

Article 11 - Appeals

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Sec. 11-1. - Purpose and Intent.

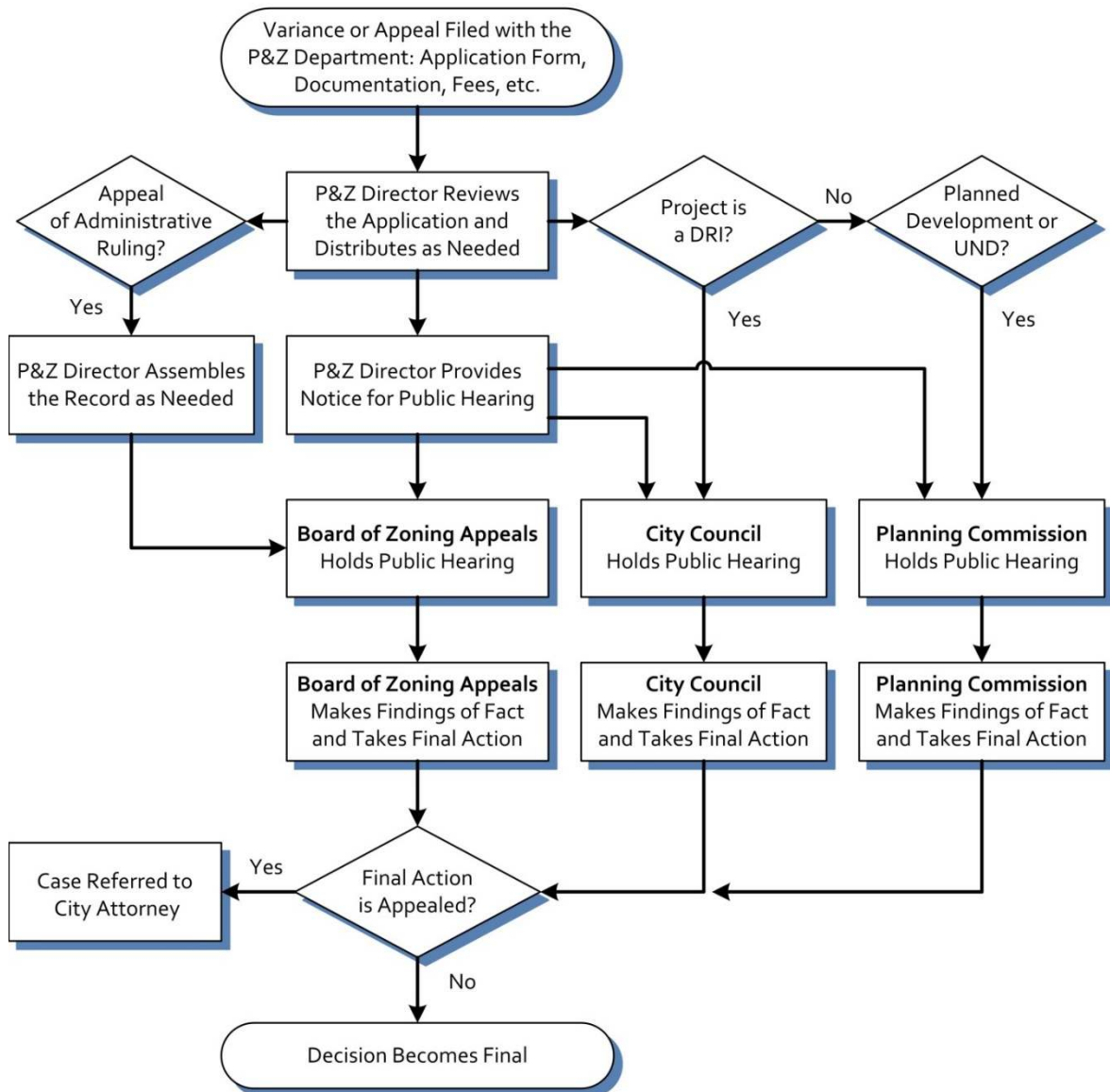
The purpose of this Article is to provide clear guidelines for the granting of variances and administrative appeals to the provisions of this Ordinance.

