

# **CHATHAM COUNTY ZONING ORDINANCE**

## **SECTION 10 – BOARD OF APPEALS**

### **SECTION 10**

#### **BOARD OF APPEALS**

##### Sec. 10-1 Authority

The Board of Appeals, which has been created by an Ordinance of the Commissioners of Chatham County dated August 24, 1962, shall have full and complete jurisdiction as hereinafter set forth.

##### Sec 10-2 Rules and Procedures

The Board of Appeals shall elect one of its members as Chairman, who shall serve for one year or until he is elected. The Board of Appeals shall appoint a secretary who may be an officer or employee of the city or of the Planning Commission. The Board of Appeals shall have authority to adopt rules of procedure. Meetings of the Board of Appeals shall be held at the call of the Chairman and at such other times as said Board may determine. The Chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. The decision of the board of appeals shall be by resolution, which resolution shall contain a statement of the grounds of its decision or action. The full text of the resolution shall be sent to the appellant. No appeal requesting the same relief in regard to the same property shall be received or heard by the board of appeals for a period of 12 months following the date of such resolution, except that this limitation shall not affect the right of the board to grant a rehearing as provided in the rules of procedure adopted by the Board.

### Sec. 10-3 Administrative Assistance

The Zoning Administrator shall provide such technical, administrative, and clerical assistance and office spaces as is required by the Board of Appeals to carry out its function under the provisions of these regulations.

### Sec. 10-4 Appeals

#### Sec. 10-4.1 Who May Appeal

Appeals to the Board of Appeals may be taken by a person aggrieved or by any officer, department, board, or bureau of the governing authority affected by any decision of the Zoning Administrator.

Such appeal shall be filed no later than 30 days after the date of notification of the decision appealed from, by filing with the Zoning Administrator and with the Board of Appeals a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

#### Sec. 10-4.2 Legal Proceedings Stayed.

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Appeals after the notice of appeal shall have been filed with him, that by reason of facts stated in certificate a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or be a court of record on application, on notice to the Zoning Administrator, an on due cause shown.

#### Sec. 10-4.3 Presentation of Evidence

The appellant, and any public agency or private individual shall be entitled to present evidence on matters before the Board of Appeals, and said Board may request technical service, advice, data, factual evidence from the Planning Commission and the governing authorities for assistance in reaching decisions.

#### Sec. 10-4.4 Extent of Board of Appeals' Power

The Board of Appeals may, in conformity with the provision of these regulations, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination of the Zoning Administrator and to the end shall have all the powers of the Zoning Administrator. The Board of Appeals may direct the issuance of a permit. It shall be the duty of the Zoning Administrator to carry out the decisions of the Board of Appeals.

#### Sec. 10-4.5 Board of Appeals Decision Invalid After Six Months.

A building permit issued by the authority of the Board of Appeals shall become invalid unless the work authorized by such permit shall have commenced within six months of its issuance, or if work or development authorized by such permit is suspended or abandoned for a period of six months after the work or development has commenced. The valid time of a building permit issued by the Board of Appeals may be extended by the Board for good cause.

#### Sec. 10-5 Public Hearing

##### Sec. 10-5.1 Notice of Hearing Shall be Given.

Before making its decision on an appeal, request for permission to establish a use, request for a variance, or on any other matter within the Board of Appeals' purview, said Board shall hold a public hearing thereon. At least 15 days' notice of the time and place of such hearing shall be sent to the appellant or petitioner, to the Planning Commission, to the Zoning Administrator, and to the owner of all properties either adjoining the property with which the hearing is concerned or situated directly across a public right-of-way from said property. Such notice shall contain the name of the appellant or petitioner, the date, time, and place fixed for the hearing and a brief statement of the error alleged by the appellant, or of the variance, use requiring special approval, or other relief requested.

##### Sec. 10-5.2 Erection of Sign

At least 12 days prior to the date of the scheduled public hearing of an appeal, the applicant shall erect a sign, to be furnished by the Zoning Administrator, on the land with which the appeal is concerned.

