

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF CUMMING, GEORGIA, TO COMPLY WITH RECENT AMENDMENTS TO THE ZONING PROCEDURES ACT, O.C.G.A. § 36-6-1 ET SEQ.; TO CORRECT THE TABLE OF DIMENSIONAL REQUIREMENTS; TO AMEND THE PROCEDURES FOR ZONING ANNEXED LAND; TO ADDRESS DESIGN REVIEW COMMITTEE APPOINTMENTS; AND FOR OTHER PURPOSES

WHEREAS the Constitution of the State of Georgia provides in Article IX, Section II, Paragraph IV thereof, that the governing body may adopt plans and exercise the power of zoning; and

WHEREAS, the Georgia General Assembly has enacted the Georgia Planning Act of 1989, (Georgia Laws, 1989 pp. 1317-1391, Act 634) which among other things provides for local governments to adopt plans and regulations to implement plans for coordinated and comprehensive planning; and

WHEREAS, The City finds that the regulations contained in this Ordinance are necessary for the purposes of implementing its comprehensive plan adopted pursuant to the requirements of the Georgia Planning Act of 1989; and

WHEREAS, this Ordinance has been prepared and considered in accordance with the Zoning Procedures Act, O.C.G.A. § 36-66-1 et. seq., and

WHEREAS, this Ordinance is necessary for the purposes of promoting the health, safety, morals, convenience, order, prosperity and the general welfare of the City of Cumming; and encouraging the most appropriate use and development of land and buildings throughout the City of Cumming in accordance with its duly adopted comprehensive plan;

NOW THEREFORE, the governing body of the City of Cumming, Georgia, does hereby ordain, enact and thereby incorporate into the City Code of Cumming, Georgia, this ordinance and all of its sections as set forth below:

SECTION 1: Chapter 101 "General and Administrative Provisions," of the City of Cumming Code of Ordinances, Article II "Planning Commission," Section 101-27 Creation and Appointment is deleted in its entirety, and a new Section 101-27 Creation and Appointment is hereby enacted as follows:

The planning commission for the city is hereby created. The planning commission shall be composed of three members appointed by the governing body in such a manner as hereinafter provided. Two members present shall be required to constitute a quorum. One such member shall be the annually elected chairman of the planning commission by the planning commission members, and the chairman shall not vote except in cases of a tie-vote between the other members. In cases of a tie-vote and the chairman excuses himself from voting, then such tie-vote shall constitute denial of said motion, application or action. All members appointed to the planning commission shall be residents of or property owners in the city. The

members shall serve concurrent terms of one year and shall serve until their successors are appointed. The compensation of the members of the planning commission shall be as established by the governing body. Any vacancy in the membership of the planning commission shall be filled for the unexpired term of such vacancy in the same manner as the original appointment. The governing body may remove any member of the planning commission for due cause after written notice to such member and after a public hearing. Members of the planning commission shall appoint a secretary, or in lieu of such appointment, the zoning administrator shall serve as the secretary of the planning commission.

SECTION 2: Chapter 101 "General and Administrative Provisions," of the City of Cumming Code of Ordinances, Article II "Planning Commission," Section 101-29 Powers and duties is deleted in its entirety, and a new Section 101-29 Powers and duties is hereby enacted as follows:

The planning commission shall have the following functions, powers, and duties:

(1) Cooperate with, contract with, or accept funds from federal, state, regional, or local public or semi-public agencies or private individuals or corporations; expend such funds; and carry out such cooperative undertakings or contracts.

(2) Make expenditures for the purchase of required equipment and supplies. Expenditures, exclusive of gifts to the planning commission or contract receipts, shall be within the amounts appropriated for the purpose by the governing body.

(3) Conduct surveys and studies of existing conditions and probable future developments and to prepare and recommend to the governing body any plans for physical, social and economic growth as will best promote the public health, safety, order, convenience, aesthetics, prosperity or the general welfare of the City of Cumming.

(4) Prepare and recommend for adoption by the governing body zoning regulations and official zoning map, subdivision regulations and other such land use regulations; prepare and recommend for adoption by the governing body amendments to any of the land use regulations; and to review and make recommendations concerning applications for zoning map amendment, conditional use approvals, variances, or other such applications.

(5) Review and render decisions on all applications for variances under Chapter 113 of these Ordinances.

(6) Perform other planning functions and duties as may be required by the governing body.

