

ZONING AND LAND USE

RULES AND PROCEDURES

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PREFACE

These Rules and Procedures, adopted pursuant to O.C.G.A. §36-66-5, are for the purpose of establishing hearing procedures in connection with the conduct of meetings before the Cobb County Board of Zoning Appeals.

By virtue of a Home Rule Amendment to the Cobb County Planning and Zoning Ordinance adopted on December 11, 1990, (to become effective January 18, 1991), the Cobb County Board of Commissioners has provided for split hearings on rezoning and land use permitting. The Board of Zoning Appeals was established by Section 134-91 of The Official Code of Cobb County, Georgia, and is charged with the responsibility of conducting public hearings on variances and appeals from decisions of administrative officers and other matter set forth in the Code.

Prior to this amendment of the Rules and Procedures, each body conducted their hearings pursuant to rules and procedures specific to each body. In an effort to establish consistency before the various boards and commissions making decisions and/or recommendation on zoning and land use matters, this streamlined set of Rules and Procedures was compiled. These Rules and Procedures will apply to all hearings before the Board of Zoning Appeals unless specifically set forth in the body of the Rules and Procedures.

In revising these Board of Zoning Appeals Rules, procedures no longer used were removed and the hearing procedures were updated to conform to current practices. Matters arising during the hearings shall be governed by these Rules and Procedures; however, it is not possible to address every possible situation that may arise. Where these Rules are silent, the latest edition of Roberts' Rules of Order Newly Revised, 11th Edition shall govern.

BOARD OF ZONING APPEALS
RULES AND PROCEDURES

SECTION 1. MEETINGS

- A. Regular and special zoning meetings of the Board of Zoning Appeals (“BZA”), (also individually or collectively may be referred herein as the body, members) shall be as determined in accordance with the Official Code of Cobb County, Georgia (“Code”). For BZA, meetings shall be convened at 1:30 P.M. on the second Wednesday of each month or as may be set in accordance with State law, and may not begin before the prescribed time of which the public has been notified.
- B. An adjourned meeting is a continuation of the meeting immediately preceding, whether a regular or special meeting.
 - 1. If the scheduled business of the BZA is not completed, due to time constraints or emergency, the meeting shall be adjourned to the following day or a specific day scheduled by the BZA to allow for the completion of pending business.
 - 2. In an adjourned meeting (regular or special), only business which would have been proper to consider at the prior meeting may be considered and acted upon at the adjourned meeting.
 - 3. Adjourned meetings resume business under the same rules, limitations and rights as the original meeting which was adjourned.
- C. Executive Session Meetings shall be conducted in accordance with the O.C.G.A. §50-14-3 and §50-14-4, or as these sections may be amended from time to time.

SECTION 2. QUORUM

Any three (3) of the members, or the chair and any two (2) members, shall constitute a quorum for any meeting of the BZA.

- A. If a quorum is not present thirty (30) minutes following the scheduled hour for convening, the chair the vice-chair, or in their absence, the county attorney (or his/her designee) may adjourn the meeting until the next day or by unanimous consent, those present may select another hour and day.
- B. If during the meeting there ceases to be a quorum, all business must stop except that the remaining members of the BZA by majority vote to be recorded in the minutes (naming those present at the time of the vote) may:
 - 1. fix another day at which to reconvene;
 - 2. adjourn and return at the next regular meeting;
 - 3. recess to determine if a quorum will be present within a short period of time.

SECTION 3. CHAIRMAN

- A. The BZA members shall elect one of its members as chairman, who shall serve for one year or until he/she is reelected or a successor is elected as set forth in the Code.
- B. The chair shall have the same right and privileges of the other members with respect to rights to make motions, debate and vote. Additionally, his/her duties during meetings shall include:
 - 1. presiding over meetings of the body;
 - 2. calling the meeting to order at the scheduled hour;
 - 3. determining that a quorum is present;
 - 4. preserving decorum and order at all meetings;
 - 5. making the members aware of the substance of each motion;
 - 6. calling for the vote;
 - 7. announcing the results of each vote;
 - 8. calling for a recess at such times as deemed advisable; and
 - 9. other duties as prescribed in the Code.

SECTION 4. VICE-CHAIRMAN

For the conduct of zoning and land use hearings, the vice chair shall have all rights, privileges and duties of the chair in the absence of the chair. The BZA shall elect a vice chair from among the members as prescribed by the Code.

