



4800 Ashford Dunwoody Road
 Dunwoody, Georgia 30338
 dunwoodyga.gov | 678.382.6700

MEMORANDUM

To: Mayor and City Council

From: Madalyn Smith, Senior Planner

Date: September 13, 2021

Subject: Text Amendments
 Chapter 8, 16, 26, and 27

ITEM DESCRIPTION

The general purpose of the proposed text amendments is to clarify vague language and correct inconsistencies.

PLANNING COMMISSION REVIEW

On its August 10, 2021 meeting, the Planning Commission reviewed the proposed text amendments to Chapters 8, 16, 26, and 27. The amendments were discussed chapter by chapter and four separate motions were made. The Commission generally expressed support of all proposed changes.

Chapter 8: The Commission recommended approval with a 6-0 vote.

Chapter 16: The Commission recommended approval with a 6-0 vote.

Chapter 26: The Commission recommended approval with a 6-0 vote.

Chapter 27: The Commission recommended approval, subject to an amendment to Section 150.1, with a 6-0 vote. The Commission recommended the amendment to Section 150.1 reference the code section detailing the appeals process.

DISCUSSION

#1 - Section 8-27, Design Professional Requirements:



This item is a request to require a licensed engineer or architect to seal plans for residential structures. Currently, all residential structures are exempt from this requirement. However, new single-family detached homes in Dunwoody are typically 3,000 to 5,000 SF, well above the national average for the United States, and this amendment is necessary to properly ensure the safety and welfare of existing and future Dunwoody residents.

#2 - Section 8-27, Time Limitations:

This item is a request to clarify the language for expired permits and specify a path to reinstate expired permits. The existing language does not address how to reinstate permits after they have been issued. This amendment aligns the code with established department policy. This amendment specifies that there is an applicable fee to reinstate an issued permit. A companion resolution is included in this package specifying this change.

#3 - Section 16-29, Time Limitations:

This item is a request to add time limitations to development permits. This is currently not specified in the code and would reflect the language as seen in Section 8-27.

#4 - Section 26-8, Obstruction of the Right-of-Way:

This item is a request to add regulations that outlaw obstruction in the Right-of-Way. Obstruction of the right of way could include, for example, overgrown hedges spilling out onto the sidewalks or road, which creates an obstacle for pedestrians and can interfere with the line of sight for drivers. Obstruction of the right-of-way poses a threat to public safety and the proposed amendment is a common provision in other municipalities to rectify this issue.

#5 - Section 27-30, Expired and Obsolete Zoning Districts:

This item is a request to add an appendix containing the lot and building regulations for the R-CH (Single-Family Cluster Residential) and R-CD (Residential Community Development) zoning districts. Dunwoody has 2 expired zoning districts, R-CH and R-CD that still exist on the zoning map. There are 8 remaining subdivisions (~420 lots) that maintain an R-CH or R-CD zoning classification, but properties may no longer rezone to R-CH or R-CD. The Code acknowledges the existence of these subdivisions, but the zoning regulations that govern these properties was removed. Staff proposes to reintegrate these regulations, with no changes to their previous text, for ease of reference.



#6 - Section 27-58, Rear Setback on Corner Lots:

This item is a request to amend the lot regulations for single-dwelling districts. As written, corner lots are not subject to a rear setback, only street and interior side setbacks. This provision, enacted in 2014, conflicts with standard practice, as well as most Dunwoody subdivision plats. The amendment redefines the rear setback as the lot line parallel to the lot frontage. Staff recommends that the code be updated to reflect this standard method for determining a rear setback.

#7 - Section 27-72, O-I Allowed Uses:

This item is a request to amend the allowed uses in the O-I zoning district. Staff was prompted to propose this amendment after receiving a business license request for a jewelry store located in an office building in the O-I zoning district, which was initially denied.

Currently, retail is not permitted in the O-I district, but staff proposes to allow *Other food and beverage sales* and *Other retail sales* subject to the following conditions:

- a. Not permitted in any residential buildings or buildings with a residential component.
- b. Allowed only as an accessory use on the ground floor of a multi-story office or institutional building.
- c. Maximum floor area of the tenant suite is limited to 2,000 square feet.

Conditions (a) and (b) ensure that retail uses do not encroach into residential areas. The O-I district has several multi-family residential buildings that are considered legal nonconforming ("grandfathered-in"). Condition (c) is intended to encourage a boutique retail experience, rather than attracting big-box or large chain retailers. The overall purpose of the conditions is to ensure that the character of the O-I district remains the same while also allowing property owners of multi-story offices complexes flexibility to legally market and rent space to a larger pool of tenants. This would be a major benefit given the recent high commercial vacancy rates. Staff recommends approval of this amendment.

#8 - Section 27-111, Use Determinations:

This item is a request to amend Section 27-111 by removing public notice requirement for use determinations. Section 27-111 part (5) details the criteria the Director uses to make use determinations and requires all decisions to be published and a notice sent out to adjacent property owners.



Use determinations are an everyday occurrence and a normal part of the general operations of a planning and zoning division. It would be an impossible undertaking to provide public notification for every use determination. For these reasons, staff recommends that this requirement be removed from Section 27-111.

#9 - Section 27-147, Residential Infill:

This item is request to amend the Director's ability to make determinations whether contextual regulations for lot size, width, frontage, and setbacks apply. The current text is imprecise but the intention of the code is to allow flexibility in the application of contextual regulations. It is staff's opinion that the proposed amendment more clearly communicates the intention of the code and recommends approval without changing any of the applicable standards.

10 - Section 27-174, Relative's Residences:

This item is a request to remove a sentence from Sec. 27-174, which governs relative's residences. The existing code stipulates that a second kitchen facility may be constructed in a detached house for the exclusive use of relatives of the property owner; it also stipulates that the unit must be removed once it is vacated. The intent of this stipulation is to prevent the relative's residence from being rented by someone outside the household once the relative vacates. However, this section of the code is logistically challenging to enforce, as well as redundant. The residential use category is already written to prevent two households from living on a property zoned for single family residential use. For this reason, staff recommends approval of the amendment to remove the described provision.

11 - Section 27-439 & 27-442, Posted Notice for Special Administrative Permits:

This item is a request to amend the posted notice requirements for Special Administrative Permits.

Staff recommends adding a sentence to Sec. 27-439 specifying that decisions will be posted on the City's webpage. This is an already established policy staff follows.

Staff recommends removing the requirement in Sec. 27-442 that decisions must be published in the newspaper for Special Administrative Permits. Since decisions are posted online, it is redundant.

12 - Section 27-104 & Section 27-574.5, Perimeter Center Open Space:



This item is a request to amend the Perimeter Center regulations by removing the requirement that developments with a floor-area-ratio (FAR) over 12 to provide an additional type of open space and to remove the definition for floor-area-ratio.

