

Article 18 – Amendments and Zoning Procedures

18.1 ADMINISTRATION AND LEGISLATIVE BODIES.

The provisions of this Article of the Zoning Ordinance shall be administered by the Planning and Land Use Department, in association with and in support of the Planning Commission, and Board of Commissioners (the “Board”), as described herein.

18.2 PLANNING COMMISSION

18.2.1 Jurisdiction. The Cherokee County Planning Commission (the “Planning Commission”) shall exercise all those powers and duties as herein prescribed in this Article with respect to all unincorporated areas of Cherokee County and for those municipalities within Cherokee County as may be agreed upon from time to time between the County and the respective municipality.

18.2-2 Powers and Duties

A. Comprehensive Plan. The Planning Commission shall review and recommend to the Board a long-range comprehensive plan to guide the future development of Cherokee County, and may make recommendations to the Board for amendments to the Comprehensive Plan.

B. Small Area Plans. The Planning Commission may prepare, review, and recommend to the Board for its consideration small area plans for identifiable areas wherein more detailed guidelines are provided to supplement the objectives of the comprehensive plan. The Planning Commission may recommend amendments to existing small area plans.

C. Recommendations Related to Zoning Map, Text of Zoning Ordinance, Special Use Permits, and Concurrent Variances. The Planning Commission is authorized to prepare and recommend for adoption to the Board an official zoning map and zoning regulations for unincorporated Cherokee County. The Planning Commission is further authorized to recommend amendments to the existing zoning map and the text of this Zoning Ordinance, and to make recommendation with respect to requests for Special Use Permits and concurrent variances.

D. Public Hearings. The Planning Commission is hereby delegated by the Board of Commissioners the non-exclusive authority to conduct public hearings in connection with its recommendations regarding map and text amendments, Special Use Permits, and concurrent variances. Such public hearings must be conducted in compliance with Georgia law and the requirements of this Zoning Ordinance. Nothing in this paragraph shall limit or pre-empt the Board from conducting public hearings at any time it deems appropriate in its sole discretion or as otherwise provide in this Article 18.

E. Minutes and Public Records. The Planning Commission shall keep minutes of its proceedings in accordance with Georgia Law. Written minutes of the Planning Commission’s meetings and public hearings shall be prepared by the Department of Planning and Land Use for the Planning Commission and approved by the Planning Commission at its next regular meeting. All minutes of the Planning Commission’s meetings and public hearings shall be maintained as public records in the Department of Planning and Land Use and available for public inspection during normal business hours.

F. Additional Powers. The Planning Commission shall exercise any other powers or duties as provided to it by law not otherwise delegated to the Department, the Board or another appointed body by this Article.

18.2-3 Membership

The Planning Commission shall consist of nine (9) members who reside in Cherokee County. The Board of Commissioners of Cherokee County shall appoint seven (7) of the members with each Commissioner and the Chairman having one (1) appointment to run concurrently with the term of the person so appointing. In addition, two members shall be appointed by the Board as a whole to serve at the pleasure of the Board.

Two members of the Planning Commission shall consist of representatives of the City of Waleska and the City of Ball Ground. The City of Waleska and the City of Ball Ground shall appoint the respective members.

Within the first year of service, each member of the Planning Commission, regardless of how appointed, shall attend a minimum of one professional training session related to the role and responsibilities associated with the mission of a Planning Commission.

18.2-4 Leadership

There is hereby established a Chairman of the Planning Commission to be appointed annually by the members of the Planning Commission. In addition, a Vice-Chair shall be appointed by the members of the Planning Commission.

18.2-5 Policies and Procedures

The Planning Commission is authorized to adopt policies and procedures to govern the conduct of its business and meetings, provided that such policies and procedures are in accordance with the Zoning Ordinance. Copies of the Planning Commission Policies and Rules of Procedure shall be available for distribution to the general public through the Planning and Land Use Department. Should there be a conflict between this Zoning Ordinance and the Planning Commission Policies and Rules of Procedure, the terms of this Zoning Ordinance shall govern and control. In addition, Robert's Rules of Order shall be utilized as a guide for parliamentary procedure in the absence of the issue being addressed specifically in the Policies and Rules of Procedures or this Article.

18.3 ZONING ORDINANCE TEXT AND MAP AMENDMENTS.

18.3-1 Zoning Ordinance and Official Zoning Map Amendment Procedure.

The Zoning Ordinance, including the Official Zoning Maps, may be amended from time to time by the Board of Commissioners in accordance with the requirements of the State Zoning Procedures Law (Ga. Laws 1985, page 1139; O.C.G.A. Sections 36-66-1 through 36-66-5) and this Ordinance.

18.3-2 Initiation of Amendments.

