

STATE OF GEORGIA
COUNTY OF HALL

A RESOLUTION TO AMEND THE CODE OF ORDINANCES OF HALL COUNTY
WITH REGARD TO TITLE 17 ZONING REGULATIONS

WHEREAS, Hall County has developed comprehensive regulations governing zoning and development in the County found in Title 17 of the Official Code of Hall County, Georgia; and

WHEREAS, effective July 1, 2022 the Georgia General Assembly enacted House Bill 1405, which comprehensively amended the Georgia Zoning Procedures Law; and

WHEREAS, the enactment of HB 1405 requires the review and revision of certain provisions of Title 17 of the Hall County Code where said provisions are impacted by the newly amended Georgia Zoning Procedures Law; and

WHEREAS, the Hall County Board of Commissioners wishes to amend Title 17 of the Hall County Code so as to ensure that the County remains fully compliant with the procedural requirements found in the Georgia Zoning Procedures Law; and

WHEREAS, the Hall County Board of Commissioners also wishes to remove various references within Title 17 of the Hall County Code to the “zoning board of adjustment” because said board no longer carries out any duties in Hall County, Georgia; and

WHEREAS, the County’s Board of Commissioners believes that these changes to its Title 17 zoning and development regulations as described herein are in the best interests of residents and businesses of Hall County, Georgia, and would promote the public health, safety, and general welfare of such residents and businesses.

NOW, THEREFORE, the Board of Commissioners does hereby amend The Official Code of Hall County, Georgia as follows:

1.

Section 17.10.010 (Zoning regulations adopted; authority) is hereby amended by deleting Section 17.10.010 in its entirety and inserting in lieu thereof a new Section 17.10.010 which provides as follows:

“17.10.010. – Zoning regulations adopted; authority.

The board of county commissioners for Hall County, Georgia, as authorized by article IX, section IV, paragraph II of the Constitution of the State of Georgia, does hereby create a planning commission known as the Hall County Planning Commission, and does hereby adopt zoning regulations for the following purposes: to define certain words used herein; to create zone boundaries; to regulate the locations of trades, professions, businesses, industries, apartment houses, and residences; to define the area of lots; to fix the location and size of yards and the alignment of buildings; to establish setback lines; to provide for nonconforming uses; to provide for the administration and enforcement thereof together with penalties for the violation of its provisions; to adopt a map or maps of any section or sections thereof for zoning purposes of the unincorporated areas of Hall County; to authorize variances and conditional uses; and to provide for court review.”

2.

Chapter 17.20 (Definitions) is hereby amended by inserting new Sections 17.20.1061 and 17.20.1062 which provide as follows:

“17.20.1061. Special exception.

The term “special exception” when used in Title 17 shall refer to a variance, and shall be defined in the same manner as the term “variance” is defined herein.

17.20.1062. Special use.

The term “special use” when used in Title 17 shall refer to a conditional use, and shall be defined in the same manner as the term “conditional use” is defined herein.”

3.

Section 17.240.110 (Lot density exceptions) is hereby amended by deleting Section 17.240.110 in its entirety and inserting in lieu thereof a new Section 17.240.110 which provides as follows:

“17.240.110. – Lot density exceptions.

Residential zones. In all residential zoning districts except planned development districts, only one principal structure and its customary accessory buildings, including agricultural buildings, may be erected on any parcel recorded as a separate lot or tract with the clerk of superior court unless otherwise specifically permitted by either:

Approval or a site plan for multi-family development, in zones permitting such uses, by the Planning Commission;

Approval of a caretaker or hardship variance by the Planning Commission.

Non-residential zones. In all other zoning districts except planned development districts, only one principal structure and its customary accessory buildings for each 15,000 square feet of land area may be erected on any parcel. A minimum of 20 percent of the site must be retained as open space. That open-space area must be maintained as either a natural or landscaped area.

Nonconforming uses. Any building containing a nonconforming use is considered a principal structure.”

4.

Section 17.340.010 (C) (Criteria for continuation of nonconforming use) is hereby amended by deleting Section 17.340.010 (C) in its entirety and inserting in lieu thereof a new Section 17.340.010 (C) which provides as follows:

“17.340.010. Criteria for continuation of nonconforming use.

C. Any replacement of a preexisting manufactured home or mobile home with a manufactured or mobile home shall be permitted in accordance with O.C.G.A § 36-66-7 et seq.”

5.