This amendment would have no effect on the amount of open space required, just the type. There are 4 types of open space defined: plaza, green, commons, and park. The requirement for an additional type of open space is unnecessary for several reasons. First, an FAR of 12 is very high and very few developments, if any, would reach that. This regulation also has little value, since the maximum types of open space that can be used to meet the requirement is two. This is also the only requirement in the code that utilizes FAR; the City does not specify a maximum FAR, instead we use maximum lot coverage ratios. If FAR is removed from the Perimeter Center regulations, the definition in Sec. 27-574.5 should be removed as well.

13 - Section 27-402 & Section 27-425, Concurrent Variances & Concurrent Special Exceptions:

This item is a request to include regulations for concurrent variances and concurrent special exceptions. This allows the Planning Commission and the City Council to consider and grant variances and special exceptions when applied for as part of a rezoning or special land use permit application. This removes the need to go through two separate processes for development projects that require both a zoning action and a form of relief.

This amendment would not change the criteria for variances or special exceptions. The Planning Commission and the City Council would simply apply the regular approval criteria. When making its recommendation, the Planning Commission will make a recommendation for each concurrent variance or each concurrent special exception with its recommendation for the rezoning or the special land use permit. The City Council would then include the concurrent variance or concurrent special exception as a zoning condition.

14 - Appeals:

This item is a request to amend multiple sections in multiple chapters of the code related to appeals. Overall, the goal of these amendments is to establish a consistent procedure and timeline for all appeals, for the benefit of both applicants and staff.



4800 Ashford Dunwoody Road
 Dunwoody, Georgia 30338
 dunwoodyga.gov | 678.382.6700

There is an established, standard process for requesting appeals in Chapter 27, Article V, Division VIII (Sec. 27-456 to 464). This section establishes that those aggrieved by an administrative decision, i.e. the issuance of a permit, the issuance of a license, or a determination by the director, may appeal to the Zoning Board of Appeals.

Sec. 27-150.1 contradicts the established process by specifying that those appealing the decision to deny an administrative permit for telecommunication facilities must be brought before the mayor and city council. Staff recommends that the contradicting portion of Sec. 27-150.1 be removed and that appeals follow the established procedure.

In Chapter 16, Land Development Regulations, there is no standard process for appeals. There is an appeals process specified in section 16-114, 16-190, 16-202, 16-222, and 16-272. The sections contradict one another and the timelines do not make sense. These sections will be amended to reference the standard appeals process.

Staff recommends to amend Section 16-33 and add a new division: Chapter 16, Article V, Division 2. The amended Section 16-33 and new Division 2 will establish a standard process to appeal administrative decisions that were made based on Chapter 16's regulations. These sections mirror the process detailed in Chapter 27.

Appeals to decisions made in accordance with article II will follow the procedure detailed in Section 16-33. Appeals to decisions made in accordance with article III or IV will follow the procedure detailed in article V, division 2.

ARTICLE V. — VARIANCES AND ADMINISTRATIVE APPEALS^[14]

Footnotes:

--- (14) ---

Editor's note— Section 1 of Ord. No. 2015-01-04, adopted Jan. 26, 2015, added a new art. V, and redesignated former div. 6, "Subdivision Variances," § 16-256 as new div. 1, § 16-271 to read as herein set out.

DIVISION 1. - VARIANCES

Sec. 16-271. - Authority.

- (a) The zoning board of appeals is authorized to hear and decide applications for variances from the strict application of articles III or IV, where strict application of any of the regulations of this articles III or IV would result in exceptional and undue hardship to the owner of such property. These regulations provide the minimum necessary requirements; thus, variances from the requirements of articles III or IV may be authorized only upon the zoning board of appeals making all of the following findings:
- (1) By reason of the shape or topographical conditions of a parcel of property which were not created by the owner or applicant, the strict application of articles III or IV would deprive the property owner of rights and privileges enjoyed by other similarly situated property owners in the same zoning district;
 - (2) By reason of the shape or topographical conditions of a parcel of property which were not created by the owner or applicant, there is no opportunity for development under any design configuration allowed by these subdivision regulations unless a variance is granted;
 - (3) The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute the grant of a special privilege inconsistent with the limitations upon other property owners in the zoning district in which the subject property is located;
 - (4) The requested variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located; and
 - (5) The requested variance will not in any manner vary the provisions of the city zoning ordinance, the city comprehensive plan or the zoning map of the city.
- (b) No variance may be granted by the zoning board of appeals to:
- (1) Allow any variance which conflicts with or changes any requirement enacted as a condition of zoning or of a special land use permit by the city council;
 - (2) Increase the density allowed on the property; or
 - (3) Vary the requirements set forth [in] section 16-241.
- (c) Applications for variances must be submitted in writing to the community development director along with the application for sketch plat approval or if a variance becomes necessary after the approval of the sketch plat, within 30 days of discovery of the conditions requiring such a variance from the preliminary plat. Applications must contain all those materials and documents required by the community development director that are necessary to demonstrate the necessity for the variance and compliance with the requirements of this Code. At a minimum, the variance application must contain a full explanation of the reasons for the variance and must include a plat that shows the proposed subdivision designed without the variance and a plat that shows the proposed subdivision designed with the variance.
- (d) When the variance application is first considered by the zoning board of appeals, the community development director must provide the zoning board of appeals with written findings of fact and a recommendation for approval or disapproval of the variance.

- (e) Applications for variances that accompany the application for sketch plat approval must be heard by the zoning board of appeals prior to the approval of a sketch plat.
- (f) After the filing of a complete application for a preliminary plat variance, the application must be placed on the next available meeting agenda of the zoning board of appeals. All land development activity associated with a proposed variance from a preliminary plat must cease until a final decision on the variance is made by the zoning board of appeals. Land development activity that is not related to the proposed variance may continue unabated.
- (g) All decisions by the zoning board of appeals approving or disapproving a variance must be issued in writing and must provide the grounds for the decision of the zoning board of appeals. The zoning board of appeals must issue a final decision on a variance submitted with the application for a sketch plat at the same time that it issues the final decision approving or disapproving the sketch plat. The zoning board of appeals must issue a final decision on a variance from the preliminary plat within 50 days after the first meeting at which the zoning board of appeals considers the variance. If a final decision is not made on a subdivision plat variance in accordance with the time constraints set forth in this section, the variance will be deemed approved.
- (h) Any person or entity (i.e., an owner, applicant, adjoining neighbor or a neighbor whose property line is within 1,500 feet of the nearest property line of the proposed subdivision) aggrieved by a variance decision of the zoning board of appeals affecting a preliminary plat, may appeal such decision by filing a petition for writ of certiorari to the county superior court in accordance with state law.

(Ord. No. 2013-10-14, 1(Exh. A § 16-16.10), 10-14-2013; Ord. No. 2015-01-04, § 1, 1-26-2015)

DIVISION 2. APPEALS OF ADMINISTRATIVE DECISIONS

Sec. 16-272. - Applicability.