SECTION 5. ABSENCE OF CHAIRMAN AND VICE-CHAIRMAN

In the absence of the chair and vice-chair, the clerk or county attorney shall determine whether a quorum is present, and if a quorum is present shall call for the election of a temporary chair. The temporary chair shall preside over that meeting or until the conclusion of the business immediately pending at the time the chair or vice-chair arrives.

SECTION 6. FILINGS, EXHIBITS AND DISCLOSURES

- A. All documentation and exhibits shall be marked and filed with the clerk prior to presentation to the members.
- B. The deadline for receiving any additional information, changes or modifications for consideration by the members shall be 12:00 Noon on Wednesday of the week preceding the public hearing. In the event an applicant or opposition submits revised plats or revised information, changes or modifications after such cut-off, the applicant or opposition shall only be allowed to present such documentation at the public hearing. It shall be in the body's discretion as to whether or not it desires to accept the information, changes or modifications and further determine if the information merits holding the application until the next regular hearing. Should an applicant turn in such material late a second time for a regularly scheduled public hearing, then it shall be grounds to dismiss the application with prejudice, hold or continue the application.

- C. Reserved.
- D. Reserved.

SECTION 7. PUBLIC HEARING AGENDA

- A. An agenda for the meetings will be established and prepared by the Zoning Division Manager, and posted by the Clerk. The agenda will be available to the members in advance of the advertised meeting.
- B. Except in cases where it is not feasible, an agenda work session will be held for the BZA with as many of the members as are available to attend.
- C. The order of business shall be as follows: Consent cases, Held cases, Continued cases, Regular cases, Other Business items and non-agenda items. The order of business listed in the agenda summary may be changed by unanimous consensus or upon a 4/5¹ vote of the body. Should only three (3) or four (4) members of the body be present, a unanimous vote shall be required.

SECTION 8. PUBLIC HEARING AGENDA ITEMS

Section 8.01 Consent Agenda

- A. A portion of the agenda may be designated as a consent agenda by the Zoning Division staff for the BZA and all items contained therein may be voted on en gross.
- B. Prior to any item being considered on any consent agenda, the Zoning Division staff shall make available online all staff comments, conditions and stipulations.
- C. Prior to the vote on the consent agenda, the following may cause the case to be removed from Consent and placed on the Regular Agenda for a full public hearing:
 - 1. a member may request an item be removed;
 - 2. upon objection by the applicant of any staff comment, condition or stipulation; or
 - 3. if opposition is present, a member or staff may elect to remove the case.

Section 8.02 Held Case Agenda

- A. Held cases are those wherein public hearings have already been held; however, the members delayed action, based upon an exercise of discretion, such as when there is a desire for the applicant and opposition to meet further or where additional information or further evaluation by staff is needed.

¹ Rationale: Frequently the business can be facilitated by changing the order in which business is considered. Since items are not designated a specific time, it is the responsibility of the interested parties to be available throughout the meeting until items which interest them have been disposed of.

- B. The applicant or representative shall update the respective board on any aspects of the case which have been revised. Public input shall be allowed as provided for within Section 10.
- C. These cases will be voted on following the presentation and questions.

Section 8.03 Continued Case Agenda

- A. Continued cases are those wherein public hearings were not conducted due to recommendation of staff, mutual consent by the applicants and opponents or due to reasons set forth within the Code.
- B. Continued cases are voted on following a public hearing conducted in accordance with the procedures outlined in Section 10.

Section 8.04 Regular Agenda

- A. Regular cases are those wherein, in the opinion of staff and/or the BZA, issues exist that should be considered following a full public hearing.
- B. Each case will be considered in the order assigned it in the Variance Agenda Summary except when agreed upon by unanimous consensus or upon a 4/5 vote of the body. Should only three (3) or four (4) members of the body be present, a unanimous vote shall be required.
- C. Voting on cases on the Regular Agenda will take place immediately following the close of the public hearing of the same case.

Section 8.05 Reserved.

Section 8.06. Reserved.

SECTION 9. ADDITION OF NON-AGENDA ITEMS

A non-agenda item shall be defined as that which is deemed by a member to require urgent attention but has not been placed on the published agenda.

- A. Adequate information, including the specific topic, shall be given on any items requested to be added as non-agenda items.
- B. A vote of 4/5 shall be required to add a non-agenda item. Should only three (3) or four (4) members of the body be present, a unanimous vote shall be required.

