

HB1405 DRAFT AMENDMENT

LIST OF CHANGES IN THE DRAFT AMENDMENT FOR HB1405

1. Sec. 109-69 – replace section to be clearer on Notice requirements
2. Sec. 109-70 – add Minimum time for hearings
3. Sec. 109-107 (d) – change minimum days from 15 to 30
4. Sec. 109-108 – Add new section for Appeal Process
5. Sec. 119-442 – Minor changes in timeline to submit and adding SUP to Public Hearings
6. Sec. 119-443 – removing timeline in this section as it is covered in other areas and removing language of automatic approval.
7. Sec. 119-444 – adding language for if denied 6 months before bringing back
8. Sec. 119-420 – pointing back to Sec. 109-69 for public notice
9. Sec. 119-469 (a) – Changing timeline to submit to meet new noticing requirements.

#1.

Chapter 109 – PLANNING, ARTICLE IV. - PUBLIC HEARINGS Sec. 109-69. - Required.

(CURRENTLY READS)

The planning and zoning commission must conduct a public hearing on zoning amendments. The responsibility of conducting the public hearing is delegated to the planning and zoning commission by the board of county commissioners under provisions specified in the Zoning Procedures Law (O.C.G.A. §§ 36-66-1 to 36-66-5). Notice of the hearing stating the time, place, and purpose, including notice of the date the board of county commissioners is expected to make a final decision, must be published in two consecutive issues in a newspaper of general circulation in the county, the first insertion being at least 15 days but not more than 45 days before the hearing. The location of the property, area to be rezoned, present zoning classification, and proposed zoning classification must be indicated in the newspaper notice. In addition, the applicant and all property owners within 250 feet of the subject property will be notified of the date of the hearing by the planning and zoning commission by first class mail at least 15 days but not more than 45 days before the hearing. Any person may appear at the hearing, or have a representative attend instead.

(REPLACEMENT WILL READ)

The planning and zoning commission must conduct a public hearing on **zoning text amendments, future land use map amendments, zoning amendments, and special use permits. The board of appeals shall conduct public hearing on variances and appeals.** The responsibility of conducting the **first** public hearing is delegated to the planning and zoning commission by the board of county commissioners under provisions specified in the Zoning Procedures Law; **and the responsibility of conducting the public hearing for variances and appeals is delegated to the board of appeals by the board of county commissioners under provisions specified in the Zoning Procedures Law (O.C.G.A. §§ 36-66-1 to 36-66-5).**

Notices **of such hearings are as follows:**

1. **Newspaper of general circulation: Notice** of the hearing stating the time, place, and purpose, including notice of the date the board of county commissioners is expected to make a final decision, must be published in two consecutive issues in a newspaper of

HB1405 DRAFT AMENDMENT

general circulation in the county, the first insertion being at least **30** days but not more than 45 days before the hearing. **For applicant initiated rezoning requests the following information shall also be included in the newspaper notice:** the location of the property, area to be rezoned, present zoning classification, and proposed zoning classification.

2. In addition, **the owner of the property**, the applicant and all **neighboring** property owners within 250 feet of the subject property will be notified of the date of the hearing by the planning and zoning commission or by the board of appeals by first class mail at least **30** days but not more than 45 days before the hearing. Any person may appear at the hearing, or have a representative attend instead.
3. **A sign giving notice of the public hearings shall be placed in a conspicuous location on the property. The sign shall state the time, place and purpose of the public hearings.**

#2.

(ADDING TO SUBSECTION (3) BELOW A MINIMUM TIME)

Chapter 109 – PLANNING, ARTICLE IV. - PUBLIC HEARINGS

Sec. 109-70. - Policies and procedures.

The following policies and procedures will be observed in conducting the required public hearing:

- (1) The hearing will be held in the county courthouse.
- (2) Written comments on the subject of the hearing may be submitted by any citizen or property owner at any time prior to the adjournment of the hearing.
- (3) All persons desiring to be heard orally may present their views at the hearing. The length of time of oral presentations permitted ~~to each speaker will be determined by the planning and zoning commission and governed by the planning and zoning commission chairperson, depending upon the number of persons present and desiring to speak.~~ **shall be a minimum of ten minutes, or the amount of time as prescribed by State of Georgia law, in which to speak in favor of or against the proposed rezoning amendment, special use permit, variance or appeal. If additional time is given to one side then the same amount of time shall be extended to the opposite side.** Remarks of a personal nature will not be tolerated.
- (4) The applicant is allowed to respond to any issues that are raised.
- (5) Any person desiring a transcript of the hearing must arrange for a court reporter at their own expense.
- (6) All questions and comments from the floor will be addressed to the chairperson of the planning and zoning commission or the commission member then presiding. The planning and zoning commission members may ask pertinent questions of the applicant.
- (7) Standing to challenge a zoning decision is not conferred by being permitted to speak orally at a hearing, nor by being permitted to file statements or pleadings.
- (8) The planning and zoning commission shall have discretion to continue a hearing to a later date if the materials submitted or views expressed require more time for study and consideration than may reasonably be allocated in one meeting.