The procedures of this division apply to appeals of administrative decisions made in accordance with articles III or IV.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.10), 10-14-2013)

Sec. 16-273. - Authority to file.

Any person or entity (i.e., an owner, applicant, adjoining neighbor, or a neighbor whose property is within 1,500 feet of the nearest property line aggrieved by an administrative decision may appeal the decision.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.20), 10-14-2013; Ord. No. 2015-01-05, § 1, 1-26-2015)

Sec. 16-274. - Application filing.

Decisions by the community development director made pursuant to this division may be appealed to the Zoning Board of Appeals (ZBA) by filing a request with the community development director within thirty (30) days of the community development director's decision. Appeal shall be in accordance with procedures and conditions of this division. If no appeal is made within the thirty (30)-day period, the decision of the community development director is final. If an appeal is made to the ZBA, the ZBA must set a hearing date for the appeal within thirty (30) days of the appeal being requested and the decision of the ZBA is final. The thirty (30)-day appeal deadline may be waived by the ZBA if the appellant can show evidence that the appeal was filed within thirty (30) days of their actual or constructive notice of the decision.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.30), 10-14-2013; Ord. No. 2015-01-05, § 1, 1-26-2015)

Sec. 16-275. - Effect of appeal.

The filing of a complete notice of appeal stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the Zoning Board of Appeals, after the appeal is filed, that, because of facts stated in the certification, a stay would cause imminent peril to life or property. In such a case, proceedings may be stayed only by a restraining order granted by the county superior court on notice to the official whose decision is being appealed and on due cause shown.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.40), 10-14-2013)

Sec. 16-276. - Record of decision.

Upon receipt of a complete application of appeal, the community development director or other administrative official whose decision is being appealed must transmit to the Zoning Board of Appeals all papers constituting the record upon which the action appealed is taken.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.50), 10-14-2013)

Sec. 16-277. - Hearing notice.

Mailed notice of the Zoning Board of Appeals hearing must be provided to the appellant at least thirty (30) days before the date of the Zoning Board of Appeals hearing.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.60), 10-14-2013)

Sec. 16-278. - Hearing and decision.

- (a) The Zoning Board of Appeals must hold a hearing to consider all appeals of administrative decisions.
- (b) Following the close of the hearing and consideration of all testimony, documentary evidence and matters of record, the Zoning Board of Appeals must make a decision. The decision must 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. Final action on an appeal requires a simple majority vote of the board of appeals members present and voting.
- (c) In exercising its powers, the zoning board of appeal may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from. To that end the board of appeals has all the powers of the administrative official from whom the appeal was taken and may issue or direct the issuance of a permit provided all requirements imposed by all other applicable laws are met.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.70), 10-14-2013)

Sec. 16-279. - Review and approval criteria.

An appeal shall be sustained only upon a finding by the Zoning Board of Appeals that the administrative official's action was based on an erroneous finding of a material fact or that the administrative official acted in an arbitrary manner.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.80), 10-14-2013)

Sec. 16-280. - Appeals.

- (a) Any person or entity authorized by Sec. 16-273 may seek review of such decision by petitioning the county superior court for a writ of certiorari, setting forth the alleged errors. The petition must be filed within thirty (30) days of the date that the Zoning Board of Appeals renders its final decision.
- (b) When a petition is for a writ of certiorari is filed, the Zoning Board of Appeals (ZBA) must be designated the respondent in certiorari and the city the defendant in certiorari. The secretary of the ZBA is authorized to acknowledge service of a copy of the petition and writ on behalf of the ZBA, as respondent. Service upon the city as defendant must be as provided by law.

(Ord. No. 2013-10-15, § 1(Exh. A § 27-24.90), 10-14-2013; Ord. No. 2015-01-05, § 1, 1-26-2015)

~~Secs. 16-272—16-280.—Reserved.~~

Sec. 16-222. - Appeals.

Decisions by the community development director made pursuant to this division may be appealed in accordance with procedures and conditions in Chapter 16, Article V, Division 2. ~~to the city council by filing a request with the community development director within 30 days of the community development director's decision. Decisions will be posted on the city's web page and in a newspaper of general circulation within the city. The 30-day appeal period shall start to run upon the earlier of said postings. Appeal shall be in accordance with procedures and conditions in chapter 16, section 16-33. If no appeal is made within the 30-day period, the decision of the community development director is final. If an appeal is made to the city council, the city council must set a hearing date for the appeal within 30 days of the appeal being requested and the decision of the city council is final. The city council decision may be appealed only by a petition for writ of certiorari to the county superior court in accordance with state law.~~

(Ord. No. 2013-10-14, 1(Exh. A § 16-2.60), 10-14-2013; Ord. No. 2015-01-04, § 1, 1-26-2015)

DIVISION 4. - FINAL PLATS^[10]

Footnotes:

--- (10) ---

Editor's note— Section 1 of Ord. No. 2015-01-04, adopted Jan. 26, 2015, amended and reorganized former § 16-207, "Final plats" in order to create a new div. 4, §§ 16-201—16-203.

Sec. 16-201. - Applicability.

Minor subdivisions are required to be reviewed under the provisions of this division. Proposed major subdivisions are required to be reviewed under the provisions of this division after completion of all required improvements in accordance with the approved preliminary plat.

(Ord. No. 2013-10-14, 1 (Exh. A § 16-13.20), 10-14-2013; Ord. No. 2015-01-04, § 1, 1-26-2015)

Sec. 16-202. - Final plat procedure.

- (a) *Preparation.* The applicant must have a registered surveyor prepare the final plat of the subdivision. An application for final plat approval may be made when a preliminary plat of the proposed subdivision has been approved and construction of all required infrastructure is complete to ascertain its location as built, or as required by this chapter.
- (b) *Application filing.* The final plat and a fee in the amount established by the city council must be filed with the city. The final plat and as-built drawings must also be submitted in a digital format acceptable to the city.
- (c) *Plat review.*
 - (1) Upon receipt of the final plat, the community development director must forward copies of the final plat to the following city departments for certification that required improvements are complete and in conformity with the Code of Ordinances:
 - a. Appropriate official of the department of community development;
 - b. City geographic information system department;
 - c. Public works department;
 - d. Any other department or entity the community development director deems appropriate.
 - (2) Any department to which the final plat is submitted must note whether the development meets or fails to meet the requirements of this Code and of that department, specifically, whether all improvements were properly completed and whether the improvements are in conformity with the preliminary plat, when required by the procedures of this chapter. If the improvements are incomplete or if the improvements are not in conformity with the preliminary plat, the department must note the manner in which the plat fails to meet these requirements.
 - (3) Upon receipt of the annotated copies from all of the departments which received the final plat for notation, the community development director must independently review the final plat and determine whether it complies with all city zoning, environmental, and subdivision ordinances and regulations and all applicable state and federal laws. The community development director must certify in writing on the final plat his finding of whether the final plat complies with all city zoning, environmental, and subdivision ordinances and regulations and all applicable state and federal laws.