Section 17.350.010 (Authority of planning commission and zoning board of adjustment) is hereby amended by deleting Section 17.350.010 in its entirety and inserting in lieu thereof a new Section 17.350.010 which provides as follows:

“17.350.010. Authority of planning commission.

The planning commission may authorize, under conditions prescribed herein, conditional uses and permitted uses expressly identified in a particular zoning district. However, the planning commission reserves full authority to deny any request for such a use or to impose conditions authorized on the use as it deems appropriate to protect the general health, safety, and welfare of the county and its citizens.”

6.

Section 17.350.020 (Review procedure) is hereby amended by deleting Section 17.350.020 in its entirety and inserting in lieu thereof a new Section 17.350.020 which provides as follows:

“17.350.020. Review procedure.

- A. The planning commission shall hold a public hearing on all applications for conditional uses and permitted uses and consider the merits of the applications.
- B. After hearing testimony from all interested parties, the planning commission shall have 30 days to render its decision.”

7.

Section 17.350.050 (Review criteria) is hereby amended by deleting Section 17.350.050 in its entirety and inserting in lieu thereof a new Section 17.350.050 which provides as follows:

“17.350.050. Review criteria.

A conditional use or permitted use may be granted when the planning commission finds from a preponderance of the evidence produced at the public hearing that the proposed use is suitable for the subject property considering the general lines of inquiry established under Section 17.380.060 (C).”

8.

Section 17.350.060 (Burden of proof) is hereby amended by deleting Section 17.350.060 in its entirety and inserting in lieu thereof a new Section 17.350.060 which provides as follows:

“17.350.060. Burden of proof.

The applicant for a conditional use or a permitted use shall have the burden of proof, which shall include the presentation of evidence and the burden of persuasion of all questions of fact which are to be determined by the planning commission as authorized herein.”

9.

Section 17.350.070 (Conditions of approval) is hereby amended by deleting Section 17.350.070 in its entirety and inserting in lieu thereof a new Section 17.350.070 which provides as follows:

“17.350.070. Conditions of approval.

The planning commission may place any reasonable conditions or stipulations upon any approved use as deemed necessary (such as hours of operation, parking, maximum building size, lot size, outside displays, signs, landscape and buffer improvements, screens, etc.) to further insure the orderly operation of the proposed use and its compatibility with the surrounding properties.”

10.

Section 17.350.080 (Expiration of approval) is hereby amended by deleting Section 17.350.080 in its entirety and inserting in lieu thereof the word “Reserved”.

11.

Section 17.350.090 (Appeals to board of commissioners) is hereby amended by deleting Section 17.350.090 in its entirety and inserting in lieu thereof a new Section 17.350.090 which provides as follows:

“17.350.090. Appeals to board of commissioners.

Any decision of the planning commission may be appealed to the board of commissioners of the county in accordance with chapter 17.370 hereof.”

13.

Section 17.360.020 (Appeals) is hereby amended by deleting Section 17.360.020 in its entirety and inserting in lieu thereof a new Section 17.360.020 which provides as follows:

“17.360.020. Appeals.

Any person or persons aggrieved by any decision of the building official or planning director may appeal said decision to the county's planning commission in accordance with chapter 17.370 hereof.”

14.

The heading to Chapter 17.370 shall be changed from “**APPEALS**” to “**APPEALS OF ADMINISTRATIVE OFFICIALS AND DECISION-MAKING BODIES**”.

15.

Section 17.370.010 (Right to appeal) is hereby amended by deleting Section 17.370.010 in its entirety and inserting in lieu thereof a new Section 17.370.010 which provides as follows:

“17.370.010. Right to appeal.

- A. Any person aggrieved by the final decision rendered on any proposed amendment, any conditional use, or use subject to the approval of the planning commission, or any other zoning or quasi-judicial decision by any county official, department, board, or agency affected by any final order, requirement, or decision authorized in this ordinance shall have the right to an appeal of the decision. Appeals of administrative officials shall be heard by the planning commission, and appeals of any decision-making body shall be heard by the board of commissioners.
- B. A person is considered aggrieved for purposes of this section only if the person or their property was the subject of the action appealed from, or the person has a substantial interest in the action being appealed that is in danger of suffering special damage or injury not common to all property owners similarly situated.”

16.

Section 17.370.020 (Notice of appeal) is hereby amended by deleting Section 17.370.020 in its entirety and inserting in lieu thereof a new Section 17.370.020 which provides as follows:

“17.370.020. Filing of Appeal.

