

CITY OF SMYRNA

COMMUNITY DEVELOPMENT DEPARTMENT

MEMORANDUM

To: Mayor and Council

From: Russell Martin, AICP, Community Development Director
Joey Staubes, AICP, Planner II

Date: May 22, 2023

CC: Joe Bennett – City Administrator

RE: Notification Requirements

BACKGROUND

HB 1405 was signed into law in 2022 and requires local government compliance by July 1, 2023. HB 1405 amends a portion of the zoning procedures law which regulates meeting notification requirements for quasi-judicial officers, boards, or agencies with delegated powers that hear cases for variances, special land use permits, and administrative appeals. The notification requirements mandate posting signs a minimum of 30 days prior to any hearing, and a legal advertisement a maximum of 45 days and minimum 15 days prior to the hearing. The law also amended the appeal process for legislative and quasi-judicial decisions.

STAFF COMMENTS

Community Development has reviewed the City's Code of Ordinances with respect to notification requirements and is proposing code amendments to the following sections.

Section 1401 and 1402 of the Zoning Ordinance (Appendix A) shall be amended to update variance application notification requirements. The proposed sections shall read as follows (amended portions are highlighted).

ARTICLE XIV. – Zoning Variance

Sec. 1400. Variances.

All requests for a variance from the terms of the Zoning Code ~~relating to setbacks, distance requirements between buildings or other substantially similar dimensional regulations, parking, or accessory structures,~~ except when requested as part of a rezoning, **or a variance that is defined as a request for a "Zoning Decision", as defined by O.C.G.A. § 36-66-3, as may be amended,** shall be heard by the license and variance board as established by city ordinance.

Sec. 1401. – Variance Petitions.

- (a) *Filing of petition.* Variance petitions to the license and variance board may be filed by any person aggrieved by the literal enforcement of the requirements of the Zoning Code. Upon receipt of written petition and filing fee, the city administrator, or his designee, shall, within 30 days, the time required by state law, schedule a hearing to consider the petition and shall notify the petitioner of such hearing.

Sec. 1402. – Notification Required.

- (a) Notice for such hearing, including publication requirements and signage posting requirements shall be in accordance with the Zoning Procedures Law set forth in Title 36 of the Official Code of Georgia. Whenever the Zoning Procedures Law set forth in Title 36 of the Official Code of Georgia requires a sign to be posted, then the required signs shall be placed by the Community Development Department in a place conspicuous to the nearest public roadway on said property. Each sign shall not be less than six square feet in area and shall contain the information required herein.

~~The building inspector shall cause to have posted, in a place conspicuous to the nearest public roadway on said property, one or more signs, each of which shall not be less than six square feet in area, and each of which shall indicate that a variance petition has been filed and shall contain the date and time and place of the public hearing. No such public hearing shall take place until said signs have been posted for at least 15 days.~~

Chapter 2, Article IV Boards and Commissions of the Code of Ordinances shall be amended update notification requirements. The proposed sections shall read as follows (amended portions are highlighted).

ARTICLE IV. – Boards & Commissions Division 1 – Generally

Sec. 2-141. - License and variance board.

- (a) There is hereby established a license and variance board which shall be a Quasi-Judicial board as contemplated by the Zoning Procedures Law set forth in Title 36 of the Official Code of Georgia.
- (b) The license and variance board established by this section shall have the following duties:
- (1) Act as a hearing officer for applications for licenses to sell alcoholic beverages as specified in subsection 6-114(b).
 - (2) Hear applications for pawn brokers as specified in subsection 22-109(b).
 - (3) Hear applications for any other license or certificate to be issued by the city for which a public hearing is required, including but not limited to the following: precious metals dealers, massage practitioners, and bail bondsmen.