SECTION 10. PUBLIC PARTICIPATION IN MEETINGS

Cobb County welcomes visitors to its meetings and is willing to hear any person or persons desiring to appear; however, during work sessions the public may only observe the meeting. Speakers at all other meetings are subject to these rules as follows:

- A. Time limitations.
 - 1. Zoning hearings.
 - a) Applicants/representatives and those in favor, as a group, and opponents/representatives, as a group, shall be given a maximum of ten (10) minutes for each side to present its application or opposition, unless, by general consensus, more time is allotted by the BZA. Any groups which are present are encouraged to choose a spokesperson to present their views so as not to repeat the same information.
 - b) Reserved.
 - c) As each application is called, all non-attorney witnesses for the applicant and opponents shall first be sworn prior to making their presentations.
 - 2. The County Attorney or designee shall be responsible for keeping time.
- B. No further public input will be allowed following the close of the public hearing except in response to questions from members of the BZA.
- C. All remarks must be related to the application. No person shall be allowed to make impertinent, derogatory, offensive or slanderous remarks while addressing the body.
 - 1. A person may be barred from further speaking before the BZA in that meeting if his/her conduct is deemed "out of order".
 - 2. A person, once barred for improper conduct shall not be permitted to continue or again address the body in that meeting unless a majority vote of the body allows.
 - 3. In the event the speaker thus barred fails to obey the ruling, the chair may take such action as is deemed appropriate, including the removal of such person from the assembly.
 - 4. The body may bar a person from addressing meetings for up to sixty (60) days for improper conduct.
 - 5. A person barred by the body for this period may request a hearing, by written request to the chair stating reason(s) for a reversal of the decision.
 - 6. The hearing shall be placed on the next available agenda and heard by the body. A 4/5 vote of the entire BZA shall be required to overturn the previous decision to bar the person(s).
- D. When the meeting leader asks for a count of those in opposition, whether an early head count or at the calling of the matter, a count of those in favor shall also be made.

SECTION 11. MOTIONS

- A. Following presentation of both sides, the public hearing shall be closed and the body shall discuss the application prior to the district member making a motion.

- B. These motions shall take precedence in order in which they are listed below:
1. Adjourn;
 2. Recess;
 3. Motions of privilege;
 4. Call the question;
 5. Limit discussion or debate by the body;
 6. Hold/continue until a time certain;
 7. Refer back to staff; or refer to staff;
 8. Amend;
 9. Main motion.
- C. When needed for clarity and prior to taking the vote, the chair should state the motion (or resolution) or its substance.

SECTION 12. MAIN MOTION

A main motion shall be a motion whose introduction brings business before the body.

- A. Possible dispositions of such a motion include:
1. adopted/approved, with or without deletions, stipulations or conditions;
 2. defeated/denied/rejected;
 3. referred to staff for further information or recommendations;
 4. held until _____ (a definite time);
 5. continued;
 6. withdrawn, with or without prejudice;
- B. All main motions shall require a second² and, if such motions fail to obtain a second the chair shall state, "Since there is no second, the motion is not before this meeting."
- C. Once a motion has been moved and seconded it belongs to the entire body and not to the maker of the motion; therefore, if a member wishes to withdraw a motion that is officially before the body, action of the BZA must be taken in either of the following ways:
1. The chair will ask the BZA if there are any objections to the motion being withdrawn. If there are no objections, the motion shall be withdrawn by unanimous consent, without the need for the seconder to withdraw his/her second or any further motion.
 2. If there is an objection to the motion being withdrawn, the person requesting permission or another member may make a motion to grant permission. A second is required if the motion is made by the person requesting permission but not if by another member. The chair shall take an official vote. A majority vote shall be required to adopt the motion to grant permission to withdraw a motion.

² The member who seconds a main motion, or any procedural motion, implies that he/she wishes that the motion be discussed and voted upon, but does not indicate support for the motion and may speak for or against the motion.

SECTION 13. SUBSIDIARY MOTIONS

During the course of debate, members may introduce motions that propose a particular action on the main motion. These subsidiary motions allow a body to reach a conclusion on the main motion.

Three of these subsidiary motions – amend, limit discussion or debate and call the question – can also apply to other subsidiary motions.