Sec. 11-2. - Jurisdiction and Authority.

- (a) Upon application, the Board of Zoning Appeals (BZA) shall exercise the jurisdiction and authority to grant a variance from the literal terms of this Ordinance in accordance with the procedures, standards, and limitations contained in this Article and the Administration and Enforcement Article, except as provided hereunder. This authorization shall not be construed to grant the BZA the power to rezone property.

- (b) Under the following circumstances, in lieu of the BZA, variances shall be determined by the Planning Commission or the City Council as follows:
- (1) The Planning Commission shall review and decide upon variances for properties or projects zoned for planned developments, and from the Urban Neighborhood Design (UND) guidelines, except for such requests that relate to a property or project that qualifies as a Development of Regional Impact (DRI) under the criteria contained in the Amendments to Zoning Ordinance Map Division of the Procedures and Permits Article.
 - (2) The City Council shall review and decide upon variances for properties or projects zoned for mixed use developments or for any property or project that qualifies as a Development of Regional Impact (DRI), as described in the Amendments to Zoning Ordinance and Map Division of the Procedures and Permits Article.

Variance and Appeals Process



Sec. 11-3. - Definitions Referenced.

The definitions of certain terms referenced in this Article are set forth in the Interpretation and Definitions Article.

Sec. 11-4. - Authorized Variances.

- (a) Variances (defined herein as reasonable deviations from the regulations and restrictions contained in this Ordinance) may be granted by the BZA, the Planning Commission or the City Council, as applicable, only in the following instances:
 - (1) A variance from those provisions regulating the size or area of a lot or parcel of land.
 - (2) A variance from those provisions regulating the size, area, bulk, setback, open space, yards, or location of a building or structure.
 - (3) A variance from the provisions of the Master Planned Developments Article relating to planned development projects may be granted by the Planning Commission as provided in that Article, and from the Urban Neighborhood Design (UND) guidelines in the Design Review Standards and Procedures Article.
 - (4) A variance from the provisions of the Master Planned Developments Article relating to mixed use development projects may be granted by the City Council as provided in the Application Procedures and Requirements Section of Division II in that Article.
- (b) All variance requests, whether considered by the BZA, the Planning Commission or the City Council (i.e., the hearing authority), shall be reviewed and decided according to the application and hearing procedures for variances of this Article.

Sec. 11-5. - Unauthorized Variances.

No variance from any of the provisions of this Ordinance relating to the use or density of land, buildings or structures may be granted. Nor shall a variance be granted for any use or activity within any designated floodway if any increase in the 100-year flood elevations would result. Nor shall any determination be made that has the effect of setting a new standard or rendering any provision of this Ordinance obsolete or invalid.

Sec. 11-6. - Administrative Variances.

The Planning and Zoning Director shall have the authority to grant limited minor administrative variances from certain provisions of the zoning and stream buffer ordinance where the Planning and Zoning Director determines that:

- (a) The strict application of the requirements of the ordinance would cause undue and unnecessary hardship to the property owner or authorized agent; and
- (b) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and

- (c) That the authorization of such modification or alteration will not be of substantial detriment to contiguous property and that the character of the zoning district will not be changed by granting the request; and
- (d) The intent and continued integrity of the ordinance can be achieved with equal performance and protection of public interests through granting of an administrative variance.
- (e) All applications for administrative variances shall be submitted to the Planning and Zoning Department. The application for an administrative variance shall be subject to the standards in Sec. 11-9 of the Zoning Ordinance and Section 10-114 (b) of the City of Newnan Code of Ordinance pertaining to Stream Buffers. The authority to grant such administrative variances shall be limited to variance from the following requirements:
 - (1) Principal Building Front, Side, Street Side and Rear Setbacks.