SECTION 3: Appeals and administrative variances

Chapter 113 "Zoning," of the City of Cumming Code of Ordinances, Article II "Administration and Enforcement," Section 113-49 Appeals and administrative variances is deleted in its entirety, and a new Section 113-49 is hereby enacted. The title of said section shall be "Appeals" and the text shall read as follows:

(a) The board of zoning appeals is empowered to hear and decide appeals where it is alleged in an appeal filed by an aggrieved party that there is an error in any order, requirement, decision or determination made by the zoning administrator, building official in the interpretation or enforcement of this chapter. "Aggrieved party" is defined as the applicant/owner or a neighboring landowner having a substantial interest in the outcome of the board's decision and suffering special damages as a result of the board's decision. Any appeal must be filed by an aggrieved party within five business days from the date of the action complained of by filing with the zoning administrator or his designee at his office in city hall a notice of appeal specifying the ground thereof. All papers constituting the record, upon which the action appealed from was taken, shall forthwith be transmitted to the board of zoning appeals.

(b) The board shall select a reasonable time and place for the hearing of the appeal and give at least five business days of public notice thereof and due notice to the aggrieved party and shall render a decision in the appeal within a reasonable time.

SECTION 4: Variances

Chapter 113 "Zoning," of the City of Cumming Code of Ordinances, Article II "Administration and Enforcement," Section 113-50 Variances is deleted in its entirety and a new Section 113-50 Variances is hereby enacted as follows:

A. The planning commission is hereby empowered to authorize upon application in specific cases such variance from the terms of these regulations as will not be contrary to the public interest under the following circumstances:

(a) The proposed use or development variance requested is de minimis and that the goals and intent of the chapter are being properly served; or

(b) Where, owing to special conditions, a literal enforcement of the provisions of these regulations will in an individual case, result in unnecessary hardship, so that the spirit of these regulations shall be

observed, public safety and welfare secured, and substantial justice done. The existence of a nonconforming use of neighboring land, buildings or structures in the same zoning district or of permitted or nonconforming uses in other districts shall not constitute a reason for the requested variance. A variance may be granted in an individual case of unnecessary hardship, after appropriate application, upon specific findings that all of the following conditions exist. The absence of any one of the conditions shall be grounds for denial of the application for variance.

(1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other land or structures in the same district;

(2) A literal interpretation of the provisions of these zoning regulations would create an unnecessary hardship and would deprive the applicant of rights commonly enjoyed by other property owners within the district in which the property is located;

(3) Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;

(4) Relief, if granted, will be in harmony with the purpose and intent of these regulations and will not be injurious to the neighborhood or general welfare in such a manner as will interfere with or discourage the appropriate development and use of adjacent land and buildings or unreasonable affect their value;

(5) The special circumstances are not the result of the actions of the applicant;

(6) The variance requested is the minimum variance that will make possible the legal use of the land, building, or structure; and

(7) The variance is not a request to permit a use of land, building or structures which are not permitted by right in the district involved.

The planning commission shall have power to issue or direct the issuance of a permit pursuant to this section.

B. At any time before the planning commission renders a decision on an application for a variance, the zoning administrator may direct that the application be transferred to the mayor and city council for consideration by them, and shall take appropriate steps to effect such transfer. The zoning administrator should direct transfer under this paragraph if, based on the nature of the variance requested, consideration of the application by the mayor and city council would be in the public interest. The planning commission shall take no further action on the application after the zoning administrator directs the transfer, and any action taken on the application by the planning commission after such direction shall be void. Upon transfer, the mayor and council shall hold a hearing on the application that complies with section 113-114 of this chapter and shall grant or deny the variance, applying the criteria set forth in paragraph A of this section, and shall issue or direct the issuance of any necessary permit.

SECTION 5: Conditional approval permitted

Chapter 113 "Zoning," of the City of Cumming Code of Ordinances, Article II "Administration and Enforcement," Section 113-51 Conditional approval permitted is deleted in its entirety and a new Section 113-51 Conditional approval permitted is hereby enacted as follows:

The board of zoning appeals, in granting an appeal, and the planning commission, in granting a variance, may attach any conditions to such decision which it finds necessary to accomplish the reasonable application of the requirements of these regulations.

SECTION 6: Public notice and public hearing required

Chapter 113 "Zoning," of the City of Cumming Code of Ordinances, Article II "Administration and Enforcement," Section 113-114 Public notice and public hearing required is deleted in its entirety and a new Section 113-114 Public notice and public hearing is hereby enacted as follows:

(a) This section shall apply to all applications for a zoning decision or decision by a quasi-judicial officer, board, or agency, as those terms are defined in O.C.G.A. § 36-66-3(1.1) and (4), respectively.