Section 13.01. Amend

- A. If any member feels that the main motion might be more acceptable in a way other than the way presented, the member may amend through substitution, insertion or deletion of stipulations/conditions, or striking out portions. Such proposed amendments shall be handled in one of the following ways:
 - 1. by unanimous consent of the members. The chair, or another member, through the chair, may suggest changes or stipulations, and if there are no objections from the members the motion shall be amended by unanimous consent.
 - 2. with a second, discussion on the amendment only and a majority vote, on the proposed amendment.
- B. If a proposed amendment fails to obtain unanimous consent or a majority vote, or lacks a second, the main motion considered shall be the one originally presented.
- C. An amendment must be germane (relating to the substance of the main motion) and may not introduce an independent question.
- D. Improper amendments shall be:
 - 1. one which is not germane;
 - 2. one which would make the adoption of the amended motion equivalent to a rejection of the motion; or
 - 3. one which is frivolous or absurd.

Section 13.02. Hold/Continue Until a Time Certain

A motion to hold or continue to a time certain (postpone) may be used if a majority of the BZA feel that the motion before them should be considered at a later date or if the discussion shows that more information from staff or the applicant is needed or that the facts as presented are not adequate for their final vote. A second shall be required and discussion shall be limited to the reason for holding the motion or the time to which it is to be held. A majority is needed to pass it. If this motion fails, the motion to be considered shall be that motion which was on the floor prior to the motion to hold.

Section 13.03. Limit Discussion or Debate

If a member feels that the period of time for discussion of a motion should be limited as to time for the motion as a whole, or as to individual time given, the member may move to "limit discussion (or debate)

to ___ minutes." This motion shall require a second and no discussion on the motion shall be allowed. It shall require a 4/5 vote to adopt. Should only three (3) or four (4) members of the body be present, a unanimous vote shall be required.

Section 13.04. Call the Question

A member may "call the question" (a motion to end discussion) when it is clear that further discussion is unnecessary or that discussion is becoming repetitive. This motion shall require a second and no discussion on the motion shall be allowed. It shall require a 4/5 vote to adopt. Should only three (3) or four (4) members of the body be present, a unanimous vote shall be required. If this motion fails to gain the necessary 4/5 vote, debate continues as if this motion had not been made. This motion and vote is separate from and before the vote on the motion to which it is applied.

SECTION 14. PRIVILEGED MOTIONS OR MATTERS

Privileged motions facilitate the running of the meeting. They do not address or relate to the main motion and can be introduced whether or not there is a main motion under consideration. Privileged motions take precedence over all subsidiary motions. Debate is not allowed on these motions.

Section 14.01. Motions of Privilege

If any matters occur such as to impede a member in attending to the business, e.g., too much noise, the microphone not working, matters that affect the safety, orderliness, or comfort of the members, or that affects the honor of an individual commissioner/member, such member may state to the chair that he/she has a question of privilege and the matter must be addressed before the pending business of the body continues. No vote is required unless a motion arises out of the privilege.

Section 14.02. Recess for breaks and/or lunch

A recess may be declared by the chair, in his/her discretion, when he/she deems it advisable or by a request of a member. If the body unanimously consents, no motion is required. If there is an objection from a member, then a motion and a second is required, it is not debatable and an affirmative majority vote shall be required to recess.

Section 14.03. Adjourn

The highest ranking motion shall be the motion to adjourn, requiring a second and a majority vote with no discussion allowed, except that the motion shall contain a time to hear any non-completed items on the agenda, if such exist. If all business on the agenda has been completed, the chair may assume the motion, and without a second, obtain unanimous consent to adjourn.

SECTION 15. INCIDENTAL MOTIONS

Incidental motions have no rank but shall be decided immediately before business may proceed and may be used throughout the meeting. These motions allow members to exert their rights as a member of the body.

Section 15.01. Point of Order. A member may call for a point of order if he/she believes that the chair has failed to notice a breach in the rules. A second is not required. This point of order shall be decided by the presiding officer without debate, unless in doubtful cases he submits the question to the body for decision.

Section 15.02. Appeal From the Chair's Decision. Whenever a member believes that the chair is mistaken in his/her ruling, a member may appeal from the chair's decision. An appeal shall require a second and shall be debatable with the chair speaking first explaining his/her ruling, and the chair may close out the debate by a statement at the end defending the ruling. An appeal may be made only on a ruling and may not be made:

- A. in response to a parliamentary inquiry or point of information;
- B. in areas that challenge verifiable rulings of factual nature.