HB1405 DRAFT AMENDMENT

#3.

(CHANGE MINIMUM DAYS)

Chapter 109 – PLANNING, ARTICLE V. - PLANNING AND ZONING COMMISSION Sec. 109-107. - Appealing an action of the planning and zoning commission.

- (a) If the planning and zoning commission executes an action which the developer or other aggrieved party believes to be contrary to law, that action may be appealed. Findings of fact, however, may not be appealed. Recommendations on ordinance amendments are not actions. Such an appeal must be filed within 30 days of the date on which the action by the planning and zoning commission was taken.
- (b) The board of appeals has jurisdiction for hearing appeals concerning actions of the planning and zoning commission related to this article. Applications for appeal may be submitted to the administrative officer, who will transmit them to the board of appeals for its consideration.
- (c) When an action of the administrative officer or planning and zoning commission is appealed, all construction or other activity authorized by the appealed action must be stopped immediately. In certain cases, however, the administrative officer may feel that the stopping of such construction or other activity authorized by the appealed action will cause imminent peril to life or property, in which case the administrative officer may certify to the board of appeals that, by reason of facts stated in the certificate, the halting of construction or other activity authorized by the appealed action would in his opinion cause imminent peril to life or property. In such cases, the construction or other activity authorized by the appealed action is allowed to continue unless a restraining order is granted by either the board of appeals or a court of appropriate jurisdiction.
- (d) When an application for appeal of an action of the planning and zoning commission is received, the board of appeals will set a time and place for a public hearing on the appeal. Notice of the hearing must be published in two consecutive issues in a newspaper of general circulation in the county, the first insertion being at least ~~15~~ **30** days before the hearing. In addition, the parties to the appeal will be notified of the date of the hearing by the board of appeals by first class mail at least ~~15~~ **30** days before the hearing. Any person may appear at the hearing, or have a representative attend instead.
- (e) The board of appeals will make a decision concerning the appeal and record the decision in the minutes for that meeting. Further appeal on points of law may be made to the superior court of the county.

#4.

(ADD NEW SECTION FOR APPEAL PROCESS)

Sec. 109-108. – Appealing Final Decisions

1. Zoning decisions such as rezoning requests, text amendments, and comprehensive land use map amendments are legislative in nature and shall be subject to direct constitutional challenge regarding the validity of maintaining the existing zoning on the subject property or the validity of conditions or an interim zoning category other than what was requested in the superior court pursuant to its original jurisdiction over

HB1405 DRAFT AMENDMENT

declaratory judgments pursuant to Chapter 4 of Title 9 and equity jurisdiction under Title 23 of the Georgia Code.

- a. Such challenges shall be by way of a de novo review by the superior court wherein such review brings up the whole record from the local government and all competent evidence shall be admissible in the trial thereof, whether adduced in a local government process or not and employing the presumption that a governmental zoning decision is valid and can be overcome substantively by a petitioner showing by clear and convincing evidence that the zoning classification is a significant detriment to the petitioner and is insubstantially related to the public health, safety, morality, or general welfare.
 - b. All such challenges or appeals shall be brought within 30 days of the written decision of the challenged or appealed action.
 - c. The County Manager shall have authority, without additional board or agency action, to approval or issue any form or certificate necessary to perfect the petition described in Title 5 – Appeal and Error of the Georgia Code for review of lower judicatory bodies and upon whom service of such petition may be affected or accepted on behalf of the lower judicatory board or agency, during normal business hours, at the regular offices of the county government.
 - d. The County Manager shall be the designee who shall have authority to accept service and upon whom service of an appeal of a quasi-judicial decision may be affected or accepted on behalf of the local governing authority, during normal business hours, at the regular offices of the county government.
2. Special Use Permits are quasi-judicial petitions. The Board of Commissioners is the final decision-making board for special use permits. Any aggrieved party wishing to appeal the final decision of the Board of Commissioners shall be subject to appellate review by the superior court pursuant to its appellate jurisdiction from a lower judicatory body and shall be brought by way of a petition for such review as provided for in Title 5 – Appeal and Error of the Georgia Code.
- a. All such challenges or appeals shall be brought within 30 days of the written decision of the challenged or appealed action.
 - b. The County Manager shall have authority, without additional board or agency action, to approval or issue any form or certificate necessary to perfect the petition described in Title 5 – Appeal and Error of the Georgia Code for review of lower judicatory bodies and upon whom service of such petition may be affected or accepted on behalf of the lower judicatory board or agency, during normal business hours, at the regular offices of the county government.
 - c. The County Manager shall be the designee who shall have authority to accept service and upon whom service of an appeal of a quasi-judicial decision may be affected or accepted on behalf of the local governing authority, during normal business hours, at the regular offices of the county government.
3. The Board of Appeals is a quasi-judicial final decision-making board for variances, special exceptions and/or appeals. Any aggrieved party wishing to appeal the final decision of the Board of Appeals shall be subject to appellate review by the superior court pursuant to its appellate jurisdiction from a lower judicatory body and shall be

HB1405 DRAFT AMENDMENT

brought by way of a petition for such review as provided for in Title 5 – Appeal and Error of the Georgia Code.