This sign shall be non-returnable, weather-resistant, or equal, shall have a minimum size of 30 x 40 inches, show the application number, the type of relief sought, the schedule date, time, and place of public hearing, and the telephone number to call for further information. Once the petition is disposed of, the applicant must remove and dispose of the sign within ten (10) days.

#### Sec. 10-5.3 Adjournment of Hearing

Hearings may be adjourned from time to time and, if the time and place of the continued hearing be publicly announced at the time of adjournment, no further notice of such continued hearing shall be required; otherwise, notice thereof shall be given, as in the case of the original hearing.

#### Sec. 10-5.4 Who May Appear

Any party may appear at the public hearing in person or by agent or by attorney.

#### Sec. 10-5.5 Public Notice in Newspaper

The Board of Appeals shall give public notice of the hearing in a newspaper published and circulated in Chatham County by advertisement published at least give (5) days prior to the date of the public hearing.

#### Sec. 10.5.6 Rehearing

An application for a rehearing may be made in the same manner as provided for an original hearing.

#### Sec. 10-5.7 Time Limit on Board's Decision.

The Board of Appeals shall reach a decision following a public hearing within a reasonable period of time; however, said period shall not exceed 30 days.

### Sec. 10-6 Powers and Duties

#### Sec. 10-6.1 Appeals from Actions of the Zoning Administrator

The Board of Appeals shall hear and decide upon appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this Zoning Ordinance.

Sec. 10-6.2 Request for Permission to Establish Uses

The Board of Appeals shall hear and decide upon requests for permission to establish uses upon which the Board of Appeals is required to pass under the terms of these regulations.

The application to establish such use shall be approved on a finding by the Board of Appeals that:

- a. The proposed use does not affect adversely the general plans for the physical development of Chatham County, as embodied in these regulations and in any Master Plan or portion thereof adopted by the Commissioners of Chatham County.
- b. The proposed use will not be contrary to the purpose stated for these regulations.
- c. The proposed use will not affect adversely the health and safety of residents or workers in Chatham County.
- d. The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.
- e. The proposed use will not be affected adversely by the existing uses.
- f. The proposed use will be placed on a lot of sufficient size to satisfy the space requirements of said use.
- g. The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use such facility, vehicular movement, noise or fume generation, or type of physical activity.
- h. The standards set forth for each particular use for which a permit may be granted have been met.

- i. Provided, that the Board of Appeals may impose or require such additional restrictions and standards as may be necessary to protect the health and safety of workers and residents in the community, and to protect the value and use of property in the general neighborhood.
- j. Provided that the proposed use shall be subject to the minimum area, setback, and other location requirements of the zoning district in which it will be located.
- k. Provided that the proposed use shall be subject to the off-street parking and service requirements of these regulations.
- l. Provided, that wherever the Board of Appeals shall find, in the case of any permit granted pursuant to the provisions of these regulations, that any of the terms, conditions or restrictions upon which such permit was granted are not being complied with, said Board shall rescind and revoke such permit after giving due notice to all parties concerned and granting full opportunity for a public hearing.

Use approval granted by the Board of Appeals shall be subject to the following provisions:

- a. The use approval shall run with the property. The sale or transfer of an approved use to a new owner or tenant shall not require re-approval by the Board of Appeals.
- b. The use approval shall apply only to the specific location on the property, configuration, and intensity as identified in the site plan submitted with the use approval application and as approved by the Board.
- c. Relocation of the use on the site, expansion of the use, or the establishment of additional similar uses on the site (where permitted by the district within it is located) requires a new use approval application to the Board.

- d. Any approved use which ceases to operate for period of one year shall require Board approval to be reestablished.