The chair shall state the motion as "Shall the chair's decision be sustained?" A tie vote shall sustain the chair because a majority of those voting shall be required to overturn the chair's ruling.

Section 15.03. Parliamentary Inquiry. A parliamentary inquiry is a question directed to the chair to obtain information on a matter of parliamentary law or the rules of the body. The chair will answer such questions or may ask the county attorney or parliamentarian for an opinion. The motion does not require a second, is not debatable and does not involve a vote. The chair's reply, whether or not he/she has requested advice from the county attorney or parliamentarian, is not a ruling, but is an opinion. If a member does not agree with the chair's opinion, he/she may act in a way contrary to this opinion, and if ruled out of order, may then appeal the chair's ruling. The chair is not obligated to respond to hypothetical questions.

SECTION 16. VOTING

- A. All votes shall be taken by either raised hand or electronic means, at the discretion of the Chair, except those which the chair handles through unanimous consent, i.e., "If there are no objections...". A single objection will require that a counted vote be taken. An affirmative vote of at least three members, or the chair and two members, shall be required to adopt a motion, except where otherwise indicated.
- B. When an entire section of the agenda is to be voted upon by engross, a member may, without discussion, state that he/she is voting in the affirmative on all of the agenda items contained within that section of the agenda except certain ones (which he/she will name by number). In such cases, the vote of the member(s) will be recorded as negative for the items named.
- C. If a motion has been voted on without discussion and a member feels that it is necessary to explain his/her vote, he/she may have no more than one minute to give public reasons for his/her vote.

This shall not be construed as an opportunity to repeat discussion that has already taken place at the same meeting.

- D. A tie vote shall cause all procedural motions to be defeated.
1. Reserved. **For the BZA**, a tie vote on a main motion shall keep the motion as pending before the Board and the motion shall be rescheduled for another time.
- E. No member who is present at any meeting of the body at which an official decision, ruling or other official act is to be taken or adopted may abstain³ from voting in regard to any decision, ruling, or act, and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is or appears to be a possible conflict of interest⁴ as defined in Section 2-47 and Section 2-55 of The Official Code of Cobb County, Georgia. In such cases the abstaining member shall give his/her reason for abstaining on the record.
- F. A member has the right to change his/her vote up to the time that a new matter is called, e.g. if the member notices the registered vote is different than intended, the member may correct his/her vote.
- G. Voting for the various sections occurs as follows:
- Consent – Following the reading of the consent agenda, as it may be amended, the body shall vote on agenda en gross.
 - Held cases, continued cases and regular cases – Each individual case shall be voted on following the presentation and any discussion.
 - Reserved.
 - Reserved.

SECTION 17. MOTIONS USED TO BRING BACK AN ISSUE

Except as otherwise provided by law, if a member wishes to bring back to the BZA a matter which has been adopted, he/she may do so through: motion to reconsider, motion to amend something previously adopted, or motion to rescind. These shall have the same rank as a main motion.

Section 17.01. Reconsider.

- A. In the same meeting but at any time within that meeting provided the applicant is still in attendance (if applicant is no longer present, then notice is required pursuant to Section 17.02), when it appears that mistake or a different result might better reflect the will of the BZA, any

³ "It is a general rule that a legislative body cannot only compel the attendance of its members, but that it can also require them to vote unless excused by the body from voting." Mason's Manual of Legislative Procedure.

⁴ "It is a general rule that no members can vote on a question in which they have a direct personal or pecuniary interest. The right of members to represent their constituencies, however, is of such major importance that members should be barred from voting on matters of direct personal interest only in clear cases and when the matter is particularly personal." Mason's Manual of Legislative Procedure.

member (regardless of how he/she originally voted on the matter) may move to reconsider the vote with respect to any zoning matter. A motion to reconsider may be applied to a vote that was either affirmative or negative and shall propose no specific change in a decision but simply shall propose that the motion be re-opened for discussion. A second shall be required for this motion and discussion shall be allowed as to the reasons for wishing to reconsider the vote.

- B. A majority vote shall be required to adopt the motion to reconsider.
- C. If the motion to reconsider is adopted, the original decision will be voided. The body will return to debate on the original motion. Another majority vote will be required to adopt the original motion or as the motion may be amended.
- D. If the reconsideration is moved while another subject is before the assembly, it cannot interrupt the pending business, but, as soon as that has been disposed of, if called up it has preference over all other main motions and general orders.