- a. All such challenges or appeals shall be brought within 30 days of the written decision of the challenged or appealed action.
- b. The County Manager shall have authority, without additional board or agency action, to approval or issue any form or certificate necessary to perfect the petition described in Title 5 – Appeal and Error of the Georgia Code for review of lower judicatory bodies and upon whom service of such petition may be affected or accepted on behalf of the lower judicatory board or agency, during normal business hours, at the regular offices of the county government.
- c. The County Manager shall be the designee who shall have authority to accept service and upon whom service of an appeal of a quasi-judicial decision may be affected or accepted on behalf of the local governing authority, during normal business hours, at the regular offices of the county government.

#5.

Chapter 119 – ZONING, ARTICLE IX. - AMENDMENTS Sec. 119-442. - Procedure for amendments.

An application for an amendment to this chapter shall be filed with the zoning administrator at least ~~30~~ **60** days prior to the date on which it is to be heard by the planning and zoning commission. Applications shall be submitted in compliance with the following:

- (1) Text amendment applications shall include the following:
 - a. Name and address of applicant.
 - b. Current provisions of the text to be affected by the proposed amendment.
 - c. Proposed wording of the text amendment.
 - d. Statement of reasons for the proposed text amendment.
- (2) Comprehensive land use plan amendment applications shall include the following:
 - a. A map identifying the geographic area of the county proposed for a revised land use under the applicant's proposal.
 - b. All land uses permitted for the subject area under the existing comprehensive land use plan.
 - c. All changes to existing land use designations that are proposed by the application.
 - d. All land uses immediately adjacent to the subject area under the existing comprehensive land use plan.
 - e. Reasons for the proposed amendment.
 - f. Names and addresses of the owners of land affected by the proposed amendment and their agents, if any, authorized to apply for an amendment and a notarized affidavit of that authorization.
 - g. A written answer and explanation for each of the following standards:

HB1405 DRAFT AMENDMENT

1. Does the proposed amendment permit uses that are suitable in view of the use and development of adjacent and nearby property?
 2. Does the proposed amendment adversely affect the existing use or usability of adjacent or nearby property?
 3. Will the proposed amendment result in uses that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?
 4. Are there other existing or changing conditions affecting the use and development of the property which, because of their impact on the public health, safety, morality and general welfare of the community, give supporting grounds for either approval or disapproval of the proposed amendment?
- (3) Zoning map amendments applications shall include the following:
- a. The names and addresses of the owners of the property subject to the zoning map amendment and their agents, if any, authorized to apply for the amendment, and a notarized affidavit of such authorization.
 - b. The present and proposed zoning classifications for the subject property.
 - c. The present and proposed uses for the property.
 - d. A plat of the subject property containing the following information:
 1. All property lines with dimensions.
 2. Locations of buildings or other structures, floodplains, drainageways, and easements.
 3. All proposed street right-of-way lines.
 4. A comprehensive concept plan of the proposed use of the property.
 5. North arrow, scale, land lot, block and lot numbers.
 - e. A written report providing an answer and analysis for each of the following standards:
 1. Does the zoning proposal permit a use that is suitable in view of the use and development of adjacent and nearby property?
 2. Does the zoning proposal adversely affect the existing use or usability of adjacent or nearby property?
 3. Does the property to be affected by the zoning proposal have a reasonable economic use as currently zoned?
 4. Does the zoning proposal result in a use that will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?
 5. Does the zoning proposal conform to the policy and intent of the comprehensive land use plan?
 6. Are there other existing or changing conditions affecting the use and development of the property which, because of their impact on the public health,

HB1405 DRAFT AMENDMENT

safety, morality and general welfare of the community, give supporting grounds for either approval or disapproval of the zoning proposal?