- (4) The final plat must conform to the approved preliminary plat on file with the city, when one is required by the procedures of this chapter, and must comply with the city zoning and land development ordinances, including any conditions of zoning.
- (d) *Community development director approval.*
- (1) The community development director as the designee for the governing authority of the city must approve or disapprove the final plat. If the final plat is denied, the community development director must provide the reasons for denial in writing and such writing must be given to the applicant with the denied plat. If the final plat is approved, the community development director must place the following wording on the original as follows:
- "This plat has been submitted to and accepted by the Community Development Director of the City of Dunwoody, Georgia, and has been approved as required by state law and city codes as meeting all conditions precedent to recording in the county superior court.
- Dated this _____ day of _____, _____.
- By: _____ / _____ / _____
- [Community development director as designee of the governing authority]"
- (2) Final plat acknowledgement and approval by the community development director constitute the approval, if any, required in order to file subdivision plats with the clerk of the county superior court pursuant to O.C.G.A. § 15-6-67(d).
- (e) *Appeals.* ~~The decision of the community development director to approve or disapprove the final plat may be appealed in accordance with procedures and conditions in Chapter 16, Article V, Division 2. to the city council by request in writing to the community development director within 30 days of the community development director's decision. Decisions will be published on-line, in a newspaper of general circulation within the city, and provided in writing via first class mail to adjacent property owners. The 30-day appeal period shall commence from the date written notification is sent to adjacent property owners. If no appeal is made within the 30-day period, the decision of the community development director is final. The 30-day appeal deadline may be waived by the city council if the appellant can show evidence that the appeal was filed within 30 days of their actual or constructive notice of the decision. If an appeal is made to the city council, the city council must set a hearing date for the appeal within 30 days of the appeal being requested, and the decision of the city council is final. The city council decision may be appealed only by a petition for writ of certiorari to the county superior court in accordance with state law. Any person or entity (i.e.: an owner, applicant, adjoining neighbor, or a neighbor whose property is within 1,500 feet of the nearest property line of the proposed subdivision) aggrieved by a denial or approval of a preliminary plat, may appeal by filing a petition for writ of certiorari to the county superior court in accordance with state law.~~
- (f) *Recording.* The approved final plat must be recorded with the clerk of the county superior court by the applicant and returned to the community development director.
- (g) *Dedications.* The filing and recording of the final plat by the community development director will, upon completion of the improvements by the applicant and compliance with all procedures of this chapter, be deemed an acceptance of the dedication of the streets and other public land as shown upon the plat on behalf of the public.
- (h) *Material specifications.* The final plat must be composed of mylar, or other durable, stable, and reproducible drafting medium approved by the community development director and must meet all provisions of the Georgia Plat Act, O.C.G.A. § 15-6-67.
- (i) *Scale.* Final plats must be prepared at a scale of not more than 100 feet to one inch and must have a maximum sheet size of not more than 24 inches in width and 36 inches in length, and a minimum sheet size of not less than 17 inches in width and 21 inches in length.

- (j) *Compliance with zoning ordinance.* The final plat must comply with the requirements of the city zoning ordinance and all conditions of zoning for the subject property to be shown in the upper right corner of the final plat with text height at a minimum of 0.08 inches.
- (k) *Required information.* The final plat must show the following:
- (1) Sufficient data to determine readily and reproduce on the ground the location, bearings and lengths of every right-of-way, street line, lot line, boundary line and building line, whether curved or straight;
 - (2) Tract boundary lines, land lot and district lines, city and county limit lines, right-of-way lines of streets, easements and other rights-of-way and property lines of residential lots and other sites;
 - (3) All dimensions must be accurate to the nearest one-hundredth of a foot and all angles accurate to the nearest second;
 - (4) Name and right-of-way width of each street including necessary right-of-way required by the city's plans, policies, codes, and requirements;
 - (5) Sidewalk and bike path locations and width;
 - (6) House numbers: numbers will be assigned by the city geographic information system department and placed on the final plat;
 - (7) Title, north arrow, date, scale, land lot numbers and district numbers;
 - (8) Location, dimensions and purpose of easements and areas to be dedicated to public use, common areas or sites for other than residential use with notices stating their purpose and limitations;
 - (9) Special flood hazard area contour line and setback line required by this chapter, state waters/state streams, wetlands, and required stream buffers;
 - (10) Water and sewer utility locations, and the location and type of permanent stormwater management facilities and water quality facilities;
 - (11) Lots numbered in numerical order and blocks lettered alphabetically; all lot and block numerals must be kept in a uniform sequence on all plats and units of the subdivision;
 - (12) Accurate location, material and description of monuments and markers; within each subdivision set one monument on two front corners of the property adjacent to existing rights-of-way on interior streets, or as otherwise approved by the development director; each monument must be a minimum four-inch diameter disk by 24-inch high concrete monument with brass caps set flush with finished grade; and
 - (13) Lots that may not be built upon until detailed plans for grading and drainage have been approved by the community development director.
- (l) *Space for comments, certifications.* A blank space of 50 square inches must be provided on the final plat to allow room for any stamps, notes, approval or denials as required to be placed thereon by city agencies and for the certification of the community development director and approval or denial by the city manager.
- (m) *Surveyor's and owner's acknowledgments.* The acknowledgements of the surveyor and property owner must be provided and certified on the final plat in a form approved by the city.
- (n) *Protective covenants.* The final plat may not contain protective covenants stipulating lower standards than the minimum restrictions required by the city zoning ordinance.
- (o) *Disclosure statement.*
- (1) Before any final plat for any residential subdivision and any multiphase residential development may be submitted for review by the city, a disclosure statement, sworn to by the applicant under penalty of perjury before a notary public or other officer authorized to administer oaths, must be

filed with the community development director. The disclosure statement must be in a form promulgated by the community development director and approved by the city attorney.