(b) Upon receipt of a completed application, fees and other information required by this division, the zoning administrator shall cause notice of such application to be published at least one time in a newspaper of general circulation in the community at least 15 days (or 30 days in the case of a quasi-judicial decision), but not more than 45 days, prior to the date of public hearing before the mayor and council. Such published notice shall include, as a minimum, the purpose, location, date and time of the public hearing, the purpose, location, date and time of the public hearing before the planning commission, if the planning commission is required by this section to hold a public hearing on the matter, the location of the property being considered, the present zoning classification of the property, and

proposed action to be taken, as appropriate, such as proposed zoning district, type of conditional use, variance to particular articles and sections, and so forth. Whenever published notice is required by this paragraph, additional notice shall be mailed to the owner of the property that is the subject of the proposed action. The applicant shall also cause to be posted in a conspicuous place on said property one or more signs, each of which shall contain the information specified for published notices. The sign shall be obtained by the zoning administrator. The applicant shall document the placement of the sign with digital photographs submitted to the zoning administrator electronically as directed. Signs shall be returned to the City of Cumming after the completion of any required public hearings, and failing such, the applicant shall pay an administrative charge in the amount of \$100.00 for sign replacement as a condition of receiving any permits for development or building activities. No public hearing shall take place until any required sign or signs have been posted for at least 15 days, but not more than 45 days, prior to the date of the public hearing.

(c) Except as provided in paragraph (e) of this section, hearings shall be held before the following bodies: The mayor and city council shall hold at least one public hearing on any application for a zoning decision or quasi-judicial decision not delegated to another official, board, or agency, as those terms are defined in O.C.G.A. § 36-66-3(1.1) and (4), respectively, and no action shall be taken on said applications until a public hearing has been held by the mayor and council. The planning commission shall hold a public hearing on amendments to the official zoning map, requests for conditional use approval, requests for alteration or extension of conditional zoning, and applications for variances, but the planning commission shall not have review authority and shall not be required to advertise for or hold public hearings for appeals, and amendments to the text of these zoning regulations. The board of zoning appeals shall hold a public hearing on any matter appealed to it, and no action shall be taken on said matter appealed until a public hearing has been held by the board of zoning appeals.

(d) Public hearings may be delayed, rescheduled, or continued at another time and date; provided announcement is given at the time and place of the initially scheduled and advertised public hearing; and provided such date, time and location of the public hearing to be delayed, rescheduled or continued is given. A delay, rescheduling or continuance of a public hearing may be granted for good cause by the planning commission, mayor and council, or board of zoning appeals upon request from the applicant, request from the zoning administrator, or upon motion of the planning commission, mayor and council, or board of zoning appeals. Any additional advertising or signage costs incurred as a result of a delay, rescheduling or continuance shall be borne by the applicant. The failure of the applicant to attend or be represented at a public hearing may be grounds for denial by the mayor and council or board of zoning appeals.

(e) Notwithstanding any other provision of these regulations, when a proposed zoning decision relates to an amendment of a zoning ordinance to revise one or more zoning classifications or definitions relating to single-family residential uses of property so as to authorize multifamily 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, such zoning decision may only be adopted in compliance with the notice and multiple-hearing requirements of O.C.G.A. § 36-66-4(h), which are hereby incorporated into this section. The zoning administrator shall be responsible for carrying out the notice requirements of that provision, and is hereby empowered to take any appropriate action to that end.

SECTION 7: Recommendation by zoning administrator

Chapter 113 “Zoning,” of the City of Cumming Code of Ordinances, Article II “Administration and Enforcement,” Section 113-115 Recommendation by zoning administrator is deleted in its entirety and a new Section 113-115 is hereby enacted as follows:

The zoning administrator will, as appropriate, customarily submit to the recommending and/or decision-making body, prior to a scheduled public hearing, copies of the site plan and letter of intent along with a written recommendation for approval, disapproval, deferral, withdrawal or other recommendation. Such recommendation shall include reasons for said recommendations, considered within the context of the appropriate criteria as specified by this division. The recommendations of the zoning administrator shall have an advisory effect only and shall not be binding on the mayor and council or planning commission. Copies of the zoning administrator's recommendations shall be made available to the applicant and other interested parties upon completion and distribution to the appropriate bodies and at the public hearing.