Section 17.02. Amend Something Previously Adopted

If a member wishes to amend an action taken at the current or a previous meeting, the motion to amend something previously adopted should be used. This motion is used if only a part of the text is to be changed or to substitute a different version of the motion. This motion may be done in the same meeting at any time within that meeting provided the applicant is still in attendance. The form would be as follows: "I move to amend the motion relating to ... by inserting..." A second shall be required and full discussion shall be allowed.

- A. If the motion is proposed at the same meeting, a vote of 4/5 of the Board shall be required to pass the proposed amendment. Should only three (3) or four (4) members of the body be present, a unanimous vote shall be required.
- B. If the motion is placed on the agenda for the following regularly scheduled zoning/land use meeting, a majority vote shall be required for adoption of the amendment. Should only three (3) or four (4) members of the body be present, a unanimous vote shall be required. This motion shall not be in order if irreversible action has been done as a result of the vote to implement the earlier action adopted.

Section 17.03. Rescind.

- A. If any member wishes to annul an action taken at a previous meeting on any zoning matter, the motion to rescind may be used. The motion to rescind shall require prior notice at a regularly scheduled zoning meeting of the intent to rescind a motion at the next scheduled zoning meeting. After the announcement at a public hearing, the motion to rescind shall be placed on the agenda for the following regularly scheduled BZA hearing. The property shall also be posted immediately with an appropriate sign of a color different from the initial sign, and notification shall be provided by staff by telephone, email or mail to known interested parties.

- B. The motion to rescind shall not be in order if:
 - 1. the motion to reconsider may be made, i.e., at the same meeting; or
 - 2. the motion to reconsider was taken and lost; or
 - 3. only part of the action is proposed to be changed, in which case the motion to “amend something previous adopted” shall be used; or
 - 4. irreversible action has occurred as a result of the vote to implement the earlier action adopted.

- C. At the subsequent zoning meeting, when the motion to rescind is made, a second shall be required, and discussion may go into the merits of the motion to rescind. A majority shall be required to pass the motion to rescind after such prior notice.

- D. If the motion to rescind is adopted, the original decision is voided. This action leaves the original application before the body so a public hearing shall be conducted, after which a new motion on the substantive matter will be in order. The new substantive motion will require a second, will allow discussion, and will require a majority vote to adopt.

SECTION 18. MINUTES

- A. All actions of the body, except for actions described in the O.C.G.A. §50-14-3 and §50-14-4, or as those sections may be amended from time to time, shall be accurately recorded by the clerk (or his/her designee) in the minutes, which shall include:
 - 2. all main motions, substantially as worded when adopted (including amendments or stipulations);
 - 3. the name of the maker of all important motions;
 - 4. disposition of all main motions, whether:
 - a) adopted/approved, with or without deletions, stipulations or conditions;
 - b) defeated/denied/rejected;
 - c) referred to staff for further information or recommendations;
 - d) held until ____ (a definite time);
 - e) continued;
 - f) withdrawn, with or without prejudice;
 - g) dismissed, with or without prejudice.
 - 5. how each member voted;
 - 6. Clerk’s Note: a member’s comments are printed in the minutes if, when requested by the member, the majority votes (or agrees by unanimous consent) to have the remarks included. This is to emphasize a discussion item that would typically not appear on the summary minutes.

- B. The responsibility for correcting and approving the minutes shall be vested only in the members of the body for their respective minutes. The minutes of each meeting shall indicate their subsequent approval/correction. The minutes may be corrected whenever an error is noticed, regardless of the

time which has elapsed.⁵ A member may vote to approve the minutes even though he/she was not in attendance at that meeting.

- C. The minutes shall be attested to by the clerk or deputy clerk.

SECTION 19. APPEALS

Section 19.01 Of Administrative Decisions and Decisions of County Boards Where Provided in the Code (BZA)

- A. Filing of appeals from decisions of administrative officers for which provision is made in sections 134-94 and 134-95 of the Code and decisions of county boards where review by the BZA is provided in the Code shall be filed with the county clerk no later than thirty (30) days from the date of the final decision of the administrative officer or board unless otherwise provided in the Code. An appeal of an administrative officer requires a filing fee of \$100.00, payable to the Cobb County Zoning Division and should accompany the notice when filed with the Clerk. Any notice filed shall fully set forth:
 1. the jurisdictional grounds for appeal,
 2. the decision being appealed,
 3. the relief desired from such decision,
 4. the reason(s) why such relief should be granted, and
 5. documents relative to the issues raised in the appeal.