In order to file an appeal, the appellant must submit a written notice of appeal within 30 calendar days of the decision to the planning commission office. The appellant must submit justification and reasons for the appeal. Such justification should make specific reference to such relevant analysis as listed in section 17.370.030(C). The appeal fee must be paid at the time of filing said written notice of appeal. The planning director, upon receipt of the written notice of appeal and fee, shall notify the county administrator of the appeal and submit the notice and record of the application to the county administrator.”

17.

Section 17.370.030 (De novo appeal) is hereby amended by deleting Section 17.370.030 in its entirety and inserting in lieu thereof a new Section 17.370.030 (Hearing and decision) which provides as follows:

“17.370.030. Hearing and decision.

A. The appropriate hearing body (either the planning commission or the board of commissioners) shall hold a public hearing to consider all appeals of decisions by administrative officials and decision-making bodies. The only active participants are the appellant, the original applicant (if other than the appellant), and the zoning official or other administrative official whose decision is being appealed. Participants in the meeting may present testimony, produce documentary evidence, and may cross-examine witnesses provided by another participant. The board of commissioners may ask questions or seek

clarification from any participant in the hearing, and may limit the time for the hearing as it deems necessary and appropriate provided that all participants are afforded equal time to present evidence.

- B. Following the close of the hearing and following its consideration of all testimony, documentary evidence, and matters of record presented, the board of commissioners shall render its decision. The decision shall be made within a reasonable period of time, but in no event more than 30 days from the date of the close of the hearing.
- C. In exercising its powers, the board of commissioners may reverse or affirm the decision in whole or in part, or may modify the order, requirement, decision, or determination appealed from. To that end, the hearing body has all of the powers of the administrative official or decision-making body from whom or from which the appeal was taken, and it may issue or direct the issuance of a permit or other approval, provided that all requirements imposed by all other applicable laws and ordinances are met. In no case shall the powers of the hearing body be construed to include authority to reclassify use zones. An appeal shall be reversed or the decision modified only upon an expressed finding by the hearing body that the action was based on an erroneous finding of a material fact, or that said action was arbitrary”.

18.

Section 17.370.040 (Required public notice) is hereby amended by deleting Section 17.370.040 in its entirety and inserting in lieu thereof a new Section 17.370.040 which provides as follows:

“17.370.040. Required public notice.

Notice to members of the public shall be provided in accordance with the provisions of this Title and O.C.G.A. 36-66-1 et seq.”

19.

Section 17.370.050 (Date of public hearing before board of commissioners) is hereby amended by deleting Section 17.370.050 in its entirety and inserting in lieu thereof a new Section 17.370.050 (Date of public hearing) which provides as follows:

“17.370.050. Date of public hearing.

The county administrator or other appropriate county official shall place an appeal on the agenda of the first public meeting of the appropriate hearing body of the county arising after the relevant notice provisions of sections 17.380.070 through 17.380.110 have been complied with.”

20.

Section 17.370.060 (Payment of costs of appeal; decision by board of commissioners) is hereby amended by deleting Section 17.370.060 in its entirety and inserting in lieu thereof a new Section 17.370.060 (Payment of costs of appeal) which provides as follows:

“17.370.060. Payment of costs of appeal.

The appellant shall bear the costs of preparing the necessary documents as required by the county to properly appeal the matter before the hearing body, in addition to the appeal fee.”

21.

Section 17.370.070 (Denial of appeal) is hereby amended by deleting Section 17.370.070 in its entirety and inserting in lieu thereof a new Section 17.370.070 (Decision of appeal) which provides as follows:

“17.370.070. Decision of appeal.

- A. An appeal may be sustained (i.e.: where the decision is reversed) only upon a finding by the hearing body that the action subject to the appeal was based on an erroneous finding of a material fact or that the administrative official or decision-making body acted in an arbitrary manner.
- B. Appeals of administrative officials shall be heard by the planning commission.
- C. Appeals of any decision-making body shall be heard by the board of commissioners.
- D. Appeals of board of commissioners shall be appealed in accordance with section 17.380.160.”

22.

Section 17.380.030 (Initiation of proposed amendments) is hereby amended by deleting Section 17.380.030 in its entirety and inserting in lieu thereof a new Section 17.380.030 which provides as follows:

“17.380.030. Initiation of proposed amendments.

