Development Regulations;
    - 3) That the special conditions and circumstances do not result from the actions of the applicant;
    - 4) That granting the variance or waiver requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance or Development Regulations to other lands, structures, or buildings in the same district.

No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, shall be considered grounds for the issuance of a variance.

- b) Any application for an administrative review, variance, and/or waiver shall be submitted by noon thirty-six (36) days prior to the date on which it is to be considered by the Board of Appeals. The applicant shall submit nine (9) stapled or bound copies of the application and any supporting documents, in addition to one (1) unbound application bearing original signatures. In addition, a CD-ROM shall be submitted containing a digital copy of all materials submitted in .pdf format and .dwg format, as appropriate. The submitted application shall also include: verification by Gwinnett County that all property taxes owed have been paid; a Certificate of Title for all parcels subject to the application; and a map indicating the subject property(ies) and the adjacent properties, identified by tax parcel number. An initiating party shall also file any other information or supporting materials that are required by the Mayor and Council, Planning Commission, and/or the Planning and Development Department. Filing fees for such an application shall be determined by the Mayor and Council and made available by the Planning and Development Department.

The Department of Planning and Development shall notify the owners of adjoining property owner(s), of the subject property, for which the variance is sought and/or his agent by Certified Mail with Return Receipt Requested as shown by the Gwinnett County GIS Data Brower. Such notification shall be

mailed not fewer than fifteen (15) days nor more than forty-five (45) days prior to the Board of Appeals hearing. Said notification shall include a description of the application and the date, time, and place of the public hearing.

- c) The City shall provide notice of public hearing at least fifteen (15) days in advance of public hearing. Notice of such hearings shall be posted on the property for which the variance or waiver is sought and at City Hall.
- d) Due notice of the Board of Appeals hearing shall be published in the newspaper which carries the legal advertisements of the city, by advertising the application and date, time, place and purpose of the public hearing not fewer than fifteen (15) days nor more than forty-five (45) days prior to the date of the Board of Appeals hearing.
- e) The public hearing shall be held. Any party may appear in person, or by agent or attorney.
- f) The Board of Appeals shall further make findings that the requirements of Section 14.5(2) have been met by the applicant for a variance or waiver.
- g) The Board of Appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance or waiver is the minimum variance that will make possible the reasonable use of the land, building, or structure.
- h) The Board of Appeals shall further make a finding that the granting of the variance or waiver will be in harmony with the general purpose and intent of the Zoning Ordinance or Development Regulations, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

In granting any variance or waiver, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance and/or Development Regulations. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the Zoning Ordinance and punishable under Section 16.3 of the Zoning Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the waiver is granted, shall be deemed a violation of the Development Regulations and punishable under Section 13.5.2 of the Development Regulations.

SECTION 14.6 POWERS OF BOARD ON APPEALS: REVERSING DECISION OF PLANNING & DEVELOPMENT DEPARTMENT. In exercising the above mentioned powers, the Board of Appeals may, so long as such action is in conformity with the terms of the Zoning Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the Planning and Development Department staff member from whom the appeal is taken.

SECTION 14.7 DUTIES OF PLANNING AND DEVELOPMENT DIRECTOR, BOARD OF APPEALS, MAYOR AND COUNCIL AND COURTS ON MATTERS OF APPEAL.

- A) It is the intent of the Zoning Ordinance that all questions of interpretation and enforcement shall be first presented to the Planning and Development Director or his/her designee, and that such questions shall be presented to the Board of Appeals only on appeal from the decision of the Planning and Development Director or his/her designee, and that recourse from the decisions of the Board of Appeals shall be to the courts as provided by law.
- B) The Mayor and Council may add or delete conditions to Rezoning Applications during the public hearing that are more or less restrictive than the current Zoning Ordinance and/or Development Regulations.

SECTION 14.8 REAPPLICATION: ADMINISTRATIVE VARIANCES.

- A) If an application for a variance or waiver is denied by the Board of Appeals, a reapplication for such variance or waiver may not be made earlier than 12 months from the date of the original application.
- B) The Planning and Development Director or his/her designee shall have the power to grant administrative variances from the development standards of the Zoning Ordinance, where, in his opinion, the intent of the Zoning Ordinance can be achieved and equal performance obtained by granting a variance. In the Planned Residential Conservation (PRC) and R-HOP districts, the Planning and Development Director or his/her designee is restricted to granting no more than twenty-five percent (25%) reduction of the normal administrative variance authorized in this section. The authority to grant such variances shall be limited, with one exception, to variance from the following requirements:
  - 1) Front yard or yard adjacent to public street – variance not to exceed five feet (5’).
  - 2) Side yard variance not to exceed two feet (2’).
  - 3) Rear yard variance not to exceed four feet (4’).
  - 4) Height of building – variance not to exceed five feet (5’).
  - 5) Side or rear yard – a variance for a zero foot setback may be granted when part of a commercial development and planned as a unit having a similar architectural composition and not a miscellaneous assemblage of stores, provided however, that prior to any issuance of the variance, the applicant shall obtain approval from the affected side and/or rear yard property owner(s).
  - 6) Sidewalk Setback – variance for a zero foot setback.

The one exception would cover structures that preceded the zoning ordinance and do not conform to the Ordinance as written. Consideration for a variance would be given when ownership was changing and the mortgage company required conformity to the Zoning Ordinance.

**SECTION 14.9 SCHEDULE OF FEES, CHARGES AND EXPENSES.**

- A) The Mayor and Council shall establish a schedule of fees, charges, and expenses and a collection procedure for building permits, certificates of occupancy, appeals, and other matters pertaining to the Zoning Ordinance. The schedule of fees shall be posted in the Planning and Development Department and may be altered or amended only by the Mayor and Council.
- B) Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

<b>SECTION / ARTICLE</b>	<b>DESCRIPTION</b>	<b>AMENDMENT DATE</b>
Section 14.7	Reapplication: Administrative Variances (amended)	10/18/1993
Section 14.1	Establishment, Composition, Appointment and Tenure (amended)	04/18/1994
Section 14.2	Proceedings of the Board of Appeals (amended)	04/18/1994
Sections 14.2 – 14.8	Sections (renumbered)	04/18/1994
Section 14.8	Reapplication: Administrative Variances (amended)	09/15/1997
Sections 14.3-14.9	Sections (amended)	04/19/1999
Section 14.8	Reapplication: Administrative Variances (amended)	04/24/2000
Section 14.1	Establishment, Composition, Appointment and Tenure (amended)	06/10/2002
Section 14.4	Stay of Zoning Proceedings (deleted)	06/10/2002
ARTICLE XIV	DELETED AND REPLACED TO ADOPT AMENDMENTS	02/23/2004
ARTICLE XIV	DELETED AND REPLACED TO ADOPT AMENDMENTS	04/25/2005
Section 14.5	Powers and Duties (amended)	07/23/2007
Section 14.8	Reapplication: Administrative Variances (amended)	07/23/2007
Section 14.5	Powers and Duties (amended)	03/22/2010