Amendments to the text of the Zoning Ordinance or the Zoning Map may be initiated as provided herein.

18.3-3 Public Hearing Required.

- A. Prior to enacting a text amendment to the Zoning Ordinance or a map amendment, Special Use Permit, or a PUD Master Plan Amendment a public hearing shall be conducted on the proposal. A PUD Master Plan Amendment shall follow Section 18.3-5(A)(7) of the Cherokee County Zoning Ordinance unless determined otherwise by the Community Development Agency Director, or their designee.
- B. At least fifteen (15) calendar days but not more than forty-five (45) calendar days prior to the date of such hearing, there shall be published within a newspaper of general circulation within the territorial boundaries of Cherokee County, a notice of the hearing. The notice shall state the time, place and purpose of the hearing.

18.3-4 Text Amendments.

- A. Initiation of Text Amendment. An amendment to the text of the Zoning Ordinance may be initiated by the Board of Commissioners, the Planning Commission, or the Community Development Agency Director, or designee, when public necessity, general welfare or good zoning practice justifies such action.
- B. Public Hearing. The Board of Commissioners shall conduct the public hearing for a text amendment. Alternatively, the Board of Commissioners may direct the Planning Commission to conduct a public hearing for the purpose of obtaining its recommendation on the text amendment, and in any event, the Planning Commission shall conduct the public hearing on any text amendment initiated by the Planning Commission. Following its public hearing or after receipt of the Planning Commission recommendation, as applicable, Board of Commissioners shall consider the text amendment and take final action. Board Initiated Text Amendments are exempt from the requirements of 18.3-5(A)(7).
- C. In the event that the Planning Commission is considering a text amendment, action by the Planning Commission shall be as follows:
 1. A motion to recommend approval (with our without modifications) or denial of a text amendment must be passed by an affirmative vote of at least a majority of the members present in order for the motion to carry.
 2. A tie vote on any motion shall be deemed to be no action.
 3. If no action is taken on a text amendment, it shall be considered tabled and action deferred to the next regular meeting. If no action is taken by the Planning Commission within sixty (60) days of the public hearing, and in the absence of the Board's affirmative vote for the Planning Commission to continue its deliberations for another specified period, the text amendment shall proceed to the Board with no recommendation.
- D. In taking final action on a text amendment, the Board of Commissioners may:
 1. Approve, approve with changes, or deny the text amendment; or,
 2. Table the text amendment for consideration at a future scheduled meeting; or
 3. Return the proposed text amendment to the Planning Commission for further consideration with direction.
- E. Standards for text amendments.

The Planning Commission and/or the Board of Commissioners, as applicable, shall consider the following issues in considering any proposal that would result in a

change to the text of the Zoning Ordinance, giving due weight or priority to those factors that are appropriate to the circumstances of each proposed text amendment:

1. Is the proposed amendment consistent with the purpose and intent of this Ordinance as stated under Article 2 - Purpose?
2. Does the proposed amendment further or is it compatible with the purpose and intent of the Comprehensive Plan?
3. Is the proposed amendment required to adequately address new or changing conditions or to properly implement the Comprehensive Plan or the terms of this Zoning Ordinance?
4. Does the proposed amendment reasonably promote the public health, safety, morality or general welfare?

F. Effect of text amendment approval.

1. Approval of a text amendment shall be in full force and effect upon its approval by the Board of Commissioners or upon the stated effective date thereof.
2. For a property on which a use, building, structure or other improvements existed in conformity with the Zoning Ordinance prior to the effective date of a text amendment affecting the property, any such use, building, structure or other improvements no longer in conformance shall be governed by the provisions for Nonconforming Uses under Article 13 of this Ordinance, as applicable.
3. Construction of any use, building, structure, or other improvements for which a permit has been issued in conformity with this Ordinance prior to the effective date of a text amendment may continue to completion as though no change had occurred and, upon completion, shall be governed by the provisions for Nonconforming Uses under Article 13 of this Ordinance, as applicable.

18.3-5 Map Amendments

In all applications for a map amendment the burden shall be on the applicant to produce sufficient information to allow the Board of Commissioners, Planning Commission and County staff to fully consider all relevant factors and to demonstrate that the amendment complies with all applicable requirements and is otherwise consistent with the policies reflected in the factors enumerated in the Zoning Ordinance for consideration by the County.

- A. Initiation of Map Amendment. A map amendment (to include a rezoning) may be initiated by the Board of Commissioners. A map amendment initiated by the Board shall require legal notice as per 18.3-3 of this Article referencing the time, date, place and purpose of the public hearing at which the map amendment will be considered. Map amendments initiated by the Board of Commissioners are exempt from the requirements of 18.3-5(A), with the exception of 18.3-5(A)(8) and (11).

