

**ARTICLE 37
VARIANCES**

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Sec. 37.1. Authority to Grant Variances.

The Governing Body shall have the power to authorize upon application in specific cases such variances from the terms of this zoning ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this zoning ordinance will in an individual case result in practical difficulty or unnecessary hardship, so that the spirit of this zoning ordinance shall be observed, public safety and welfare secured, and substantial justice done.

The Governing Body may upon application consider the approval, conditional approval, or denial of variances, subject to the requirements of this Article. In granting a variance, the Governing Body may impose such requirements and conditions with respect to the location, construction, maintenance and operation of any use or building, in addition to those expressly set forth in this zoning ordinance, as may be deemed necessary for the protection of adjacent properties and the public interest.

Sec. 37.2. Initiation of Variance Applications.

An application for variance may be initiated by any person, firm, corporation or agency, provided said individual, firm, corporation or agency is the owner or owner's agent of the property for which the variance is sought.

Sec. 37.3. Application Requirements.

Applications for variance shall require submittal of an application requirements specified in this Section.

- (a) Application fee as specified by this ordinance or established by resolution of the Governing Body;

- (b) Application form furnished by the Zoning Administrator, including signed and notarized signature of property owner;
- (c) Legal description of the property;
- (d) Survey plat of the property;
- (e) Letter of intent describing the proposed use of the property or other action requested;
- (f) Site plan of the property at an appropriate engineering scale showing the proposed use and relevant information regarding proposed improvements;
- (g) Statistics regarding the proposed development;
- (h) Written analysis of how the proposed action compares to decision criteria specified for deciding on the subject type of application;
- (i) Description of any special conditions voluntarily made a part of the request; and
- (j) Other information as may be required by the Zoning Administrator.

Sec. 37.4. Site Plan Requirements.

Applications for variance shall include a site plan, which shall at minimum include on the site plan information specified in this Section. The Zoning Administrator may waive one or more of the requirements of this Section in individual cases when he/she determines that one or more elements of the required information specified in this Section are not essential to the review process.

- (a) Existing and proposed buildings and structures;
- (b) Other information as may be required by the Zoning Administrator to describe and/or graphically depict the requested variance.

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The Governing Body shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

- (a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;
- (b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;

- (c) Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;
- (d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;
- (e) The special circumstances are not the result of the actions of the applicant;
- (f) The variance requested is the minimum variance that will make possible the proposed use of the land, building, or structure in the use district proposed; and
- (g) The variance shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

Sec. 37.6. Application Compliance and Completeness.

- (a) No variance application shall be processed by the Zoning Administrator unless it complies with the procedural requirements of this Article and is found to be complete with regard to application materials, payment of fees, supportive materials, and any other application requirements specified by this Article.
- (b) If the variance application does not comply with all application submittal requirements of this Article, the Zoning Administrator shall reject the application and refuse to process it.
- (c) In cases where more than one application (rezoning, conditional use, variance) pertaining to a particular piece of property is filed simultaneously, the applicant must prepare separate applications and meet all application requirements for each application filed; provided, however, that the Zoning Administrator may waive separate site plan or letter of intent filing requirements when they would be unnecessarily duplicative.

Sec. 37.7. Administrative Processing of Applications.

The Zoning Administrator is hereby authorized to establish administrative deadlines for the receipt of variance applications. Upon a finding by the Zoning Administrator that a variance application is complete and complies with the requirements of this Article, including deadlines, the application shall be marked received and approved for initiation, and the date of such consideration shall be indicated in the file of the application.

Sec. 37.8. Concurrent Variance Application.

In cases where an applicant is proposing a rezoning (i.e., amendment to the official zoning map) or conditional use, and where the applicant files an application to obtain a variance at the same time of filing a rezoning or conditional use application, the two applications may be processed simultaneously, but the variance application shall not be considered until the rezoning or conditional use application is approved (which may be the same public hearing or meeting), since the variance would not otherwise be permitted without the rezoning or conditional use.