Sec. 10-6.3 Request for a Variance

The Board of Appeals may authorize upon appeal in specific cases such variance from the terms of these regulations as will not be contrary to the public interest 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 will be observed, public safety and welfare secured, and substantial justice done; provided, however, that a variance shall not be granted to permit a use of land or building or structure that is prohibited by this ordinance in the district in question. Such variance may be granted in an individual case upon finding by the Board of Appeals that:

- a. There are extraordinary and exceptional conditions pertaining to particular piece of property in question because of its size, shape, or topography.
- b. The application of these regulations to this particular piece of property would create an unnecessary hardship.
- c. Such conditions are peculiar to the particular piece of property involved.
- d. Relief, if granted, would not cause substantial harm to the public good or impair the purposes and intent of these regulations.

#### Sec. 10-6.4 Request for Extension of Nonconforming Use

The Board of Appeals may authorize, upon appeal in specific cases, an extension of an existing nonconforming use involving an increase in either or both the land area or the floor area in a building or building occupied by a nonconforming use, and an extension of an existing nonconforming use involving an increase in the land area occupied by an open use of land which is a nonconforming use. Such extension may be granted in an individual case upon a finding by the Board of Appeals that:

- a. The use is a nonconforming use as defined in these regulations.
- b. The use is in full compliance with all requirements of these regulations applicable to nonconforming uses.
- c. The extension of said use will not further injure a permitted use on adjacent property in the same zoning district.

#### Sec. 10-7 Forms

Appeals, request for permission to establish a use requiring special approval, requests for variances, and requests for extension of nonconforming uses shall be made on forms provided therefore, and all information required on said forms shall be provided by the appellant. Forms shall be filed with the Board of Appeals unless it contains all pertinent information and is accompanied by the required fee to defray expenses.

#### Sec. 10-8 Calendar of Appeals

Appeals and applications filed in proper form shall be numbered serially, docketed, and placed under the calendar of the Board of Appeals. The calendar of appeals to be heard shall be posted conspicuously in the office of the Board of Appeals and in the office of the Zoning Administrator during the period before such hearing date.

The following Rules and Procedure (Rules) define the basic procedural operations of the Chatham County Zoning Board Appeals (CZBA). These procedural policies, unlike Article H in the Chatham County Zoning Ordinance, are amended by the CZBA. **These Rules and Procedures were amended in April 2000.**



## RULES AND PROCEDURES

### ARTICLE I

#### MEETINGS

- Section 1. Regular meetings of Board of Appeals Board shall be held at 9:00 A.M., on the fourth Tuesday of each month in the Metropolitan Planning Commission Conference Room, 112 East State Street, Savannah, Georgia, or in any other designated meeting place, provided the location is specified in all notices as required by law.
- Section 2. **Special meetings** may be called by the Chairperson at the request of three members, of which notice shall be given each member at least 24 hours before the time set, except that announcement of a special meeting, at any meeting at which all members are present, shall be sufficient notice of such meeting. **Notice of special meetings shall be posted in the place where the meeting will be held. Notice of special meetings shall also be given to the newspaper in accordance with the Georgia Open and Public Meetings law.**
- Section 3. **Except as provided herein and in the City of Savannah Zoning Regulations, meetings shall be conducted according to Robert's Rules of Order, latest edition.**

### ARTICLE II

#### CASES BEFORE THE BOARD

- Section 1. Each appeal to the Board shall be taken within 30 days from the date of refusal of a permit by the Zoning Administrator, or date of order, ruling decision, or determination of the Zoning Administrator. Appeals made after 30 days from the date of aforesaid shall not be considered by the Board.
- Section 2. Each appeal to the Board, whether from an order, decision, or determination of the Zoning Administrator or whether for a special exception or for a variance, shall be made on an official application form.