These zoning regulations of the county, including the official zoning map, may be amended from time to time by the board of commissioners of the county. Official zoning map amendments may be proposed by the board of commissioners of the county, or by the county planning commission, or an administrative official, or by any individual, firm, or organization or their duly appointed agent or attorney; provided, however, no amendment shall become effective unless it shall have been proposed by or have first been submitted to the county planning commission for

review and recommendation. Application for uses subject to the approval of the county commission shall have first been submitted to the county planning commission for review and recommendation before consideration by the county commission. Text amendments to the zoning ordinances shall be proposed only by the board of commissioners of the county, or the county planning commission, or the appropriate administrative official.”

23.

Subsection 17.380.050 (B) (1) (Submission requirements) is hereby amended by deleting Subsection 17.380.050 (B) (1) in its entirety and inserting in lieu thereof a new Subsection 17.380.050 which provides as follows:

17.380.050. Submission requirements.

...

B. ...

“1. A narrative statement identifying the existing and proposed use of the property and addressing each of the criteria set forth in section 17.380.060 C of this chapter.”

24.

Subsections 17.380.060 (A) and (B) (Planning commission and Hall County Commission consideration and decision) are hereby amended by deleting Subsections 17.380.060 (A) and (B) in their entirety and inserting in lieu thereof new Subsections 17.380.060 (A) and (B) which provide as follows:

17.380.060. Planning Commission and Hall County Commission consideration and decision.

- A. “The planning commission shall hold a public meeting on all zoning applications or applications for a use subject to approval of the county commission. The planning commission shall hold the required public meeting not less than 30 days, nor more than 60 days, from the date of the filing of a complete and compliant zoning application.
- B. After hearing testimony from all interested parties, the planning commission shall have 30 days within which to make its decision to grant or deny the application. If the planning commission fails to make a decision within the specified period, it shall be deemed to have carried a recommendation of approval of the application.”

25.

Section 17.380.070 (Public hearing required; notice required) is hereby amended by deleting Section 17.380.070 in its entirety and inserting in lieu thereof a new Section 17.380.070 which provides as follows:

“17.380.070. Public hearing required; notice required.

- A. The county planning commission and the county board of commissioners, when taking final action on all applications, shall provide for public hearings on the proposed actions. Public meetings related to recommendations made by the planning commission to the board of commissioners do not require notice provided herein. A notice of public hearings shall be published at least 30 days but not more than 45 days prior to said public hearings in a newspaper of general circulation within the territorial boundaries of the county.
- B. The county will follow the additional notice and hearing requirements found in O.C.G.A. § 36-66-1 whenever so required by State law, including any of the following instances when required by State law:

1. County-initiated rezoning and/or text amendments to revise a zoning classification related to single-family residential uses of property so as to authorize multi-family uses of property pursuant to such classification or definitions, or to grant blanket permission, under certain or all circumstances, for property owners to deviate from the existing zoning requirements of a single-family residential zoning district;
2. Halfway houses, drug rehabilitation centers, or other facilities for the treatment of drug dependency; or
3. Annexations.”

26.

Section 17.380.080 (C) (Public notice of hearing; posting) is hereby amended by deleting Section 17.380.080 in its entirety and inserting in lieu thereof a new Section 17.380.080 which provides as follows:

17.380.080. Public notice of hearing; contents.

...

- C. “If an application is being considered for a change of zoning for a specifically described tract or parcel of land (amendment to the zoning map), then the public notice shall, in addition to the requirements of section 17.380.070 and subsection (A) above, include the following information:
1. The location of the property; and
 2. The present zoning classification; and
 3. The proposed zoning classification of the property.”

27.

Section 17.380.090 (Public notice of hearing; posting) is hereby amended by deleting Section 17.380.070 in its entirety and inserting in lieu thereof a new Section 17.380.070 (Public notice of hearing; posting/ mailing) which provides as follows:

“17.380.090. Public notice of hearing; posting/ mailing.

- A. Posted notice. All zoning map amendments initiated by a party other than the county planning commission or the county board of commissioners, and applications for uses subject to approval of the county commission, shall require a sign placed in a conspicuous location on the property which is the subject matter of the zoning application.
- B. Mailed notice. Mailed notice shall be made via U.S. Postal Service mail at least 30 days but not more than 45 days before the date of the public hearing to the following parties:
 - 1. Property owner notice. Mailed notice shall be made to the property owner(s) of record. The applicant shall provide the mailing address for property owner(s) with the filing of the zoning petition.
 - 2. Applicant.
 - 3. Appellant for any filed appeal shall also receive mailed notice if not one of the parties already identified as requiring notice.”

28.