- (2) Any applicant for the final plat, intending to make written or oral representations to potential purchasers of homes in any residential subdivision and any multiphase residential development must submit the information specified herein on the disclosure statement which must be made available to members of the public by the community development director:
 - a. An estimated date of completion of the entire residential subdivision;
 - b. A statement of the average size of homes to be constructed in the subdivision, any specified style of architecture, landscaping, the type of construction materials to be used (i.e., brick, stone, stucco, pressboard, etc.) and the average size of lots;
 - c. A statement of the applicant's commitment to build any community amenities within the subdivision, including, but not limited to, a clubhouse, tennis courts or swimming pool;
 - d. A statement of the general terms and conditions at which the applicant proposes to dispose of the lots and/or homes in the residential subdivision;
 - e. Copies of all forms of conveyance to be used in selling lots to potential purchasers;
 - f. A statement of all deed restrictions, easements and covenants applicable to the residential subdivision;
 - g. Copies of instruments creating any deed restrictions, easements and covenants applicable to the residential subdivision;
 - h. A statement regarding whether there will be a mandatory membership in any homeowners association and if so, a copy of the budget for the association for its first year of operation including the estimated amount of the first year's assessments and the estimated amount of revenue to be subsidized by the developer; and
 - i. An explanation of the timing and method of transfer of control of the association to the homeowners where there is a mandatory membership in the homeowner's association governing the residential subdivision.
- (3) With respect to the first phase and subsequent phases of a multiphase residential development, the applicant must also submit the following information:
 - a. An estimated date of completion of each phase of a multiphase residential development and estimated date of completion of all phases of the development;
 - b. A statement of the average size of homes to be constructed in the future phases of the development, any specified type of architecture, landscaping, the type of construction materials to be used (i.e., brick, stone, stucco, pressboard, etc.), and the average size of lots;
 - c. A statement of any community amenities to be built within the development currently or in the future, including, but not limited to, a clubhouse, tennis courts or swimming pools the applicant is committed to constructing in future phases; and
 - d. A statement of the general terms and conditions at which the applicant proposes to dispose of the lots and/or homes in the future phases of the development.
- (4) If the applicant intends to make no representations or commitments to potential purchasers concerning each of the representations set forth in this subsection, the applicant must note the same in the disclosure statement filed with the community development director which statement must be made available by the community development director to the public.
- (5) After the required disclosure statement has been submitted, the community development director must examine the information provided and determine whether the information submitted is consistent with the final plat and if the information is consistent, the community development

director must approve the disclosure statement in writing within 35 days of submission of the statement.

- (6) If it appears to the community development director that a disclosure statement is incomplete or fraudulent, the community development director must disapprove the disclosure statement and notify the applicant for the final plat in writing within 14 days after the initial submission of the statement. Such notification suspends the review of the final plat by any city employee or official until the applicant files such additional information, as the community development director requires. No final plat may be certified by the community development director until such time as the community development director approves the applicant's disclosure statement.
 - (7) If at any time after approval of the disclosure statement the community development director becomes aware that the disclosure statement contains false or misleading information, or that the applicant is developing in a manner inconsistent with the approved disclosure statement, the community development director must disapprove the disclosure statement and notify the applicant in writing that the disclosure statement has been disapproved.
 - (8) Subsequent to the recording of the final plat for a residential subdivision and for each phase of a multiphase residential development, the approved disclosure statement on file with the city must be provided by any seller to potential purchasers at the execution of the purchase and sales contract or, if no such contract is executed, ten days prior to the real estate closing on any property governed by this section.
- (p) *Violations.* It is unlawful for any person to sell property in a residential subdivision or a multiphase residential development without providing a potential purchaser with a copy of an approved disclosure statement as required by subsection (o). It is unlawful for any person to provide the community development director with false or misleading information in an approved disclosure statement as required by subsection (o). It is unlawful for any person to develop in a manner inconsistent with the approved disclosure statement. Any person convicted of violating this section is subject to fine and/or imprisonment in accordance with section 1-6.

(Ord. No. 2015-01-04, § 1, 1-26-2015; Ord. No. 2019-01-01, § V, 1-28-2019)

Sec. 16-203. - Revised final plat.

- (1) The original recorded plat must be used for all revisions.
 - a. When it becomes necessary to revise an original recorded final plat due to some error, required adjustment or desired adjustment, the applicant must confer with the community development director to determine if the revision is a minor or major revision. The applicant's surveyor must make the necessary corrections on the original final plat or prepare a new tracing of that portion of the subdivision involved. The subdivision name, date and book and page number of the original recording must be noted on the new plat. If the original final plat is not available, then any proposed revision to the final plat must be considered a major change.
 - b. Major. Changes to an approved or recorded subdivision plat that would significantly alter the layout of any public street, alley, or road shown on such plat, or area reserved thereon for public use, or if it would affect any map, plan, or plat legally recorded before adoption of any subdivision regulations, such amendment shall be approved by the same procedure, rules, and regulations required for a new subdivision.
 - c. Minor. Changes to an approved or recorded subdivision plat, including but not limited to, adjusting lots and lot lines, utility easements, streets, shifting of open space and common areas, and other changes considered by the director of community development to be minor in nature and that do not create any additional lots may be approved administratively by staff as a final plat, so long as open space and amenities are not reduced or made less effective, and the overall result is not a substantially new design. The submission of official plats for

signing, recording, and for the department record shall be followed as required in this chapter.

- d. If the community development director determines the change is major, the revised plat must proceed through the approval process for major or minor subdivisions described in this Code, depending on the applicability provisions.
- (2) If the original final plat is not available, the applicant must prepare a new Mylar or other durable, stable, and reproducible drafting medium approved by the department of community development, in accordance with this subsection.
- (3) Revisions and a notation explaining the revisions must be shown in black ink on the revised plat.
- (4) A blank space consisting of not less than 50 square inches must be provided on the revised plat to accommodate required certifications.
- (5) Revised plats must be prepared at a scale of not less than 50 feet to one inch.
- (6) The revised plat must comply with the regulations of the city zoning ordinance, including all conditions of zoning, which are to be shown in the upper right hand corner of the revised plat.
- (7) The revised plat must show the following wording in black ink:
 "This revised plat has been submitted to the Community Development Director of the City of Dunwoody, Georgia, and has been approved as required by state law and municipal codes as meeting all conditions precedent to recording in the county superior court. This plat is hereby approved subject to any protective covenants shown hereon.

Dated this _____ day of _____, _____

Community Development Director City of Dunwoody, Georgia"

- (8) All revisions to original plats must be bound by the protective covenants on the original final plat and a statement to that effect must be noted in black ink on the revised plat unless noted otherwise.
- (9) Other data which may be required in support of a revised final plat are: a final engineering design report on proposed revisions and such other certificates, affidavits, endorsements, or dedications as may be required by city officials in the enforcement of this chapter.

(Ord. No. 2015-01-04, § 1, 1-26-2015; Ord. No. 2019-01-01, § VI, 1-28-2019)

Secs. 16-204—16-215. - Reserved.

DIVISION 3. - MAJOR SUBDIVISION PROCEDURE

Sec. 16-186. - Applicability.

Proposed subdivisions not eligible to be reviewed under the minor subdivision procedures of this article are required to be reviewed as a major subdivision and subsequent final plat, including major changes to revised final plats.

(Ord. No. 2015-01-04, § 1, 1-26-2015)

Sec. 16-187. - Preliminary plat procedures.