- (4) Public hearings. Public hearings shall be held regarding proposed amendments to the text of this chapter, the comprehensive land use plan or the zoning map, and for any special use permit as follows:
- a. Prior to decision by the board of county commissioners which results in the adoption of a zoning ordinance, a comprehensive land use plan, or a zoning map, the adoption of an amendment to a zoning ordinance which changes the text of this chapter, the adoption of an amendment to the comprehensive land use plan, ~~or~~ the adoption of an amendment to the official zoning map which rezones property from one zoning classification to another, **or a special use permit request**, the county planning and zoning commission and the board of county commissioners shall hold public hearings on the proposed action.
 - b. At least **45 30** but not more than 45 days prior to the date of the public hearing by the county planning and zoning commission a notice of the public hearings will be placed in a newspaper of general circulation within the territorial boundaries of the county. The notice shall state the time, place and purpose of the public hearings, and, if the zoning decision to be considered is for an amendment to the comprehensive land use plan or the rezoning of property and the amendment to the comprehensive land use plan or the rezoning is initiated by a party other than the county, the notice shall also include the location of the property, the present land use category or zoning classification of the property and the proposed land use category or zoning classification of the property.
 - c. If the zoning decision to be considered is for an amendment to the comprehensive land use plan or the rezoning of property and the amendment to the comprehensive land use plan or the rezoning is initiated by a party other than the county, at least **45 30** days prior to the date of the public hearing by the county planning and zoning commission, a sign giving notice of the public hearings shall be placed in a conspicuous location on the property. The sign shall state the time, place and purpose of the public hearings and shall include the present land use category or zoning classification of the property and the proposed land use category or zoning classification of the property.
 - d. In cases involving an amendment of the zoning map or the comprehensive land use plan, the zoning administrator shall post signs described in subsection (4)c of this section on or within 300 feet as measured along the street right-of-way line of properties affected by the amendment. For multiple amendments, posting of properties shall not be required.

#6.

(REMOVE THE FOLLOWING RESTRICTIONS AND TIMELINE)

Chapter 119 – ZONING, ARTICLE IX. - AMENDMENTS

Sec. 119-443. - Action by planning and zoning commission.

The planning and zoning commission shall ~~have 45 days following the date of public hearing within which to~~ submit its report to the board of commissioners. ~~If the planning and zoning commission fails to submit a report within a 45-day period, it shall be deemed to have~~

HB1405 DRAFT AMENDMENT

~~approved the change.~~ Applicants may submit to the zoning administrator any conditions, alterations, changes, or amendments to an application for approval of an amendment to the zoning map, the comprehensive land use plan or to the text of this chapter up to seven days prior to the date at which the application is to be considered by the planning and zoning commission. If such conditions, alterations, changes or amendments have not been submitted as required by this section, the planning and zoning commission may, at its discretion, defer action on the application until its next regular meeting.

#7.

(ADD THE FOLLOWING SHOWN IN RED BELOW)

Chapter 119 – ZONING, ARTICLE IX. - AMENDMENTS

Sec. 119-444. - Action by the board of commissioners.

The board of commissioners, after receiving the recommendation of the planning and zoning commission, shall take appropriate action on the application at a regularly scheduled meeting of the commission.

If the zoning decision is for a rezoning of property and is denied, then the same property shall not be eligible to reapply for a rezoning for a period of 6 months from the date of the final decision denial by the Board of Commissioners.

#8.

Chapter 119 – ZONING, ARTICLE VIII. - BOARD OF APPEALS

Sec. 119-420. - Hearings.

The board shall fix a date for the hearing of an appeal within the time specified by its rules, give public notice thereof, and decide the same within a reasonable time. It shall be the duty of the zoning administrator to post notices of the time and place of the hearing in a newspaper of general circulation and by placard on or within 300 feet of the property as measured along the street right-of-way line. **Public hearing notices shall follow the procedures set forth in Chapter 109, ARTICLE IV., Sec. 109-69.** Upon the hearing of such appeal, any party may appear in person, or by agent or attorney, and shall be allowed to submit testimony or documentation.

#9.

Sec. 119-469. - Application for variance, interpretation or other appeals.

- (a) An application for a variance, interpretation or other appeal shall be filed with the office of the zoning administrator at least ~~30~~ **60** days prior to the meeting of the board of appeals at which it is to be heard. Each application shall be accompanied by a plat drawn to scale containing the following information:
- (1) All property lines with dimensions.
 - (2) Location of buildings and other structures, creeks and easements referenced to property lines.

HB1405 DRAFT AMENDMENT

- (3) North arrow, scale, lot and block numbers and land lot.
- (4) Topographic and drainage information if pertinent.
- (b) Each application for a variance, interpretation or other appeal shall be accompanied by a remittance of a fee in an amount set by the board of commissioners to partially cover the cost of advertising, field investigation and other expenses involved in processing the application.
- (c) After review and recording by the zoning administrator, the application for variance, interpretation or other appeal shall be processed in accordance with the appeals procedure in article VIII of this chapter.
- (d) When action is unfavorable on an application for variance, interpretation or other appeal or where appellant withdraws the application prior to final action by the board, the application may not be resubmitted at lesser intervals than one year.