- (4) Conduct hearings regarding the possible suspension, revocation or other action taken against a license or certificate issued by the city and to impose any sanctions as provided by law.
 - (5) Hear variance requests according to Article XIV of the zoning ordinance.
 - (6) Hear requests for variances from stream buffers established by city ordinance.
 - (7) Approve or disapprove applications in a manner consistent with applicable laws
- (c) Applicants or licensees shall be given notice of the date, time and place when the license and variance board will consider the respective matter. All meetings of the board shall be open to the public.
- ~~(d) The decision of the license and variance board shall be final unless appealed to the mayor and city council within ten days of the date of decision by the license and variance board. Such appeal must be in writing and filed with the city clerk. In the event of an appeal, the mayor and city council, within 30 days of the date the appeal is filed, shall place the matter down for a de novo hearing and take any authorized action concerning the applicant's appeal. Appellants shall be given notice of the date, time and place when the mayor and council will consider the appeal.~~
- (d) ~~(e)~~ The decision of the License and Variance Board may be appealed ~~mayor and city council on an appeal under this article shall be final unless appeal is made to the Superior Court of the Cobb County pursuant to Section 1509.1. The applicant may appeal a decision of the mayor and city council by filing a petition for writ of certiorari to the superior court in the manner provided by state law.~~
- ~~(e)(f)~~ The license and variance board shall have no jurisdiction or authority to hear any appeal from or to reverse, modify or set aside any decision of the mayor and city council.
- ~~(f)(g)~~ The license and variance board shall be composed of three regular members and two alternate members, all of whom shall be appointed by the mayor and city council and who shall serve one-year terms and/or until a successor is appointed, except that such service shall be at the pleasure and discretion of the mayor and council. The alternate member shall only participate in hearings in which a regular member of the board is unable to attend. A quorum shall consist of three regular or alternate members. The City Clerk shall serve as the clerk of the License and variance Board.
- ~~(g)(h)~~ The license and variance board shall meet at such times as is necessary, to be determined by such board, and shall render decisions within a reasonable time. Reasonable time for the purposes of this section shall be no longer than 120 days from the date an application is filed.
- ~~(h)(i)~~ The license and variance board shall select one of its members to serve as chair and one of its members to serve as secretary, to serve at the pleasure of the license and variance board.

Minutes and records of all proceedings shall be kept by the secretary or his/her designee and maintained in the office of the city clerk.

Amend Multiple Sections under Appendix A – Zoning Ordinance of the City Code of Ordinances as follows: Section 1504 to clarify the public hearing requirements, Section 1505 to clarify posting requirements, 1508 to clarify zoning review standards, 1509 to clarify zoning procedures.

Sec. 1504. Public hearing.

Before enacting an amendment to this ordinance, the mayor and council shall hold a public hearing or hearings in the manner specified by the Zoning Procedures Law set forth in Title 36 of the Official Code of Georgia. ~~At least 15 but not more than 45 days prior to the date of hearing, a notice of the date, time and place of the hearing, as well as the nature of the proposed amendment, shall be published in a newspaper having general circulation within the City of Smyrna~~ Notice for such hearing, including publication requirements and signage posting requirements shall be in accordance with the Zoning Procedures Law set forth in Title 36 of the Official Code of Georgia. Within a reasonable time from the date of the last hearing on a petition to amend this ordinance, the city council shall render an official decision on the petition.

Sec. 1505. Signs posted.

Whenever the Zoning Procedures Law set forth in Title 36 of the Official Code of Georgia requires a sign to be posted, ~~a proposed amendment to this ordinance involves changing the zoning classification of property from one type of zone to the other, and the rezoning is initiated by a party other than the local government then:~~

- (1) The notice, in addition to the requirements of section 1504 of this code section, shall include the location of the property, the present zoning classification of the property and the proposed zoning classification of the property;
- (2) The required signs shall be placed by the Community Development Department ~~building inspector shall cause to have posted, in a place conspicuous to the nearest public roadway on said property; one or more signs, e~~ Each sign ~~of which shall not be less than six square feet in area, and each of which shall contain the information~~ required herein ~~as to the proposed change and the date and time and place of the public hearing before the city council. No such public hearing shall take place until said signs have been posted for at least 15 days; and—~~
- (3) ~~The applicant shall furnish such other information as is required to facilitate the consideration of the applicable provisions of section 1508 of this article.~~

Sec. 1508. Zoning review standards.