- Section 3. All information called for in the application form shall be furnished by the appellant in the manner therein prescribed insofar as practical and all notices shall be given as prescribed by the Board.
- Section 4. The Board may reject an appeal unless made on the prescribed form properly filled out with all required data attached.
- Section 5. Any communication purporting to be an application shall be regarded as mere notice to seek relief until it is made in the form required by these rules.
- Section 6. Any appellant may withdraw his application prior to a decision by the Board.
- Section 7. Any appellant requesting that a hearing not be held, and a petition be continued shall be granted a continuation subject to the provisions set forth herein. A letter shall be submitted to the secretary at least five working days prior to the scheduled meeting. All requests shall be mailed to: Secretary, Chatham County Zoning Board of Appeals, c/o Metropolitan Planning Commission, Post Office Box 8246, 110 East State Street, Savannah, Georgia 31412. The appellant shall state within the letter reasons for the requested continuation and shall state that all individuals listed on the application as surrounding property owners and any other know aggrieved persons have been so notified by certified mail sent at least two working days prior to the scheduled meeting. The appellant shall provide a copy of the certified mail payment receipt, to the secretary prior to the meeting day.
- Section 8. Any appellant requesting a rehearing shall file such request in the same manner as the original application, within five days following the board's decision on the petition for which a rehearing is being sought. The Board may grant a rehearing only for petitioners submitting new and relevant information. Applications for a rehearing shall be denied upon a finding by the Board that there has been no substantial change in facts, evidence, or conditions relative to the petition in question.

Upon approval of a request for rehearing, the Board shall rehear the petition in question at the same meeting.

Appeals from decisions of the Board shall be to Superior Court. All such appeals shall be made **in writing** within thirty (30) days of the date of such decision.

## ARTICLE III

### THE DOCKET AND CALENDAR

- Section 1. Each appeal filed in proper form with the required data shall be numbered serially, docketed, and shall be placed upon the calendar of the Board by the Secretary thereof. The docket numbers shall indicate the number of the year in which the application is filed.
- Section 2. All cases docketed more than twenty-two (22) days preceding a regular meeting day or prior to the scheduled cut-off date, shall be automatically set for hearing on the succeeding regular meeting day, **provided that requirements for notification in accordance with Article V (below) have been met.** Cases docketed within 21 days or less of the regular meeting day or after the scheduled cut-off date shall be set for hearing on the next regular meeting day after the docketing of the application.
- Section 3. Appeals shall be heard in the order in which they appear on the calendar, except that an application may be advanced for hearing by order of the Board upon good cause. Where all appeals cannot be disposed of on the day set, or if additional information is desired, the Board may adjourn until a designated day, or until the next regular meeting, as it may order.

## ARTICLE IV

### DOCKET, MINUTE AND DECISION BOOKS

- Section 1. The Secretary shall be provided with a Docket and Minute Book which he/she shall keep posted to date. The docket shall be **recorded in** a well-bound book, **or in an electronic format and shall include** the number of the appeal; the name of the appellant, a short description by street number or otherwise, of the premises; the nature of the application; and the Board's final disposition concerning the case. All continuances, postponements, dates of sending notices and other steps taken and acts done shall be noted on the docket or in the official file of the application. The minute book shall contain a summary of all actions taken by the Board during the course of its public meetings.
- Section 2. The Decision Book or the official file of the application shall contain the decision relating to each case acted on, together with the vote of each member of the Board, those absent being so marked, together with all other actions of the Board.

## ARTICLE V

### PUBLIC NOTICE

- Section 1. Fifteen days prior to the scheduled public hearing, the Secretary shall send notice of the time and place of the public hearing to the appellant, to the Zoning Administrator, and to the owners of all properties either adjoining the property with which the hearing is concerned or situated directly across a public right-of-way from such property. Such notice shall contain the name of the appellant, the date, the time, and place fixed for the hearing, and a brief statement of the error alleged by the appellant or of the variance, use requiring special approval, or other relief requested. **The notice shall request that the petitioner or his/her agent be present at the hearing.**
- Section 2. The Secretary shall give public notice of the hearing in a newspaper published and circulated in the County by advertisement published at least five (5) days prior to the date of the public hearing.
- Section 3. **Erection of Signs: At least fifteen (15) days prior to the scheduled date of public hearing of an application, the applicant shall erect a sign, to be furnished by the Zoning Administrator, on the land for which the appeal is made. Such sign shall be erected by the applicant within ten (10) feet of whatever boundary line of such land abuts the most traveled public road; and, if no public road abuts thereon, then such sign shall be erected to face in such a manner as may be most readily seen by the public. The lower edge of the sign face shall be of sufficient height so as to be read from the roadway.**

