

AN ORDINANCE TO AMEND CHAPTER 27, ZONING, ARTICLE X REVIEW AND APPROVAL PROCEDURES, AND ARTICLE XI ADMINISTRATION AND ENFORCEMENT OF THE CODE OF THE CITY OF BROOKHAVEN

- WHEREAS, Section 1.03(b)(25) of the Charter of the City of Brookhaven grants the City of Brookhaven the power to provide comprehensive planning and regulation through zoning and subdivision requirements to ensure a safe, healthy, and aesthetically pleasing community; and
- WHEREAS, The Mayor and City Council find that amendments to the zoning regulations of the City are necessary.
- WHEREAS, Georgia House Bill 1405, Revisions to the Zoning Procedures Law, became effective July 1, 2022.
- WHEREAS, Georgia House Bill 1405 was adopted as an amendment to the Zoning Procedures Law to revise provisions related to judicial review of zoning decisions, revise definitions, provide additional requirements for zoning decisions by boards or agencies using delegated powers, and provide additional notice and hearing provisions for changes to zoning ordinances that revise single-family residential classifications and definitions so as to authorize multifamily residential property uses.

BE IT ORDAINED by the Mayor and Council of the City of Brookhaven, Georgia and it is hereby ordained by the authority of same:

SECTION I:

The identified sections of Chapter 27, Zoning, are amended to read as shown in the attached mark-up.

SECTION II:

Severability: Should any section of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

SECTION III:

Repeal of Conflicting Provisions: All ordinances, part of ordinances, maps, or regulations in conflict herewith are repealed.

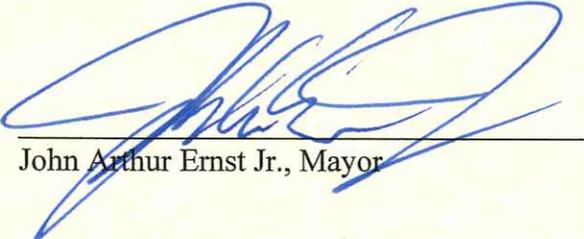
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SECTION IV:

Effective Date: This ordinance shall be effective immediately upon adoption.

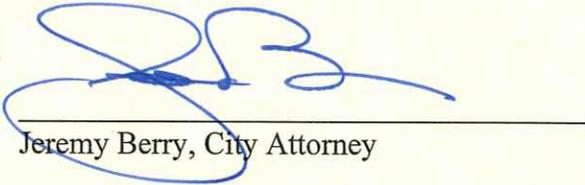
SO ORDAINED, this 20th day of June, 2023.

Approved by:



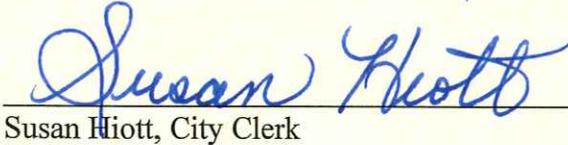
John Arthur Ernst Jr., Mayor

Approved as to Form and Content



Jeremy Berry, City Attorney

Attest:



Susan Hiott, City Clerk



ORDRZ2023-06-06

Chapter 27 ZONING [LI](#)

ARTICLE X. - REVIEW AND APPROVAL PROCEDURES

ARTICLE XI. - ADMINISTRATION AND ENFORCEMENT

DIVISION 2. AMENDMENTS

Sec. 27-1002. - Public hearings.

Following the report of the staff, the presiding officer shall recognize the applicant or his or her agent, spokesperson, or each of them, who shall present and explain the application. **Proponents and opponents of the proposed zoning action shall each be permitted a minimum of ten minutes to present their testimony and any documentary evidence. For multiple zoning actions including any combination of zoning decisions consisting of rezoning, special land use permits, and concurrent variances, an additional time frame of ten minutes for each zoning action shall be allotted to both sides.** There shall be a minimum time period of ten minutes allotted to the applicant and any members of the public wishing to speak in favor of an application at the public hearing. The applicant may choose to reserve a portion of the ten minutes allocated to its presentation for rebuttal. The applicant and its proponents may present data, evidence and opinions. The city shall not be obligated to provide the full ten-minute period to the applicants and their supporters if they elect not to use that much time. Any member of the hearing body, upon recognition by the presiding officer, may ask questions of the applicant or agent of the applicant.

Sec. 27-1023. Public Hearings and Notices.

- (a) **Public Hearings.** Any action resulting in a zoning decision shall require a public hearing on the proposed action.
 - (1) Where the proposed action includes any combination of zoning decisions under subparagraphs rezoning, special land use permits, and concurrent variances, only one hearing shall be required under this Code Section.
 - (2) All decision-making powers to a quasi-judicial board to include Planning Commission and Board of Appeals shall provide for a hearing on each proposed action described for zoning decision in Section 27-1384 of the chapter.
- (b) **Notice of Public Hearings.** Notice of required public hearings shall be provided as follows (see section 27-1003 for additional information on required newspaper, mailed and posted notices):
 - (1) **Newspaper notice.** Newspaper notice is required to be published at least **30** ~~15~~ days before but not more than 45 days before the date of the public hearings before the planning commission and city council for all proposals to rezone property, amend the zoning map,

adopt a new zoning map, amend the text of the zoning ordinance, or amend conditions previously imposed as a condition of zoning or special land use permit.