- (a) *Pre-application conference.* Before filing the preliminary plat for a subdivision for review and approval, the applicant must meet with the community development director or his designee to present a generalized concept plan for the proposed project and to discuss the procedure for approval of a subdivision plat and the requirements as to general layout of streets, reservations of open space, street improvements, drainage, sewerage, fire protection, and similar matters, as well as the availability of existing infrastructure and services. This conference will allow early evaluation of the applicant's intentions and coordination with the comprehensive plan and the zoning ordinance. This conference will also allow city officials to discuss with the applicant the necessary regulations that will properly accomplish the project.
- (b) *Application and preliminary plat required.* The owner of the land where the proposed development is to occur, or his authorized agent, must file a preliminary plat with the department of community development along with an application for approval. The application must:
 - (1) Be made on forms prepared by the department of community development;
 - (2) Be accompanied by three copies of the preliminary plat, plus one electronic/digital copy, which must be prepared by a registered civil engineer, surveyor, architect, or landscape architect, as described in these regulations and complying in all respects with these regulations;
 - (3) Be accompanied by an application fee in the amount set by the city council; and
 - (4) Include the name, address and telephone number of an agent who is authorized to receive all notices required by these regulations.
- (c) *Plat information.* The following information must be shown on the preliminary plat:
 - (1) *Boundary lines.* Perimeter boundary of the overall tract, bearings and distances, referencing the legal point of beginning;
 - (2) *Streets on or adjacent to tract.* Name, right-of-way width, and location of streets on and adjacent to the tract, and any existing railroad, sidewalk, trail, or bike lane;
 - (3) *Contour data.* Topographic contour data at no more than two-foot elevation intervals. The source of this data must be written on the plat. Existing contour data from the city geographic information system department may be used where available;
 - (4) *Tree survey.* A tree survey, in compliance with article II, division 6, or tree sample calculations where allowed by the city arborist which may be submitted as a separate plan;
 - (5) *Historic resources.* Any building, structure, site or district identified as historic by the county historic preservation commission, the county historic resources survey, the city historic preservation commission, if one is established, the comprehensive plan, by listing on the Georgia or national register of historic places, or by listing as a national historic landmark;
 - (6) *Natural features on tract.* Other conditions on the tract such as stream buffers, state waters, cemeteries, wetlands, existing structures, special flood hazard areas (where available), rock outcroppings, and archeological resources;

- (7) *Soils*. Location of soils as shown on soil survey of DeKalb County, Georgia, by the United States Department of Agriculture;
- (8) *Geographical data*. Numerical and graphic scales, north arrow, land lot and district numbers and lines, city and county names and limit lines;
- (9) *Prior subdivisions*. Name and reference of any formerly recorded subdivision crossing any of the land shown on the plat;
- (10) *Zoning district*. Show zoning district, case number and conditions of zoning;
- (11) *Permits*. Show any special administrative permit number, special land use permit number, or zoning board of appeals case number and conditions;
- (12) *Variances*. Show any administrative variance approvals;
- (13) *Septic tanks*. Show existing septic tank and drain field location or note absence;
- (14) *Sewers*. Show size and location of sanitary sewer mains available;
- (15) *Sewer easements*. Show a sanitary sewer easement with a minimum width of 15 feet for lines not within public rights-of-way, unless otherwise required by the county water and sewer department;
- (16) *Water mains*. Show size and location of water mains and fire hydrants;
- (17) *Water main easements*. Show a water main easement with a minimum width of 15 feet for county maintained lines not within right-of-way, unless otherwise required by the county water and sewer department;
- (18) *Fire hydrants*. Show new fire hydrants and eight-inch fire lines;
- (19) *Wetlands*. Provide wetlands determination from U.S. Army Corps of Engineers;
- (20) *Receiving waters*. Provide distance to and name of receiving waters;
- (21) *Certificate of conformity*. Certification by the applicant that no lots platted are non-conforming or will result in any non-conforming lots;
- (22) *Bury pits*. Show location of any existing inert waste bury pits;
- (23) *Seal*. All sheets of plats must be sealed by a professional engineer, architect, surveyor, or landscape architect currently registered in the state;
- (24) *Title*. The title under which the proposed subdivision is to be recorded, if known, with the name of the property owners and designers and the date of the plat;
- (25) *Street names*. The names of all proposed streets;
- (26) *Rights-of-way*. Street rights-of-way and widths indicated, including any necessary right-of-way required for improvements as shown on the comprehensive transportation plan;
- (27) *Sidewalks*. All proposed sidewalk and bike lane locations;
- (28) *Lots*. Lot lines, lot numbers, block letters, and the total number of proposed lots within the development;
- (29) *Dedications*. Sites, if any, to be dedicated or reserved for common areas, public parks, open space, schools, playgrounds, multi-use trails, or other public uses, together with the purpose and the conditions or limitations of these dedications, if any;
- (30) *Yards*. Minimum building setback lines as required under the yard requirements of the zoning ordinance;
- (31) *Zoning conditions*. All conditions of zoning and proposed deed restrictions must be recited on the preliminary plat;

- (32) *Corner lots.* Show that corner lots must have an extra width of not less than 15 feet more than required for interior lots for the zoning district within which they are located;
 - (33) *Transitional buffers.* Show transitional buffers, if any, and any required screening fencing;
 - (34) *BMPs.* Show conceptual location of stormwater management and water quality BMP facilities on preliminary plat;
 - (35) *Covenants.* Indicate whether the proposed subdivision will be subject to private covenants and whether a homeowner's association will be established;
 - (36) *Fencing.* Show any required fencing around detention ponds, if required; and
 - (37) *Electrical service.* Show the location of electrical service.
- (d) *Additional Information.* The following additional information must be submitted with the preliminary plat:
- (1) *Owner consent.* The property owner must consent in writing to the proposed development in a consent affidavit provided by the community development director with the application;
 - (2) *Taxes.* Provide statement from the county tax commissioner certifying that all ad valorem taxes on the property have been paid;
 - (3) *Location.* A small map of the city depicting the subdivision location within the city;
 - (4) *Vicinity map.* Vicinity map at a scale of 400 feet to one inch showing the location of the tract with reference to surrounding properties, streets, municipal boundaries, and streams within 500 feet of the tract, and showing zoning districts of adjoining property;
 - (5) *Adjacent properties.* Names of adjoining property owners and the zoning classification of adjacent properties; and
 - (6) *Engineer.* Name, address and phone of developer and engineer on plat.
- (e) *Scale.* Preliminary plats must be prepared at an appropriate scale of not more than 100 feet to one inch. Maximum sheet size may not exceed 24 inches by 36 inches, with a minimum text size of 0.08 inches.
- (f) *Application submittal.*
- (1) An application will be considered complete and ready for processing only when it fully complies with the requirements of this article.
 - (2) If the application and preliminary plat are not accepted, the community development director must inform the applicant of the deficiencies and request the applicant to resubmit the application and preliminary plat with the additional information.
- (g) *Referral of preliminary plat for review.*
- (1) Upon official acceptance of the application and the preliminary plat, the community development department, public works, and any other city or county department the community development director determines should be consulted for the particularities of the proposed subdivision, shall review the preliminary plat. As part of its review, each such department and receiving entity must make comments and recommendations regarding any required changes necessary to comply with all applicable regulations.
 - (2) Once the community development director has received each department's comments and recommendations, the community development director must either notify the applicant that the preliminary plat has been approved or notify the applicant that revisions to the preliminary plat are required.
 - (3) If a preliminary plat is not approved within 180 days of the official acceptance of the application, the application and preliminary plat is considered withdrawn without further action by the city. The community development director must approve the preliminary plat if the application and

preliminary plat conform to all requested revisions, the requirements of this Code and state law and must deny the preliminary plat if the application and preliminary plat do not conform to all requested revisions, the requirements of this Code or state law.

