



CITY COUNCIL  
ATLANTA, GEORGIA

AN ORDINANCE  
BY ZONING COMMITTEE

17-O-1266

Z-17-26 #12158

**AN ORDINANCE TO AMEND CITY CODE SEC. 16-26.007 OF THE ATLANTA ZONING ORDINANCE TO PROVIDE THAT APPEALS FROM DECISIONS OF THE BOARD OF ZONING ADJUSTMENT ARE BY WRIT OF CERTIORARI AND MAY ONLY BE BROUGHT BY THOSE WITH STANDING; AND FOR OTHER PURPOSES.**

**WHEREAS**, since at least 1970 the Atlanta Zoning Ordinance has provided that appeals from decisions of the City of Atlanta Board of Zoning Adjustment (BZA) have been directly appealable to Superior Court; and

**WHEREAS**, direct appeal from BZA decisions has its genesis in the 1957 General Zoning Act (Ga. L. 1957, p. 420) which was amended in 1964 (Ga. L. 1964, pp. 259-260) to provide the right of appeal from decisions of the board of zoning appeals by “[a]ny person or persons severally or jointly aggrieved....” (“the 1964 amendment”); and

**WHEREAS**, In *Massey v. Butts County*, 281 Ga. 244 (2006), the Georgia Supreme Court analyzed the 1964 amendment and binding precedent to hold that one who seeks to challenge a local zoning board must establish standing by way of the “special interest-aggrieved citizen test”; and

**WHEREAS**, the “special interest-aggrieved citizen test” requires a showing before the board “that his property will suffer special damage as a result of the decision complained of rather than merely some damage which is common to all property owners similarly situated”; and

**WHEREAS**, in the case of *City of Cummings et al. v. Flowers et al.* (S16A1884) and *Kerley Family Homes LLC et al. v. Flowers et al.* (S16A1885), decided on March 6, 2017, the Georgia Supreme Court held that all appeals from quasi-judicial zoning decisions of local zoning boards such as the BZA are not directly appealable to Superior Court but must proceed by petition for certiorari pursuant to O.C.G.A. § 5-4-1 et seq.; and

**WHEREAS**, it is in the interest of the public health, safety and general welfare to amend the Atlanta Zoning Ordinance consistent with and to provide notice to the public of the decisions in *Massey* and *Flowers*.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS AS FOLLOWS:**

Section 1: City Code Sec. 16-26.007 entitled “Appeals from decisions of the board of zoning adjustment” and which provides:

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1) Any person aggrieved by a decision of the board, or any officer, department, board or bureau affected by such decision, may appeal from such decision to the Superior Court of Fulton County by filing with the clerk of said court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within 30 days after decision of the board is rendered.

(2) *Notice to Board:* Upon such filing, the clerk of the superior court shall give immediate notice thereof to the secretary of the board. Within the time prescribed by law, the board shall cause to be filed with said clerk a duly certified copy of the proceedings had before the board, including a transcript of the evidence heard before it, if any, and the decision of the board.

(3) *Judicial Procedure, Superior Court:* Thereafter at the next term of the superior court, or in vacation upon 10 days' notice to the parties, the judge of such court shall proceed to hear and pass upon the appeal. In determining the questions presented by the appeal, the court shall determine whether the decision of the board is correct as a matter of law.

(4) *Supersedeas May Be Granted:* The filing of an appeal in the superior court from any decision of the board shall not ipso facto act as a supersedeas, but a supersedeas may be granted by the court upon such terms and conditions as may seem reasonable and proper.

Is hereby amended to read:

Any person aggrieved by a decision of the board, or any officer, department, board or office affected by such decision, may seek review of such decision from the Superior Court of Fulton County by petition for certiorari. Other than one with a legal or equitable interest in property that is the subject of the decision, "any person aggrieved" shall mean one who demonstrates before the board that his property will suffer special damage as a result of the decision complained of rather than merely some damage which is common to all property owners similarly situated"

A true copy,

*Rhonda Dauphin Johnson*  
Municipal Clerk

ADOPTED by the Atlanta City Council  
APPROVED as per City Charter Section 2-403

SEP 05, 2017  
SEP 14, 2017

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