- (2) *Mailed notice.* Notice shall be mailed to the applicant, all owners of property included within the area that is the subject of the proposed amendment and all owners of property within 250 feet of the subject property. Notices shall be deposited in the mail at least ~~30~~ 45 days before but not more than 45 days before the date of the city council public hearing.
- (3) *Posted notice.* Notice (signs) shall be posted for all property owner-initiated amendments at least ~~30~~ 45 days before but not more than 45 days before the date of the planning commission and city council public hearing.

(Ord. No. [RZ-2018-11-06](#), § I, Exh. A(27.293), 11-27-2018)

Sec. 27-1029. Modifying conditions of approval.

Conditions attached to rezoning approvals may only be modified by city council through the map amendment process, including all requirements for fees, notices and hearings.

Sec. 27-1030. Amendments to zoning ordinance involving single-family residential uses

- (a) This section shall be applicable to zoning decisions related to an amendment of the zoning ordinance to revise one or more zoning classifications or definitions relating to single-family residential uses of property so as to authorize one of the following:
 - (1) Multifamily uses of property, multi-unit buildings, master planned development or mixed use development to include multi-unit buildings, pursuant to such classification or definitions; or
 - (2) Grant blanket permission, under certain or all circumstances, for property owners to deviate from the existing zoning requirements of a single-family residential zoning classification.
- (b) Zoning decisions applicable to Section 27-1030 of the chapter must be adopted in the following manner:
 - (1) The zoning decision shall be adopted at two regular meetings, during a period of not less than 21 days apart.
 - (2) Prior to the first meeting provided for in subparagraph (b)(1) of this paragraph, at least two public hearings shall be held on the proposed action.
 - (3) Such public hearings shall be held at least three months and not more than nine months prior to the date of final action on the zoning decision. At least one of the public hearings must be held between the hours of 5:00 P.M. and 8:00 P.M.
 - (4) The hearings required by this paragraph shall be in addition to any hearing required under Section 27-1023 of this Code section.
 - (5) The local government shall give notice of such hearing by:
 - (i) Posting notice on each affected premises in the manner prescribed by subsection (b) of this Code section; provided, however, that when more than

500 parcels are affected, in which case posting notice is required every 500 feet in the affected area; and

- (ii) Publishing in a newspaper of general circulation within the territorial boundaries of the local government a notice of each hearing at least 15 days and not more than 45 days prior to the date of the hearing.
 - (iii) Both the posted notice and the published notice shall include a prominent statement that the proposed zoning decision relates to or will authorize multifamily uses or give blanket permission to the property owner to deviate from the zoning requirements of a single-family residential zoning of property in classification previously relating to single-family residential uses.
 - a. The published notice shall comply with the following:
 - i. The notice shall be at least nine column inches 190 in size and shall not be located in the classified advertising section of the newspaper.
 - ii. The notice shall state that a copy of the proposed amendment is on file in the office of the City Clerk or the recording officer of the local government and in the office of the clerk of the superior court of the county of the legal situs of the local government for the purpose of examination and inspection by the public.
- (6) The local government shall furnish anyone, upon written request, a copy of the proposed amendment, at no cost.
- (7) The provisions of paragraph Section 27-1030 shall also apply to any zoning decisions that provide for the abolition of all single-family residential zoning classifications within the territorial boundaries of a local government or zoning decisions that result in the rezoning of all property zoned for single-family residential uses within the territorial boundaries of a local government to multifamily residential uses of property.
- (8) This section of the zoning ordinance shall not apply to zoning decisions for the rezoning of property from a single-family residential use of property to a multifamily residential use of property when the rezoning is initiated by the owner or authorized agent of the owner of such property.

(Ord. No. [RZ-2018-11-06](#), § I, Exh. A(27.299), 11-27-2018)

Secs. 27-1030~~1~~—27-1039. Reserved.

DIVISION 3. SPECIAL LAND USE PERMITS (SLUPS)

[Sec. 27-1045. Public hearing notices.](#)

Sec. 27-1045. Public hearing notices.

Notice of required public hearings shall be provided as follows (see section 27-1003 for additional information on required newspaper, mailed and posted notices):

- (1) *Newspaper notice.* Newspaper notice shall be published at least ~~30~~ 15 days before but not more than 45 days before the date of the planning commission and city council public hearings. In addition to the notice contents required by section 27-1003, notice of all property owner-initiated amendments shall identify the property's existing and proposed zoning classification.
- (2) *Mailed notice.* Notice shall be mailed to the applicant, all owners of property included within the area that is the subject of the proposed amendment and all owners of property within 250 feet of the subject property. Notices shall be deposited in the mail at least ~~30~~ 15 days before but not more than 45 days before the date of the planning commission and city council public hearings.
- (3) *Posted notice.* Notice (signs) shall be posted at least 15 days before but not more than 45 days before the date of the city council public hearing.