Sec. 37.9. Investigations and Recommendation.

- (a) Within a reasonable period of time after acceptance of a complete application, the Zoning Administrator may send the application out for review by internal municipal departments and external agencies as may be appropriate (i.e., inter-agency review). Such internal municipal agencies should include the police department and public works/utilities department. External agencies may include but are not limited to the Hall County Board of Education; Georgia Regional Transportation Authority, Georgia Department of Transportation; Georgia Mountains Regional Development Center, adjacent local governments, and various departments of Hall County Government.
- (b) Any written comments received in a timely manner shall be submitted to the Governing Body for consideration, and any such comments shall become an official public record.
- (c) The Zoning Administrator may investigate and make a recommendation regarding any or all of the relevant matters concerning the application. Any such investigation and recommendation shall if in writing be made available to the applicant and Governing Body prior to the public hearing held by the Governing Body and shall become an official public record.
- (d) Copies of the Zoning Administrator's findings and recommendations shall be provided to the applicant prior to the public hearing and shall be available upon request to interested members of the public prior to or at public hearing on the matter.

Sec. 37.10. Notice of Public Hearing.

- (a) At least fifteen (15) but not more than forty-five (45) days prior to the date of the public hearing before the Governing Body, the city shall cause to be published within a newspaper of general circulation within the City a notice of the public hearing before Mayor and City Council, on the variance application. The notice shall state the time, place, and purpose of the public hearing.
- (b) Each public notice sign pertaining to a concurrent variance shall state the proposed zoning classification and the section or sections of the Zoning Ordinance proposed to be varied.

Sec. 37.11. Public Notice Sign.

- (a) For all variance applications the Zoning Administrator shall cause to have posted in a conspicuous location on said property one (1) or more sign(s).
- (b) The public notice sign shall be erected not less than fifteen (15) calendar days prior to the public hearing before the Governing Body pertaining to said application. Each public notice sign shall state the time, place, and purpose of the public hearing before the Governing Body, and the location of the property.
- (c) Each public notice sign pertaining to an amendment to the official zoning map shall state the section or sections of the zoning ordinance proposed to be varied.

Sec. 37.12. Public Hearing.

The Governing Body shall hold a public hearing on all variance applications in accordance with the public hearing procedures specified in Article 35 of this zoning ordinance.

Sec. 37.13. Decision.

- (a) Within a period of sixty-five (65) calendar days from the date of the public hearing held by the Governing Body on any variance application, the Governing Body shall render a decision on the application.
- (b) The Governing Body may approve or disapprove the variance as applied for, or it may approve modifications of the application as originally proposed, and it may place conditions of approval on the application.
- (c) In rendering a decision on any such application, the Governing Body shall consider all information supplied by the applicant and Zoning Administrator.

Sec. 37.14. Withdrawal of Application.

A variance application may be withdrawn at any time at the discretion of the person or agency initiating such a request, upon written notice to the Zoning Administrator.

Sec. 37.15. Refunds When Application is Withdrawn.

- (a) When a variance application is withdrawn within ten (10) calendar days from the date of approval for initiation by the Zoning Administrator, one half (1/2) of the entire application fee paid by the applicant shall be refunded to the applicant. The Administrator shall refund that portion of the application fee within thirty (30) calendar days of the date of withdrawal of the application.
- (b) No portion of a required application fee shall be refunded on any application withdrawn by an applicant later than ten (10) calendar days from the date of approval for initiation by the Zoning Administrator.

Sec. 37.16. Limitations on the Frequency of Filing Applications.

No variance application affecting the same or any portion of property which was denied by the Governing Body shall be accepted for filing by a property owner until twelve (12) months shall have elapsed from the date said application was denied by Governing Body.

Sec. 37.17. Notice of Action.

The Zoning Administrator shall notify the applicant of the action taken by the Governing Body on the application no later than five (5) working days from the date the Governing Body took action on said application.