An application for a map amendment (also referred to as an application for rezoning) may be initiated by or on behalf of a property owner relative to his/her/its property, provided such application is submitted by the owner of the record of the relevant property, the owner's agent, or by a contract purchaser with the owner's written consent. In such case of an application by or on behalf of a property owner, all items of 18.3-5 shall apply.

1. Pre-Application Meeting prior to any submittal

Any person considering submitting a rezoning application, or an application for a Special Use Permit per section 18.4 of this Article, shall first schedule a meeting with staff of the Department of Planning and Land Use prior to submitting such application. The purpose of the pre-application meeting is to communicate the intent to seek a change of zoning, to understand the documents, the timeline and the responsibilities for submitting a complete application.

2. Preliminary Review Meeting Prior to Submittal

Any time after the Pre-Application Meeting with staff, but prior to submittal of an application, the project shall be presented for a Preliminary Review of the project. The purpose of the preliminary review meeting is to allow the County's staff assigned to review and approve development plans the opportunity to become familiar with the proposed site / project and to offer their comments as to what their respective codes will require of the proposed site/project were the project to seek a development permit as proposed. The Preliminary Review Meeting is required as a courtesy for applicants and to provide a forum for applicants to ask questions and learn more about the requirements related to the application. However, staff comments provided at such meeting do not relieve the applicant from being responsible for compliance with all aspects of the County's Ordinances, even in the absence of comments related to an issue being provided by staff. Each applicant has the burden to know and become familiar with the County's Ordinances and to comply therewith in pursuit of the application, irrespective of staff comments offered during the Preliminary Review Meeting.

3. Community Information and Input Meeting (if required)

a. Applicability. This requirement for a Community Information and Input meeting applies only to rezoning applications for any commercial, office, industrial, multi-family residential, single-family residential subdivisions (more than 7 lots), non-residential uses in agriculture, and applications for a Special Use Permit. Failure to comply with the Community Information and Input requirements herein will result in a request by staff to postpone the case until such time as the applicant demonstrates compliance.

b. Purpose. Applicable applicants as defined above, shall host a Community Information and Input meeting after the proposed project has been presented in both a Pre-Application meeting and a Preliminary Review meeting. The purpose of the meeting is to ensure early and effective communication with nearby property owners and interested citizens, giving them the opportunity to understand the proposed request for a change of zoning or proposed special use, and to mitigate any impacts such proposal may have on the community.

Community Information and Input is intended to facilitate fair, open and honest discussions between an applicant for rezoning or a Special Use Permit, and citizens. Emerging out of these discussions should be a better understanding of the issues and an atmosphere for informed decision making. The desired outcome is for citizens and the applicant to work together to refine the proposal to mitigate any impacts the proposal might have on the surrounding community.

- c. Scheduling. No Community Information and Input meetings shall be scheduled by any applicant on a weekend, on a regularly scheduled Planning Commission or Board of Commission meeting date, on a holiday recognized in the Board of Commissioner's Holiday Schedule, or from the Monday prior to Thanksgiving Day to the following Sunday, or from December 20th to January 3rd.
- d. Notification Letters, Area for Mailing, and Timing. Notification Letters shall be mailed at least ten (10) days prior to the scheduled meeting.. The applicant must include certificates of mailing for the Notification Letters, and shall include said certificates with the rezoning or special use application. At a minimum, the Notification Letters must be sent to property owners within the following notification target area:
- i. All properties that lie within 1,000 feet of the legal boundary of the subject property.
 - ii. Any homeowners associations that represent subdivisions or properties, that lie within the 1,000 feet of the legal boundary of the subject property.
 - iii. Other interested parties who have requested that they be placed on the Interested Parties Notification List, as such is maintained by the Planning and Zoning Department.

These notification requirements shall apply, in addition to the formal notification provisions required by 18.3-3 and 18.3-5(A)(7) . The basis for this target area is to provide an expanded notification area beyond the legal notification required for rezoning requests (adjacent properties) to enhance Community Information and Input opportunities.

- e. Contents of Community Information and Input Notification Letter. The notification letter shall meet the requirements as set forth by the Planning and Zoning Department.
- f. Meeting Protocol.
- i. The meeting location shall be held at a public facility near the community for which the applicant is seeking the rezoning request or Special Use Permit. The meeting location should be within a 5-mile radius from location of the subject property. If no such facility is available, the applicant may propose an alternate location to be approved by the Community Development Agency Director, or designee, prior to making such arrangements.
 - ii. The applicant or authorized representative shall be available to answer questions of the general public for at least thirty (30) minutes, and is encouraged to make a short presentation of the project to those present.
 - iii. The applicant or authorized representative shall provide the following material for the general public to view at the meeting:
 1. Cherokee County Future Development Map information.
 2. Proposed Concept Site plan.
 3. Contact information for the applicant or authorized representative.