A copy of the appeal and documents filed with the county clerk shall be delivered by the clerk to the administrative officer whose decision is being appealed and to the members of the reviewing body.

- B. The county clerk shall notify the appellant, the administrative officer and the members of the reviewing body of the time and date of the hearing on the appeal, such notice to be in writing. Said notice shall be sent to the Appellants via certified mail and email, if known. All other notice and any subsequent mailings/pleadings may be accomplished via email and/or U.S. mail.

The hearing shall take place within 90 days from the date of the filing with the county clerk except as otherwise provided by the Code. Public notice of the hearing shall be accomplished by publication in the legal organ of the county for at least one (1) insertion, at least 15 but not more than 45 days prior to the date of the hearing. Additionally, a Notice of Appeal Hearing shall be posted on the second floor bulletin board.

- C. Each party has the right but not the obligation to submit a position paper detailing its position to the reviewing board prior to the hearing. The paper should be emailed or personally delivered to the County Clerk's office who will then distribute the paper to the board members and the opposing party.

⁵ Mason, Paul. Mason's Manual of Legislative Procedure. The American Society of Legislative Clerks & Secretaries in cooperation with the National Conference of State Legislatures, 1989.

- D. The procedures for appeal hearings shall be as follows: 1) any pre-hearing motions heard and ruled on; 2) if the hearing is to proceed, each side presents an opening statement limited to three minutes; 3) each side has twenty minutes to present their case, inclusive of cross examination, with the appellant presenting first; each witness shall be subject to cross examination by the opposing party; 4) each side may present a summation limited to three minutes; 5) the members of the reviewing body may question each witness and such shall not count against any party's allotted time. The appellant may reserve any of his remaining time for rebuttal. Upon request, the reviewing body may in its discretion allow additional time for each side.
- E. If the aggrieved party is not the property owner, the property owner or its representative may fully participate in the hearing or elect to simply make a ten-minute presentation to the reviewing body. The property owner may only address the issue(s) before the Board on appeal. It may not expand the appeal.
- F. The rules of evidence as set forth in the Georgia Civil Procedures Act shall not apply to the hearings described in this section. Upon objection by either party, the hearing officer shall rule on the admissibility and evidence shall be admitted, if necessary, to serve substantial justice.
- G. The legal standard of review to be applied by the reviewing body shall be "abuse of discretion."
- H. If the hearing has not been concluded before 5:30 p.m., the hearing may be continued to a "date certain" specially called meeting or to a date to be "announced" later (pursuant to notification requirements set forth in 19.B.).
- I. At the conclusion of the hearing, the reviewing body may issue a ruling or may take the case "under advisement". In the event the reviewing body takes the case under advisement:
 - 1. The chair will announce the Board's intent to render a ruling within approximately X number of days (does not have to be date/time certain).
 - 2. The reviewing body may direct the parties to submit, within X number of days, written proposed decisions.
 - 3. The reviewing body may discuss at the next work session; however, the final determination must be announced at a public meeting which has been properly posted and notice given.
 - 4. Counsel shall not discuss the case particulars with members during the advisement period. No emails or public statements on this issue that occurred after the date of the hearing should be taken into consideration by the members.
- J. Following a decision by the reviewing body, a written decision shall be issued to Appellants and property owner.

Section 19.02. Reserved.

SECTION 20. PARLIAMENTARIAN

The county attorney or his/her designee shall serve as parliamentarian, and shall advise and assist the chair and the body in matters of parliamentary law. A professional parliamentarian may be consulted as deemed necessary.

SECTION 21. PARLIAMENTARY AUTHORITY

The latest edition of **ROBERTS' RULES OF ORDER NEWLY REVISED, 11th Edition** shall govern the BZA in all areas not addressed and which are not inconsistent with these rules adopted by the members or higher law.

SECTION 22. AMENDMENTS TO THESE RULES AND PROCEDURES

These rules may be amended by a 4/5 vote of the entire BZA at a regular or special meeting of the BZA provided notice has been given of the amendment(s) at the meeting prior to the vote on the amendment(s).