SECTION 8: Planning commission recommendation

Chapter 113 “Zoning,” of the City of Cumming Code of Ordinances, Article II “Administration and Enforcement,” Section 113-116 Planning commission recommendation is deleted in its entirety and a new Section 113-116 Planning commission recommendation is hereby enacted as follows:

(a) Prior to the public hearing held by the mayor and council on an amendment to the official zoning map, conditional use permit application, or applications for alteration or extension of conditional zoning, or prior to the first such hearing if multiple hearings are required under sec. 113-114(e) of this chapter, the planning commission shall hold a public hearing and conduct appropriate study of the application.

(b) After completing its studies of the particular application, the planning commission shall submit a recommended action in writing to the mayor and council. The planning commission may submit any additional report it deems appropriate. The recommendations of the planning commission shall have an advisory effect only and shall not be binding on the mayor and council or the board of zoning appeals. Copies of the planning commission's recommendations and reports shall be made available to the applicant and other interested parties upon completion and distribution to the mayor and council and at the public hearing before the mayor and council.

(c) For applications for which the planning commission has review authority, it shall have 30 days within which to submit its recommendations. The mayor and council shall not take action on any of said applications, until it has received the recommendation of the planning commission within the specified time period. If the planning commission fails to submit a recommendation within the 30-day period, it shall be deemed to have approved the proposed application.

SECTION 9: Action

Chapter 113 "Zoning," of the City of Cumming Code of Ordinances, Article II "Administration and Enforcement," Section 113-118 Action is deleted in its entirety and a new Section 113-118 Action is hereby enacted as follows:

After the public hearing has been completed, the mayor and council may take action to approve or deny the request, refer the application back to the zoning administrator or planning commission for further study, or the mayor and council may table or defer action until a later meeting. The planning commission, after the public hearing has been completed, may take action to recommend approval or denial of the request, or defer action until a later meeting. The board of zoning appeals, after the public hearing has been completed, may take action to approve or deny the request, or defer action until a later meeting. In any instance when the mayor and city council are required to hold multiple preliminary hearings under section 113-114(e) of this chapter, the mayor and council shall not take any action on the matter until all such hearings have been completed.

SECTION 10: Appeals; manner of review

Chapter 113 "Zoning," of the City of Cumming Code of Ordinances, Article II "Administration and Enforcement," Section 113-120 Appeals; manner of review is deleted in its entirety and a new Section 113-120 Appeals is hereby enacted as follows:

A. All decisions of the mayor and council pursuant to this chapter, and all decision on applications for variances by the planning commission pursuant to this chapter, are final and subject to judicial review in the superior court of the county in accordance with O.C.G.A. § 36-66-5.1. Whereas O.C.G.A. § 36-66-5.1(c)

requires local governments to designate officials to receive service of a petition for review of a quasi-judicial decision and to perform other acts required by that paragraph, the following are hereby designated:

(1) The chairman of the planning commission, pursuant to O.C.G.A. § 36-66-5.1(c)(1), and

(2) The mayor, pursuant to O.C.G.A. § 36-66-5.1(c)(2).

SECTION 11: Table of Dimensional Requirements

Chapter 113 “Zoning,” of the City of Cumming Code of Ordinances, Article IV “Zoning Districts,” Section 113-182 Table of dimensional requirements is amended by deleting the content in Rows labelled “Maximum number of dwelling units per acre,” “Minimum floor area per dwelling unit,” and “Maximum floor-area ratio,” in the columns labeled “OP” and “INST,” and replacing said content with “NP,” so that said rows read as follows:

	R-1	R-1A	R-2	R-3	OP	INST	CBD	NS	HB	PSC	OCMS	MU	M-1
Maximum number of dwelling units per acre	1.5	2.5	3	6	NP	NP	30	3	3	NP	NP	4	NP
Minimum floor area per dwelling unit	1,500	1,400	1,200	800	NP	NP	800	800	800	NP	NP	800	NP
Maximum floor-area ratio	None	None	None	None	NP	NP	2.9	0.35	0.5	0.5	1.5	2.15	0.65

The remainder of this section shall be unaltered.

SECTION 12: Zoning of annexed land.