Section 17.380.100 (Public notice of hearing; sign information) is hereby amended by deleting Section 17.380.100 in its entirety and inserting in lieu thereof a new Section 17.380.100 which provides as follows:

“17.380.100. Public notice of hearing; sign information.

The public notice sign shall contain the same information described in section 17.380.080.”

29.

Section 17.380.110 (Public notice of hearing; sign posting date) is hereby amended by deleting Section 17.380.110 in its entirety and inserting in lieu thereof a new Section 17.380.110 which provides as follows:

“17.380.110. Public notice of hearing; sign posting date.

The required public notice sign shall be posted not less than 30 but not more than 45 days prior to the date of the hearing.”

30.

Section 17.380.120 (Public notice of hearing; applications initiated by county) is hereby amended by deleting Section 17.380.120 in its entirety and inserting in lieu thereof a new Section 17.380.120 which provides as follows:

“17.380.120. Public notice of hearing; applications initiated by county.

When an application is brought by or initiated by the board of commissioners of the county or by an administrative official of the county, the only public notice required by these zoning regulations is newspaper advertisement as set forth in O.C.G.A. § 36-66-1 et seq. and sections 17.380.070 and 17.380.080.”

31.

Subsections 17.380.130 (E) (7), (8), and (9) (Board of commissioners’ action) are hereby amended by deleting Subsections 17.380.130 (E) (7), (8), and (9) in their entirety and inserting in lieu thereof a new Subsection 17.380.130 (E) (7) which provides as follows:

17.380.130. Action by Board of Commissioners

...

(E) The board of commissioners' public hearing is to be held as follows (or the planning commission, where authorized by this chapter as the final decision-making body):

...

7. No approval or denial of an amendment, use subject to approval of the county commission, appeal of an administrative official or decision-making body, approval or denial of a use subject to approval of the planning commission, or other zoning or quasi-judicial decision by the board of commissioners shall become effective unless said approval or denial is determined after a public hearing.”

32.

Chapter 17.380 (Amendments) is hereby further amended by inserting new sections 17.380.150, 17.380.160, and 17.380.170 which provide as follows:

“17.380.150. Successive applications.

If a use subject to approval of the county commission/planning commission or a rezoning is denied, or if an appeal from the decision of an administrative official or the planning commission is affirmed by the board of commissioners, then the same property may not again be considered for any zoning application (rezoning, conditional use, variance, etc.) and no such application shall be filed until the expiration of at least six months immediately following the date of the denial of the use/rezoning or the denial of the appeal and may not be considered for an application of the same type and no such application of the same type shall be filed until the expiration of at least six months immediately following the date of the denial of the use/rezoning or the denial of the appeal.

17.380.160. Appeals of board of commission actions.

A. Any person with adequate standing to do so under Georgia law may seek review in the Superior Court of Hall County in accordance with the applicable procedures established by Georgia law.

B. The Director of Community Development and Infrastructure shall be authorized, without additional board or agency action, to approve or issue any form or certificate necessary to perfect any appeal petition for review of lower judicatory bodies, and shall be authorized, without additional board or agency action, to accept service or be served in behalf of any lower judicatory board or agency, during normal business hours, at the regular offices of the county.

C. Service of an appeal of any quasi-judicial decision rendered pursuant to this Title may be effected or accepted on behalf of the local governing authority, during normal business hours, at the regular offices of the county, by the County Attorney when so allowed by the County's Service of Process Resolution, otherwise said service may be effected or accepted on behalf of the local governing authority according to the requirements of O.C.G.A. § 9-11-4 (e).

17.380.170. Georgia Zoning Procedures Law.

The review and approval procedures of this Zoning Ordinance are intended to comply with the provisions of the Georgia Zoning Procedures Law (O.C.G.A. § 36-66-1 et seq.), which is incorporated by reference in its entirety. If any provision of this Zoning Ordinance is in conflict with any provision of the Zoning Procedures Law or if this Zoning Ordinance fails to incorporate a provision required for the implementation of the Zoning Procedures Law, the Zoning Procedures Law controls.”

33.

The remaining provisions of Title 17 (Zoning Regulations) of the Hall County Code of Ordinances shall remain as they were, unchanged by this amendment.

SO RESOLVED, this the _____ day of June, 2023.

HALL COUNTY BOARD OF COMMISSIONERS

By: _____
Richard Higgins, Chairman

ATTEST:

_____ (SEAL)
Jennifer Rivera, County Clerk

APPROVED AS TO FORM:

William J. Linkous III
County Attorney