(Ord. No. 2013-10-14, 1(Exh. A § 16-13.10), 10-14-2013; Ord. No. 2015-01-04, § 1, 1-26-2015; Ord. No. 2019-01-01, § II, 1-28-2019)

Editor's note— Section 1 of Ord. No. 2015-01-04, adopted Jan. 26, 2015, amended, renumbered and retitled former § 16-206, "Sketch plat/preliminary plat," as § 16-187 to read as herein set out.

Sec. 16-188. - Public notice.

- (1) The applicant must place a public notification sign on the site of the proposed subdivision. The sign must remain in place of at least 30 days. The community development director must verify that the sign has been posted. If applicant fails to properly post the required sign, the preliminary plat may not be approved until the applicant has properly posted the required notification sign.
- (2) Once the application has been submitted, the applicant and members of the public may submit written comments to the community development director in support of or in opposition to the preliminary plat.
- (3) Following public notice period and determination that the application complies with all city codes, the community development director is authorized to approve or disapprove the proposed preliminary plat in accordance with the approval criteria of this article.

(Ord. No. 2015-01-04, § 1, 1-26-2015; Ord. No. 2019-01-01, § III, 1-28-2019)

Sec. 16-189. - Compliance with design and improvement standards and approval criteria.

- (a) Subdivisions eligible for processing as major subdivisions are subject to compliance with all applicable land development regulations, including the design and improvement standards contained in article IV of this chapter.
- (b) Approval criteria.
 - (1) The community development director may not approve a preliminary plat unless it is found that:
 - a. Provisions have been made for a water supply system that is sufficient in terms of quantity, dependability, and quality for purposes of health, emergency, and adequate fire protection for the subdivision proposed;
 - b. If a public sewage system is proposed, adequate provision has been made for such a system and, if other methods of sewage disposal are proposed, that such systems will comply with federal, state, and local laws and regulations;
 - c. Adequate areas have been allocated within a subdivision to meet the regulations in this chapter for the long-term collection, management, and treatment of stormwater;
 - d. The proposed subdivision is designed to protect floodplains, watercourses, wetlands, exceptional or specimen trees and woodlands;
 - e. No platting of lots within the subdivision will create any non-conforming lots or increase the non-conformity of existing non-conforming lots on property within or adjacent to the subdivision;
 - f. If the subdivision abuts a state highway, all applicable statutory provisions are followed, including the rules of state department of transportation;

- g. The proposed subdivision meets all the requirements of this chapter, the city zoning ordinance, the comprehensive plan, the comprehensive transportation plan, and all other standards and regulations adopted by all boards, commissions, agencies, and officials of the city and all other applicable laws from other relevant jurisdictions;
 - h. A properly issued certificate of appropriateness, when the subdivision or portions thereof lie within a designated historic area that required such a certificate as may be required by state law or this Code;
 - i. Lot lines have been laid out so as to minimize crossing municipal or county boundaries; and
 - j. All requirements of the preliminary plat procedures have been fulfilled.
- (2) The community development director may require the applicant to submit a site plan for any lot to demonstrate that the lot contains adequate buildable area that is suitable for the intended use.
- (3) After review of the preliminary plat and related comments, and where, in the judgment of the community development director, the preliminary plat conforms to all of the requirements of this chapter and the city zoning ordinance, all conditions of zoning, and any other applicable city regulations or law the preliminary plat shall stand approved. The following wording for approval must be shown on the preliminary plat:

"This preliminary plat has been submitted to and approved by the City of Dunwoody, on this _____ day of _____, _____.

By: _____ (By Dir.)

Community Development Director, City of Dunwoody, Georgia"

- (c) *Effect of approval.* The preliminary plat does not constitute nor provide assurance of approval of the final plat, but is to be used as the development design for the subdivision and for the acquisition of a development permit as provided for in the city zoning ordinance. The preliminary plat must be submitted to the community development department in a digital format acceptable to the city, prior to or simultaneous with an application for a development permit.
- (d) *Lapse of approval.* The preliminary plat expires 24 months from the date of its approval. If more than 50 percent of linear feet of total road in the entire development shown on the preliminary plat is complete at the expiration of 24 months from the date of the approval of the preliminary plat, then the community development director is authorized to grant a one-time, one-year extension of the approval of the preliminary plat. An expired preliminary plat is null and void and is of no effect. An expired preliminary plat may not be renewed.
- (e) *Preliminary plat amendments.* If the approved preliminary plat is amended or altered by the applicant, without an approved variance, after approval as a preliminary plat, then the applicant is required to resubmit the revised preliminary plat and begin anew the application process contained in this division.

(Ord. No. 2015-01-04, § 1, 1-26-2015; Ord. No. 2019-01-01, § IV, 1-28-2019)

Sec. 16-190. - Appeals.

The decision of the community development director to approve or disapprove the preliminary plat may be appealed ~~in accordance with procedures and conditions in Chapter 16, Article V, Division 2. to city council by request in writing to the community development director within 30 days of the community development director's decision. Decisions will be published on-line, in a newspaper of general circulation within the city, and provided in writing via first class mail to adjacent property owners. The 30-day appeal period shall commence from the date written notification is sent to adjacent property owners. If no appeal is made within the 30-day period, the decision of the community development director is final. The 30-day appeal deadline may be waived by the city council if the appellant can show evidence that the appeal was filed within 30 days of their actual or constructive notice of the decision. If an appeal is made to the city~~

~~council, the city council must set a hearing date for the appeal within 30 days of the appeal being requested, and the decision of the city council is final. The city council's decision may be appealed only by a petition for writ of certiorari to the county superior court in accordance with state law. Any person or entity (i.e.: an owner, applicant, adjoining neighbor, or a neighbor whose property is within 1,500 feet of the nearest property line of the proposed subdivision) aggrieved by a denial or approval of a preliminary plat, may appeal by filing a petition for writ of certiorari to the county superior court in accordance with state law.~~

(Ord. No. 2015-01-04, § 1, 1-26-2015)

Secs. 16-191—16-200. - Reserved.

Sec. 16-114. - Enforcement and penalties.