(Ord. No. [RZ-2018-11-06](#), § I, Exh. A(27.305), 11-27-2018)

DIVISION 6. VARIANCES

[Sec. 27-1096. Public hearing notices.](#)

[Sec. 27-1097. Zoning board of appeals public hearing and decision.](#)

Sec. 27-1096. Public hearing notices.

Notice of required zoning board of appeals' public hearings shall be provided as follows (see section 27-1003 for additional information on required newspaper, mailed and posted notices):

- (1) Newspaper notice. Newspaper notice shall be provided at least ~~30~~ 15 days before but not more than 45 days before the date of the zoning board of appeals public hearing.
- (2) Mailed notice. Notice shall be mailed to the applicant, all owners of property within 250 feet of the subject property at least ~~30~~ 15 days before the date of the zoning board of appeals public hearing.
- (3) Posted notice. Notice (signs) shall be posted at least 15 days but not more than 45 days before the date of the zoning board of appeals public hearing.

(Ord. No. [RZ-2018-11-06](#), § I, Exh. A(27.326), 11-27-2018)

Sec. 27-1097. Zoning board of appeals public hearing and decision.

- (a) The zoning board of appeals shall hold a public hearing to consider all variance applications.
- (b) At the public hearing, the community development department shall introduce the variance request and outline its recommendation based on the criteria of section 27-1098. The applicant for variance shall have the right to present testimony and other evidence in support of the variance request. Proponents and opponents of the variance request shall each be permitted a minimum of ten minutes **for each variance request** per side to present their testimony and any documentary evidence. **For multiple variance requests, an additional time frame of ten minutes for each variance request may be allotted to both sides.** The applicant shall have the right to refute by rebuttal any evidence presented by the other side, such rebuttal being limited to five minutes. The session shall

be recorded. If the applicant so desires, the applicant may supply a court reporter to take down testimony at the hearing at the applicant's own expense. The zoning board of appeals may ask questions and seek clarification of any testimony or evidence presented.

- (c) Following the close of the hearing and consideration of all testimony, documentary evidence and matters of record, the zoning board of appeals shall act to approve the variance, approve the variance with conditions or deny the requested variance. The zoning board of appeals is also authorized to defer action on the variance or allow the applicant to withdraw the variance without prejudice. The board's final decision shall be made within a reasonable period of time but in no event more than 60 days from the date of the close of the hearing.

DIVISION 4. GENERAL DEFINITIONS

Sec. 27-1375. Terms beginning with "Q"—Reserved.

Sec. 27-1378. Terms beginning with "T".

Sec. 27-1384. Terms beginning with "Z".

Sec. 27-1375. Terms beginning with "Q"

Quasi-judicial officers, boards, or agencies. An officer, board, or agency appointed by a local government to exercise delegated, quasi-judicial zoning powers including hearing appeals of administrative decisions by such officers, boards, or agencies and hearing and rendering decisions on applications for variances, special exceptions, special land use permits, or other similar permits not enumerated herein as a zoning decision, pursuant to standards for the exercise of such quasi-judicial authority adopted by Chapter 27 Zoning Ordinance.

Sec. 27-1378. Terms beginning with "T".

Territorial boundaries. The area lying within the corporate limits of the City of Brookhaven.

Three-flat building. A building occupied by three dwelling units, all of which are located on a single lot that is not occupied by other principal buildings. The three dwelling units are attached and may be located on separate floors or side-by-side.

Sec. 27-1384. Terms beginning with "Z".

Zoning. The power of local governments to provide within their respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such zones or districts and for the regulation of development and the improvement of real estate within such zones or districts in accordance with the uses of property for which such zones or districts were established.

Zoning decision. Final legislative action by a local government which results in:

- (1) The adoption or repeal of a zoning ordinance.
- (2) The adoption of an amendment to a zoning ordinance which changes the text of the zoning ordinance.
- (3) The adoption or denial of an amendment to a zoning ordinance which rezones property from one zoning classification to another.
- (4) The adoption or denial of an amendment to a zoning ordinance by a municipal local government which zones property to be annexed into the municipality.
- (5) The grant or denial of a permit relating to a special use of property.
- (6) The grant or denial of a variance or conditions concurrent and in conjunction with a decision pursuant to subparagraphs (1) or (5) of this paragraph.

~~Final legislative action by a local government that results in:~~

- ~~(1) Adoption of a zoning ordinance;~~
- ~~(2) Approval of a zoning ordinance text amendment;~~
- ~~(3) Approval of a zoning map amendment; or~~
- ~~(4) Approval of a special land use permit.~~

(Ord. No. [RZ-2018-11-06](#), § I, Exh. A(27.454), 11-27-2018)