In the consideration of any zoning proposals, the planning commission and mayor and council ~~in shall~~ balancing the interest in promoting the public health, safety, morality or general welfare against the right to the unrestricted use of the property shall consider the following factors in their determination:

- (1) Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property;
- (2) Whether the zoning proposal or the use proposed will adversely affect the existing use or usability of adjacent or nearby property;
- (3) Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
- (4) Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools;
- (5) Whether the zoning proposal is in conformity with the policy and intent of the land use plan;
- (6) Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal;
- (7) Whether the development of the property under the zoning proposal will conform to, be a detriment to or enhance the architectural standards, open space requirements and aesthetics of the general neighborhood, considering the current, historical and planned uses in the area;
- (8) Under any proposed zoning classification, whether the use proposed may create a nuisance or is incompatible with existing uses in the area; and
- (9) Whether due to the size of the proposed use, in either land area or building height, the proposed use would affect the adjoining property, general neighborhood and other uses in the area positively or negatively.
- (10) Any other factor that the planning commission and mayor and council finds relevant in balancing the interest in promoting the public health, safety, morality or general welfare against the right to the unrestricted use of the property.

Sec. 1509. Zoning procedures.

- (a) There shall be maintained in the office of the city clerk, with a copy on file in the office of the **Community Development Director** ~~building inspector~~, a copy of the zoning map, as adopted and amended from time to time, along with a printed copy of the procedures for zoning or rezoning property in the City of Smyrna.
- (b) The zoning procedures shall state the method of filing application for zoning or rezoning, required notices and advertising, and set forth the general procedure and requirements as stated in the zoning ordinance of the City of Smyrna.
- (c) At the hearing before the planning commission and at the hearing before mayor and council:
 - (1) The applicant shall present the proposed zoning, together with all facts necessary to make a determination on those facts.
 - (2) The opposition, if any, may make a presentation or introduce evidence to support its or their position.

(3) In the event more than one person or group wishes to present evidence, the chairman of the meeting may require one or more persons to act as a spokesman to avoid repetitious testimony.

(4) The chairman of the meeting may limit, within a reasonable time as the circumstance shall dictate, the time allowed for any presentation or rebuttal provided that the proponents and opponents to the proposed zoning decision shall be given at least 10 minutes per side. The proponents and opponents to the proposed zoning decision shall be given equal time.

(5) In the event there is insufficient evidence to make a determination, the hearing may be continued for a reasonable time, from time to time, in the sole discretion of the hearing body.

~~(6) The failure of the applicant to provide sufficient evidence or information, at the earliest opportunity, to make a determination shall be grounds for denial of the application.~~

~~(7) All applications shall be accompanied by the appropriate affidavits and information as required by O.C.G.A. ch. 36-67A of the laws of the State of Georgia and the fees required hereunder.~~

Add Section 1509.1 dealing with Zoning Appeals and Appeals from the License and Variance Board

Sec. 1509.1 Zoning Appeals and appeals from the License and Variance Board

a. Zoning Appeals and appeals from the License and Variance Board shall be taken in the manner specified in O.O.G.A. § 36-66-5.1 and other applicable state laws.

b. The City Clerk, acting as the clerk for the License and Variance Board, shall have the authority to approve or issue any form of certificate necessary to perfect the petition described in Title 5 for review of lower judicatory bodies as contemplated by O.O.G.A. § 36-66-5.1.

c. Service of such petition may be effectuated or accepted on behalf of the city by service upon the City Clerk as contemplated by O.O.G.A. § 36-66-5.1.

d. The City Clerk is designated as the representative authorized to accept service of an appeal of a decision of the license and variance board as contemplated by O.O.G.A. § 36-66-5.1.