Chapter 113 “Zoning,” of the City of Cumming Code of Ordinances, Article III “Zoning Districts Established; Zoning Map,” Section 113-142 Zoning of annexed land is deleted in its entirety and a new Section 113-142 Zoning of annexed land is hereby enacted as follows:

(a) Pre-application requirements. At least 30 days before filing any petition for annexation, the applicant must complete and submit to the zoning administrator a Notice of Proposed Annexation form, which shall provide at a minimum the following information: applicant name and contact information; owner name and contact information; property description sufficient to allow the property to be identified; the reason for the anticipated annexation; the proposed use upon annexation; and how the proposed use will differ from the property’s current use. The applicant must also schedule and attend a pre-application meeting with the zoning administrator prior to submission of the petition to the city. In addition, the applicant must attend the meeting between the zoning officials of the City and of Forsyth County, which they shall hold for the purpose of discussing the proposed

annexation, between the submission of the Notice of Proposed Annexation and the filing of any annexation petition. The City shall provide the applicant with reasonable notice of the time and place of said meeting.

(b) Property annexed into the municipal limits of the city shall be zoned in accordance with this chapter and may be zoned by the mayor and council according to zoning districts established in this chapter. In such cases, the mayor and council shall adopt zoning for the annexed land in accordance with the Zoning Procedures Law, O.C.G.A. 36-66-4, relative to the zoning of property to be annexed into a municipality.

SECTION 13: AP, Annexed Property District.

Chapter 113 "Zoning," of the City of Cumming Code of Ordinances, Article IV "Zoning Districts"; Zoning Map," Section 113-183 AP, Annexed Property District is amended as follows:

Paragraph (d), subparagraph (3) is amended by deleting "12 months" and inserting in place thereof "24 months."

Paragraph (e), subparagraph (2) is deleted in its entirety and a new paragraph (e), subparagraph (2) is enacted as follows:

(2) The AP zoning designation may be applied to land annexed into the corporate limits of the city for a period of up to 36 months after the effective date of the annexation as determined by chapter 36 of title 36 of the Official Code of Georgia Annotated.

a. At any time at least 24 months after the effective date of annexation of the property into the corporate limits of the city, the property may be rezoned pursuant to the application of the landowner or on the initiation of a rezoning by the governing authority.

b. If no zoning change application has been filed by the end of 26-months from the effective date of the annexation, then the zoning administrator shall thereafter initiate a zoning change to be governed by the Zoning Procedures Law, chapter 66 of title 36 of the Official Code of Georgia Annotated, and the City of Cumming Code of Ordinances in order to assign the property a zoning district under the City of Cumming's zoning ordinance.

SECTION 14: Design Review Committee

Chapter 113 "Zoning," of the City of Cumming Code of Ordinances, Article XIV: "Design Review," is amended as follows:

Paragraph (b), of Section 113-622 is deleted in its entirety, and in its place is substituted a new Paragraph (b) of Section 113-622, which shall hereafter read as follows:

(b) Notice and comment period. After determining an application for design review is complete, the Zoning Administrator shall notify a three-member committee appointed by the City Council, made up of one representative from the Planning Commission and two representatives from the City Council, of an opportunity to comment on the application. The time period for review and comment opportunity shall be not less than seven (7) work days from the date notice was provided. In the event a member of the committee recuses from service or is otherwise not able to serve on a given application because of a conflict of interest or for any other reason, the Mayor of the City of Cumming shall serve as a standing alternate for review and comment purposes.

SECTION 15: Incorporation and Repealer.

Except as modified herein, the remainder of the ordinance regulating zoning is affirmed and incorporated herein. All laws and parts of laws in conflict with this enactment are hereby repealed.

SECTION 16: Effective Date

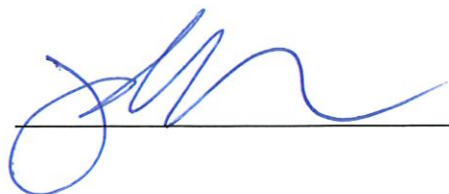
This ordinance shall be effective the day following its passage by the Council of the City of Cumming.

[Executions on Following Page]

SO ADOPTED AND ORDAINED by the City Council of Cumming, Georgia, this 21st day of March, 2023.

MAYOR AND CUMMING CITY COUNCIL

By: 
Troy Brumbalow, Mayor

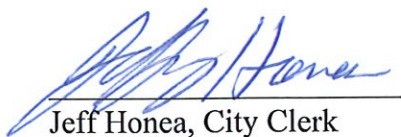


Joey Cochran, Council Member



Linda Ledbetter, Council Member

ATTESTED TO BY:




Jeff Honea, City Clerk



Christopher Light, Council Member



Jason Evans, Council Member



Chad Crane, Council Member