**The sign furnished by the Zoning Administrator shall be nonreturnable, weather-resistant or equal, shall have a minimum size of 30 by 40 inches, shall show the application number, the type of relief sought, the scheduled date, time and place of public hearing, and the telephone number to call for further information.**

Section 4. No notice other than that required by Georgia laws and the Zoning Ordinance of Chatham County will be given to applicants or others interested in hearings by the Board.

## **ARTICLE VI**

### **HEARINGS**

Section 1. Hearings shall be held by the Board of Appeals in the Hearing Room of the Metropolitan Planning Commission, 112 East State Street, Savannah, Georgia; or in any other designated meeting place, provided the location is specified in all notices as required by law.

Section 2. A quorum for hearing by the Board shall consist of four (4) members, but a lesser number may meet and adjourn a meeting.

Section 3. Hearings shall be open to the public.

Section 4. The Board shall publish the rules to govern all hearings and shall make such rules available to appellants or to the general public upon request.

Section 5. At least one copy of all advisory reports to the Board shall be available to appellants or to the general public prior to all hearings.

Section 6. An appellant may appear on his own behalf or be represented by an agent or attorney at hearings. If the appellant or his/her agent or attorney fail to appear, the Board may proceed to dispose of the matter on the record before it or continue said matter until the next regular meeting.

Section 7. All witnesses intending to speak in favor of or in opposition to a proposed variance, authorization of a specific use, or other action by the Board, shall be sworn under oath by the Chairperson; the right of cross-examination shall be available to every party.

Section 8. No petitions signed by persons not present at the hearing shall be admitted into evidence except by stipulation of all parties to the hearing.

- Section 9. Technical rules of evidence may not be applicable to the hearing, but the Board shall exclude irrelevant, immaterial, or unduly repetitious evidence and such evidence as is not of the kind which would affect reasonable men in the conduct of their daily affairs. **Witnesses shall limit testimony to ten (10) minutes unless authorized by the Board to testify for a longer time.**
- Section 10. All exhibits accepted in evidence shall be identified and duly preserved, or, if not accepted in evidence shall be properly identified and the reason for the exclusion clearly noted on the record.
- Section 11. The order of presentation at a hearing may be as follows:
- (a) Announcement of case by Chairperson.
  - (b) Zoning Administrator's Report.
  - (c) MPC Staff report and other advisory official's reports.
  - (d) Interested property owner's statements.
  - (e) Appellant's rebuttal.
- Section 12. The Chairperson, or in his absence the Vice-Chairperson, may issue all necessary subpoenas.

## ARTICLE VII

### DECISIONS OF THE BOARD

- Section 1. In a case of appeal from the decision of the Zoning Administrator, the Board shall affirm, modify, or reverse the refusal of a permit by, or any order or decision of, the Zoning Administrator. In a case of an application for variance from the terms of the Zoning Ordinance or authorization to establish a use (special exception), the Board shall set forth that the application is denied or that it is granted with conditions or without conditions; and said decision shall specifically set forth what variances or special exceptions are permitted and what conditions, if any, shall be complied with.
- Section 2. Each decision of the Board shall require the majority of the members voting at a legally constituted meeting.
- Section 3. No finding by the Board shall be made unless based upon evidence introduced at a public hearing or recorded within the official records of the municipality, county, or other public agency and unless such records are available to the public.

Section 4. The Board shall support its conclusions by findings of fact and shall recite with particularity the reasons for its conclusions in the specific case before it.