Amend Section 1510 (j) dealing with Special Land Use Notifications

~~(i)(j) Signs posted by the City of Smyrna at least ten 30 days prior to public hearings. It shall be the applicant's responsibility to insure signs remain posted throughout advertisement period.~~

Notice for such hearing, including publication requirements and signage posting requirements shall be in accordance with the Zoning Procedures Law set forth in Title

36 of the Official Code of Georgia. Whenever the Zoning Procedures Law set forth in Title 36 of the Official Code of Georgia requires a sign to be posted, then the required signs shall be placed by the Community Development Department in a place conspicuous to the nearest public roadway on said property. Each sign shall not be less than six square feet in area and shall contain the information required herein. It shall be the applicant's responsibility to insure signs remain posted throughout advertisement period.

Amend Sections 1.06, 1.07, 1.08, and 1.09 under Appendix E– Urban Design District of the City Code of Ordinances to change the notification requirements for Urban Design Commission applications.

(f) 1.06. Notification required.

Notice for any hearing, including publication requirements and signage posting requirements shall be in accordance with the Zoning Procedures Law set forth in Title 36 of the Official Code of Georgia. Whenever the Zoning Procedures Law set forth in Title 36 of the Official Code of Georgia requires a sign to be posted, then the required signs shall be placed by the Community Development Department in a place conspicuous to the nearest public roadway on said property. Each sign shall not be less than six square feet in area and shall contain the information required herein.

~~(f)~~ **(g)** ~~1.06~~ **1.07** *Variance Procedure.*

The Urban Design Commission may grant design exceptions if a proposed project is a unique and exceptional design concept that architecturally enhances the downtown area. ~~Once a design exception is granted by the Urban Design Commission the applicant must seek approval from the license and variance board through the provisions of Article XIV of the Zoning Ordinance.~~

~~(g)~~ **(h)** ~~1.07~~ **1.08** *Appeals Procedure.*

If the UDC denies an application, the applicant may follow normal appeals procedures. The applicant may file an appeal to the Mayor and City Council. ~~At its discretion, the City Council may accept this appeal and shall schedule a Public Hearing to hear public arguments on the matter.~~ Appeals from the decision of the Mayor and Counsel shall be made by a direct appeal made to the Cobb County Superior Court. If the applicant is still not satisfied with the findings of the regulatory bodies within the City of Smyrna, he or she may seek judicial review within the State Court System

~~(h)~~ **(i)** ~~1.08~~ **1.09** *Definitions.*

Except as specifically defined herein, all words used in this ordinance have their customary dictionary definitions. For the purposes of this ordinance, certain words and terms used herein shall be defined as follows:

Architraves—molding around a door or window

Cornice—a horizontal molded projection that crowns or completes a building or wall.

Fenestration—the arrangement of windows in a building

Landscape zones—shall be minimum 5 feet in width and located immediately adjacent to the curb and shall be continuous. This zone may be used for street trees, streetlights, benches, planters, trash receptacles, bicycle parking racks and other street furniture, pedestrian lights, landscaping, or sod.

Lunette—A crescent-shaped or semicircular space, usually over a door or window that may contain another window, a sculpture, or a mural.

Parapet—a low protective wall or railing along the edge of a raised structure such as a roof or balcony.

Muntins/mullions—a strip of wood or metal separating and supporting and holding panes of glass in a window or panels set in series.

Sidewalk clear zones—shall be 10 feet in width and located immediately contiguous to the landscape zone and shall be continuous. Said zone shall be unobstructed for a minimum height of eight feet.

Transom window/panel—a small window or panel above a door that is usually hinged to a horizontal crosspiece over the door.

Amend Section 1702 under Appendix A – Zoning Code of the City Code of Ordinances to change the change the notification requirements for administrative appeals.

Sec. 1702. Procedures.

Any appeal received and all papers constituting the record upon which the action appealed from was taken shall forthwith be transmitted by the community development director to license and variance board. Such appeal shall follow the procedures and notification requirements established under Section ~~1400~~ 1400 -1405 of the Zoning Ordinance.