A variance shall not exceed 15% of the footage deducted from the required setback. Factors to be considered include the average of principal building setbacks of adjoining and contiguous properties.
 - (2) Principal Living Space.

A variance shall not exceed 25% of the square footage deducted from the required principal living space. Factors to be considered include the average of principal living space square footage calculations of adjoining and contiguous properties.
 - (3) Stream Buffer.

For lots established prior to the 2008 adoption of the City of Newnan's Stream Buffer Regulations, consideration may be given to modify the City's stream buffers. Final authorization shall be contingent upon a favorable recommendation from the City of Newnan's Engineering Department of the site development plan specific to the property that is the subject of the variance application.

Sec. 11-7. - Application for Variance.

Any person owning property, or having a possessory or contract interest in property and the consent of the owner, may file an application for variance in regard to such property with the Planning and Zoning Director for one or more of the variances authorized above. The application shall contain the following information and such additional information as the BZA may, by rule, require:

- (a) The particular provisions or requirements of this Ordinance which prevent the proposed construction on, or use of, the property.
- (b) The existing zoning of the property, including any previously approved modifications, conditions, or proffers.
- (c) The special conditions, circumstances or characteristics of the land, building or structure that prevent the use of the land in compliance with the requirements of this Ordinance.

- (d) The particular hardship which would result if the specified provisions or requirements of this Ordinance were to be applied to the subject property.
- (e) The minimum extent to which it would be necessary to vary the requirements of this Ordinance in order to permit the proposed construction on, or use of, the property.
- (f) An explanation of how the requested variance conforms to each of the applicable findings and standards is set out in Sec. 11-9.

Sec. 11-8. - Decision on Variance Application.

Upon receipt of a complete application for a variance, the Planning and Zoning Director shall notify the hearing authority (i.e., the BZA, the Planning Commission or the City Council, as appropriate), which shall, within 30 days, hold a duly noticed public hearing thereon. In this capacity the body hearing the variance request exercises appellate jurisdiction as a quasi-judicial body, and its task is to determine that an undue hardship exists and what remedy is appropriate based on the facts of the particular situation.

- (a) Legal Notice of the public hearing shall be given in the same manner as for a zoning decision under the Procedures and Permits Article of this Ordinance.
- (b) The hearing shall be held in accordance with the procedures for holding a public hearing for a zoning decision under the Procedures and Permits Article.
- (c) The hearing authority shall, after such hearing, either approve, deny or approve with conditions the application for a variance.
- (d) The decision of the body hearing the variance request shall be supported by findings of fact and conclusions with respect to the standards set out in Sec. 11-9 below.

Sec. 11-9. - Standards for Variances.

The hearing authority considering the variance request shall base its required findings of fact upon the particular evidence presented to it in each specific case where the property owner can show all of the following to be true:

- (a) The strict application of the terms of this Ordinance would effectively prohibit or unreasonably restrict utilization of the property because of all of the following:
 - (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography; and,
 - (2) Such conditions are peculiar to the particular piece of such property involved; and,
 - (3) Such conditions were not imposed by the action or will of the owner of the property; and,
 - (4) The application of the Ordinance to the particular piece of property would create an unnecessary hardship other than a financial hardship in which the applicant would receive a lower rate of financial return on the use of the property if the variance is denied; and,

- (5) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this Ordinance.
- (b) In addition, the hearing authority considering the variance request shall affirmatively determine that:
 - (1) The granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant.
 - (2) The condition or situation of the property which gives rise to the need for such variance is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Ordinance.

Sec. 11-10. - Burden of Applicant.

The applicant for a variance shall bear the burden of producing evidence to establish that the requested variance satisfies all of the standards for a variance of Sec. 11-9 above.

Sec. 11-11. - Conditions and Restrictions.