- (a) *Enforcement.* It is city arborist's and his/her designee duty to enforce this section. The city arborist and his/her designee has the authority to revoke, suspend, or void any development permit and the authority to suspend all work on a site or any portion thereof.
- (b) *Violation and penalties.* The person, firm, or corporation responsible for violating any of the provisions of this section may be deemed guilty of an ordinance violation. Each tree cut, damaged, or poisoned shall constitute a single offense and the responsible party shall be subject to a fine up to \$1,000.00 per tree. The Dunwoody Municipal Court has jurisdiction to try offenses to these regulations.
- (c) *Appeal.* Any person aggrieved or affected by any decision of the city arborist or his/her designee relating to the application of this section may appeal to the community development director for relief or reconsideration within 30 days from the date of the adverse determination by the city arborist. Decision by the community development director made pursuant to this division may be appealed to the zoning board of appeals (ZBA) ~~subject to the process established in Sec. 16-33 by filing a request with the community development director within 30 days of the community development director's decision.~~

(Ord. No. 2013-10-14, 1(Exh. A § 16-8.90), 10-14-2013; Ord. No. 2015-01-04, § 1, 1-26-2015; Ord. No. 2017-10-19, § I, 10-9-2017; Ord. No. 2018-07-13, § I, 7-23-2018)

Sec. 16-33. - Appeals of administrative decisions.

- (a) *Applicability.* The procedures of this division apply to appeals of administrative decisions authorized under these land development regulations in Article II.
- (b) *Authority to file.* Any person or entity (i.e.: an owner, applicant, adjoining neighbor, or a neighbor whose property is within 1,500 feet of the subject property aggrieved by an administrative decision may appeal the decision.
- (c) *Application filing.* Decisions by the community development director made pursuant to this division may be appealed to the zoning board of appeals (ZBA) by filing a request with the community development director within 30 days of the community development director's decision. Appeal shall be in accordance with procedures and conditions of this division. If no appeal is made within the 30-day period, the decision of the community development director is final. If an appeal is made to the ZBA, the ZBA must set a hearing date for the appeal within 30 days of the appeal being requested and the decision of the ZBA is final. The 30-day appeal deadline may be waived by the ZBA if the appellant can show evidence that the appeal was filed within 30 days of their actual or constructive notice of the decision.
- (d) *Effect of appeal.* The filing of a complete notice of appeal stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the zoning board of appeals, after the appeal is filed, that, because of facts stated in the certification, a stay would cause imminent peril to life or property. In such a case, proceedings may be stayed only by a restraining order granted by the superior court on notice to the official whose decision is being appealed and on due cause shown.
- (e) *Record of decision.* Upon receipt of a complete application of appeal, the community development director or other administrative official whose decision is being appealed must transmit to the zoning board of appeals all papers constituting the record upon which the action appealed is taken.
- (f) *Hearing notice.* Mailed notice of the zoning board of appeals hearing must be provided to the appellant at least 30 days before the date of the zoning board of appeals hearing.
- (g) *Hearing and decision.*
- (1) The zoning board of appeals must hold a hearing to consider all appeals of administrative decisions.
 - (2) Following the close of the hearing and consideration of all testimony, documentary evidence and matters of record, the zoning board of appeals must make a decision. The decision must 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. Final action on an appeal requires a simple majority vote of the board of appeals members present and voting.
 - (3) In exercising its powers, the zoning board of appeal may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from. To that end the board of appeals has all the powers of the administrative official from whom the appeal was taken and may issue or direct the issuance of a permit provided all requirements imposed by all other applicable laws are met.
- (h) *Review and approval criteria.* An appeal shall be sustained only upon a finding by the zoning board of appeals that the administrative official's action was based on an erroneous finding of a material fact or that the administrative official acted in an arbitrary manner.
- (i) *Appeals.*
- (1) Any person or entity authorized by section 16-33 (b) may seek review of such decision by petitioning the superior court for a writ of certiorari, setting forth the alleged errors. The petition must be filed within 30 days of the date that the zoning board of appeals renders its final decision.

- (2) When a petition is for a writ of certiorari is filed, the zoning board of appeals must be designated the respondent in certiorari and the city the defendant in certiorari. The secretary of the zoning board of appeals is authorized to acknowledge service of a copy of the petition and writ on behalf of the zoning board of appeals, as respondent. Service upon the city as defendant must be as provided by law.
- ~~(c) — *Application filing.* Decisions by the community development director made pursuant to this division may be appealed to the zoning board of appeals (ZBA) by filing a request with the community development director within 30 days of the community development director's decision. Decisions will be published on-line, in a newspaper of general circulation within the city, and provided in writing via first class mail to adjacent property owners. The 30-day appeal period shall commence from the date written notification is sent to adjacent property owners. Appeal shall be in accordance with procedures and conditions of this division. If no appeal is made within the 30-day period, the decision of the community development director is final. If an appeal is made to the ZBA, the ZBA must set a hearing date for the appeal within 30 days of the appeal being requested and the decision of the ZBA is final. The 30-day appeal deadline may be waived by the ZBA if the appellant can show evidence that the appeal was filed within 30 days of their actual or constructive notice of the decision.~~
- ~~(d) — *Effect of appeal.* The filing of a complete notice of appeal stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the zoning board of appeals, after the appeal is filed, that, because of facts stated in the certification, a stay would cause imminent peril to life or property. In such a case, proceedings may be stayed only by a restraining order granted by the superior court on notice to the official whose decision is being appealed and on due cause shown.~~
- ~~(e) — *Record of decision.* Upon receipt of a complete application of appeal, the community development director or other administrative official whose decision is being appealed must transmit to the zoning board of appeals all papers constituting the record upon which the action appealed is taken.~~
- ~~(f) — *Hearing notice.* Mailed notice of the zoning board of appeals hearing must be provided to the appellant at least ten days before the date of the zoning board of appeals hearing.~~
- ~~(g) — *Hearing and decision.*~~
- ~~(1) — The zoning board of appeals must hold a hearing to consider all appeals of administrative decisions.~~
- ~~(2) — Following the close of the hearing and consideration of all testimony, documentary evidence and matters of record, the zoning board of appeals must make a decision. The decision must 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. Final action on an appeal requires a simple majority vote of the board of appeals members present and voting.~~
- ~~(3) — In exercising its powers, the zoning board of appeal may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from. To that end, the board has all the powers of the administrative official from whom the appeal was taken and may issue or direct the issuance of a permit provided all requirements imposed by all other applicable laws are met.~~
- ~~(h) — *Review and approval criteria.* An appeal shall be sustained only upon a finding by the zoning board of appeals that the administrative official's action was based on an erroneous finding of a material fact or that the administrative official acted in an arbitrary manner.~~

(Ord. No. 2013-10-14, 1(Exh. A § 16-3.80), 10-14-2013; Ord. No. 2015-01-04, § 1, 1-26-2015)

The file ARTICLE 16 ORDINANCE.rtf is not available for viewing.