APPENDIX PARLIAMENTARY DEFINITIONS

The following parliamentary definitions apply to the ZONING AND LAND USE HEARING PROCEDURES adopted on January 11, 1994, amended on April 26, 1994 (Section 8, Regular Agenda, paragraph "F"), and comprehensively amended on April 15, 1997; further amended on August 17, 1999 (Held Case Agenda, paragraph "B", and Other Business, paragraph "A"; further amended on November 16, 1999 (Section 12. Filings and Exhibits paragraph "B"); further amended on January 28, 2003 (Section 26. *Reconsider*, and Section 27. *Rescind*); further amended on May 11, 2004 (Section 8. *Other Business*, and Section 12. *Filings and Exhibits*); further amended on October 19, 2004 (Section 11. *Voting Session*, paragraph "D").

adjourn - to officially terminate the meeting.

adjourned meeting - a meeting that is a continuation at a later specified time of an earlier regular or special meeting.

adopt - to approve or pass by whatever vote is required for the motion.

affirmative vote - a vote in favor of the motion as stated.

agenda - the official list of items of business planned for consideration during the meeting.

approval of minutes - formal acceptance of the record of a meeting thus making this record the official minutes of the body.

Board of Zoning Appeals – board as created by Section 134-91 of the Code with the limited powers as described in detail at Section 134-94 of the Code.

Body - Board of Zoning Appeals.

chair (Chairman) - the presiding member.

Clerk – the duly appointed County Clerk.

Code - The Official Code of Cobb County, Georgia.

Commission – the Cobb County Planning Commission or the Cobb County Board of Commissioners.

commissioner - any person named or elected to that position.

common parliamentary law - the body of rules and principles that is applied by the courts in deciding litigation involving the procedure of any organization; does not include statutory law or particular rules adopted by any organization or board.

convene - to open a meeting.

debate - formal discussion of a motion under the rules of parliamentary law and more often, herein, referred to as discussion.

defer or hold - to delay action by referring the motion to staff for more information, or by postponing a vote to a time certain.

demand - an assertion of a parliamentary right by a member.

dilatory motions or tactics - misuse of procedures or motions that are out of order or would delay or prevent progress in a meeting.

floor - when a person receives formal recognition from the chair, he/she "has the floor" and is the only person entitled to speak.

germane amendment - an amendment relating directly to the motion to which it is applied.

germane discussion - discussion relating directly to the matter involved.

hearing - a meeting for the purpose of listening to the views of an individual or of a particular group on a particular subject.

in order - permissible and right from a parliamentary standpoint.

majority vote - an affirmative vote of at least three members, or the chair and two members.

minutes - the legal record of the action of the body.

motion - a proposal submitted to the body for its consideration and decision; it is introduced by the words "I move that..."

objection - the formal expression of opposition to a proposed action.

order of business - the adopted order in which the business is presented to the meeting of the body.

out of order - not correct, from a parliamentary standpoint, at the particular time.

parliamentary authority - the code of procedure adopted by the BZA as its parliamentary guide, governing in all parliamentary situations not otherwise provided for in the ZONING AND LAND USE RULES AND PROCEDURES, the Code or higher governing bodies.

pending motion - sometimes referred to as pending question; any motion that has been proposed and stated by the chair for the member's consideration and that is awaiting decision by vote.

precedence the rank or priority governing the motion.

precedent - a course of action that may serve as a guide or rule for future similar situations.

procedural motion - motions to assist the body in treating or disposing of a main motion; or, motions relating to the pending business or to business otherwise at hand.

proposal or proposition - a statement of a motion of any kind for consideration and action.

O.C.G.A. - Official Code of Georgia Annotated.

quorum - the number of persons that must be present at a meeting of the body to enable it to act legally on business.

recognition - acknowledgement by the chair, giving a person sole right to speak.

reconsider - to review again a matter previously disposed of, and to vote on it again; must be made on the same day of business.

request - a statement to the chair asking a question or some "right".

rescind - to nullify or cancel out a previous action; cannot be made if irreversible action has already been taken to implement the motion it wishes to rescind.

resolution - a formal motion, usually in writing, and introduced by the word "resolved" that is presented to the body for a decision.

ruling - the chair's decision as it relates to the procedure of the BZA.

second - a member's statement that he/she is willing to have the motion considered.

seriatim - a consideration by sections or paragraphs.

statute - a law passed by the legislature.

technical inquiry - request for information relevant to the business at hand.

tie vote - vote in which the affirmative and negative votes are equal on a motion.

unanimous consent - deciding on a vote without voting on it but where no member voices objection; with a single objection a vote must be taken.

unfinished business - any business that is postponed definitely to a time certain.