- (a) As part of approving a variance, the hearing authority may impose such conditions, safeguards and restrictions upon the property or project benefited by the variance as may be necessary to avoid, minimize or mitigate any potentially adverse or injurious effect of such variance upon other surrounding or nearby properties, to carry out the general purpose and intent of this Ordinance, or to further the goals and objectives of the Comprehensive Plan.
- (b) Such conditions may consist of any of the same conditions that can be applied to a zoning map amendment and shall be treated in the same manner as required for a zoning map amendment under the Procedures and Permits Article of this Ordinance.
- (c) Change in Conditions of Approval.

Any application that proposes a change in the conditions of approval previously established for the variance shall be considered a new application and therefore subject to all procedures and provisions of this Ordinance regarding the approval of a variance.

Sec. 11-12. - Withdrawal of Application.

A variance may be withdrawn by the applicant at any time prior to the deadline for cancellation of the newspaper advertisement for the public hearing on the application. After said deadline, an application may be withdrawn only at the advertised public hearing with the permission of the body hearing the variance request.

Sec. 11-13. - Re-Application.

If a variance is denied, no application requesting the same relief with respect to all or part of the same property shall be considered within 12 months after the date of such denial.

Sec. 11-14. - Appeals (From Administrative Ruling).

The BZA is authorized to hear appeals taken from any aggrieved person from any order, requirement, decision or determination made by any City official in the administration or enforcement of this Ordinance. In this capacity the Board exercises appellate jurisdiction as a quasi-judicial body, and its task is to determine what the Ordinance means and how the Ordinance applies to the facts of a particular situation.

Sec. 11-15. - When Administrative Appeals May Be Taken.

Appeals shall be taken within 30 days after the decision has been rendered by filing with the Planning and Zoning Director (or with the City official from whom the appeal is taken, if not the Planning and Zoning Director) a notice of appeal specifying the grounds of the appeal. The Planning and Zoning Director shall assemble all the papers constituting the record upon which the action appealed from was taken, and forward such record to the chairman of the BZA (and to the City official from whom the appeal is taken, if not the Planning and Zoning Director).

Sec. 11-16. - Decisions on Administrative Appeals.

- (a) Within 90 days after the notice of administrative appeal has been filed, the BZA shall hold a public hearing which shall be advertised and posted as follows, as well as due notice given to the parties in interest.
 - (1) Legal Notice of the public hearing shall be given in the same manner as for a zoning decision under the Procedures and Permits Article.
 - (2) The hearing shall be held in accordance with the procedures for holding a public hearing for a zoning decision under the Procedures and Permits Article.
- (b) The BZA shall, after such hearing, decide the appeal, and file with the Planning and Zoning Director its findings of fact and conclusions with respect to the appeal. In exercising its powers, the BZA may reverse or affirm, wholly or partly, or may modify the decision appealed from. The concurring vote of a majority of BZA members shall be necessary to reverse a decision.
- (c) The Planning and Zoning Director shall provide a copy of the decision to the appellant, to the City official from whom the appeal is taken (if not the Planning and Zoning Director), and to each other person who was a party of record at the hearing.

Sec. 11-17. - Withdrawal of Application.

An administrative appeal may be withdrawn by the appellant at any time prior to the deadline for cancellation of the newspaper advertisement for the public hearing on the

application. After said deadline, an appeal may be withdrawn only with the permission of the BZA at the advertised public hearing.

Sec. 11-18. - Stay of Proceedings.

- (a) A notice of appeal or an application for a variance, properly filed as herein provided, shall stay all enforcement or administrative proceedings related to the variance or appeal, unless the Planning and Zoning Director (or the responsible City official if not the Planning and Zoning Director) certifies to the hearing authority that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of a court of competent jurisdiction.
- (b) Where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of this or any other City ordinance, by a lawsuit properly filed by a private party, the court may hear and determine the issues raised in the litigation even though no appeal was taken to the appropriate hearing authority. However, the City may suspend the building permit or discontinue further construction activities pursuant thereto only upon issuance of a stop work order or a restraining order by said court.