Section 5. Each decision or opinion of the Board shall be by resolution, which resolution shall contain a statement of the grounds of its decision or action. The full text of the decision and resolution shall be mailed to the appellant.

## ARTICLE VIII

### PRECEDENTS

Section 1. No action of the Board of Appeals shall establish a precedent. Each case shall be decided upon its merits and upon the circumstances attendant thereto.

## ARTICLE IX

### OFFICERS

Section 1. The Board shall annually elect a Chairperson and Vice Chairperson at the first regular meeting in September **or by special election in the event of a vacancy. A special election may be held at any regularly scheduled meeting or at a special meeting, in accordance with Article I Section 2.**

Section 2. The Chairperson shall preside at all meetings and hearings of the Board. In the event of the absence or disability of the Chairperson the Vice-Chairperson shall preside.

Section 3. The Chairperson, subject to these rules, shall decide all points of procedure unless otherwise directed by a majority of the Board in session at the time.

Section 4. The Chairperson may designate members of the Board to make property inspections or investigations to obtain pertinent information from the Board when necessary, and unless directed by a majority of the Board, shall appoint such committees as he deems necessary.

Section 5. The Chairperson shall report at each meeting on all official transactions that have not otherwise come to the attention of the Board.

Section 6. The Chairperson shall, subject to these rules and further instructions from the Board, transact the official business of the Board, supervise the work of the Secretary, request necessary help, and direct the work of all subordinates.

Section 7. The Secretary shall be such person as may be designated by a majority of the Board.



Section 8. The Secretary, subject to the provisions of the Zoning Ordinance, these rules, and the direction of the Board and its Chairperson, shall conduct all correspondence of the Board; shall attend all meetings of the Board and all hearings; shall scrutinize all applications to see that these rules are complied with; shall keep the dockets and minutes of the Board proceedings; shall compile all required records; shall maintain the necessary files and indexes and generally supervise all clerical work of the Board.

Section 9. The Secretary to the Board of Appeals and/or the Zoning Administrator or their designated representatives shall request from the applicant such additional information and data as may be required to fully advise the Board with reference to the application, whether such information and data are called for by the official forms or not. Any failure or refusal on the part of the applicant to furnish such additional information or data may be grounds for the dismissal of the application by the Board.

## **ARTICLE X**

### **INFORMAL REQUESTS FOR ADVICE**

Section 1. No informal requests for advice, or moot questions, will be considered by the Board. Any advice, opinion, or information given by any Board member or the Secretary, or any other official or employee of Chatham County, shall not be binding on the Board. Because of the annoyance caused by individuals appealing personally to members of the Board, it is declared to be the policy of the Board to deprecate any such personal appeals.

## **ARTICLE XI**

### **AMENDMENTS**

Section 1. These rules may be amended or modified by an affirmative vote of not less than five (5) members of the Board, provided that such amendments be presented in writing at a regular meeting and action taken thereon at a subsequent regular meeting.

## **ARTICLE XII**

### **FORMS**

Section 1. The following forms are included with all properly filed applications:

Page i	Application to the Board
Page ii	Notice of Public Hearing to Property Owners concerning

Page iii	Application Public Notice Published in Newspaper
Page iv	Decision of the Board

## **ARTICLE XIII**

### **ATTENDANCE BY BOARD MEMBERS**

- Section 1. It shall be considered the obligation and responsibility of each Board member to attend all meetings of the Board.
- Section 2. The Chairperson shall notify County Commissioners of the absence of any Board member from three (3) consecutive Board meetings or for absence from four (4) out of any six (6) consecutive meetings of the Board. Any Board member who is the subject of such notice shall receive a copy of the notice.
- Section 3. The Chairperson shall submit to the County Commissioners a record of attendance for all Board members on an annual basis. Such record shall be compiled by the Secretary and shall indicate the total number of regular and called Board meetings for the report period and the number of absences for each Board member.