4. Procedure and contact information provided by Cherokee County Planning and Zoning Department.

- g. Community Information and Input Meeting Summary. The applicant shall prepare a written summary report on the results of the Community Information and Input meeting and provide a copy of all Certificates of Mailing for each Notification Letter sent to the Planning and Zoning Department for submission with the application. The applicant shall refer to the application requirements of the Planning and Zoning Determine to determine if any subsequent Community Information and Input Meeting is required.

4. Application Submitted

After completion of the Pre-Application meeting, the Preliminary Review meeting, and the Community Information and Input Meeting any person seeking a rezoning of their property, or a Special Use Permit per section 18.4 of this Article, shall submit an application on forms provided by the Planning and Zoning Department, latest version. The application shall further comply with the requests and specifications contained in the application provided by the Planning and Zoning Department.

The Planning and Zoning Department shall review and assess all applications requesting a rezoning, or a Special Use Permit, and determine if any required items are missing or are deficient within five (5) to seven (7) business days of said application being submitted. If the application is lacking information, the Department staff shall inform the applicant in writing of the deficiencies of the application, and the application shall receive no further processing until the deficiencies are corrected by the applicant.

An application shall be considered “accepted” where it is submitted on the required form(s), includes all required submittal information, and is accompanied by the current applicable application fees. The Department shall complete a certificate of acceptance to acknowledge acceptance and notify applicant of same.

5. Review of Application Submitted

When an application is accepted for submittal, the Planning and Zoning Department shall schedule each application for a Zoning Review to the other County departments that will be involved in the plan review. The review of the application shall at a minimum address the following items:

- a. Applicability of county policies, plans and requirements as they apply to the proposed development;
- b. Appropriateness of the development with respect to the policies set forth in the Comprehensive Plan and the regulations in this ordinance;
- c. Any site plan considerations or requirements;
- d. Any concerns or requirements related to the anticipated impact upon public infrastructure and/or schools and public improvements and appropriate requirements to mitigate those impacts;
- e. Any concerns related to land use and overall project design;
- f. Possible alternatives or modifications related to proposed application;

- g. Potential conditions upon the site or the proposed use which may make it acceptable and consistent with the purposes of the district(s), and
- h. Procedures additional information, and corrections that will need to be completed prior to the application being deemed complete.

Staff shall provide their review and comments in writing within five (5) to seven (7) business days following the Zoning Review to the applicant. Where staff has identified necessary procedures, additional information, and/or plan corrections, the applicant shall address such comments and resubmit their plan for subsequent review and comment. When staff finds no procedures, additional information and/or plan corrections are necessary or recommended, and all application materials are accepted, the application shall be deemed complete and the Community Development Agency Director, or designee, shall assign the application a date for public hearing based upon the Department's calendar for public hearings.

No more than eight (8) new applications, which have been deemed complete by staff, shall be scheduled for public hearing per month on a first come, first served basis.

6. Planning Commission Work Session:

Prior to the regularly scheduled public hearing date, the Planning Commission shall schedule a work session at which all business items scheduled to come before the Planning Commission at a public hearing shall be presented to familiarize the members with each such item. Planning and Land Use staff shall provide technical assistance in preparing the agenda for the Work Session.

7. Public Notice for Map Amendments:

- a. In addition to the Community Information and Input Meeting Notification requirements, the legal notice shall include the location of the property, the present zoning classification of the property, the proposed zoning classification of the property (if the application is for rezoning), and proposed use of the property (if applicable);
- b. The Community Development Agency Director, or designee shall cause a copy of the text of the legal notice to be sent by regular mail to the applicant and adjoining property owners at the address listed in the current county tax records at least ten (10) calendar days prior to the public hearing.
- c. A sign containing the information outlined above shall be erected in a conspicuous location on the property that is visible and unobstructed from sight on the road(s) on which the property fronts not less than thirty (30) calendar days prior to the date of the hearing. The applicant shall make a good faith effort to ensure the notice sign remains in place and visible during the 30 days' notice period. Acts of vandalism or natural occurrences limiting the effectiveness of notice by a sign posted on the property shall not invalidate any proceedings or action taken on the proposed application.

8. Criteria for Evaluating Map Amendments.

- a. The Board of Commissioners finds that the following criteria are relevant in balancing the interest of promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of property. These

criteria shall be used to evaluate rezoning applications and Special Use Permits:

- i. Whether a proposed rezoning will permit a use that is suitable in view of the use and development of adjacent and nearby property;
- ii. Whether a proposed rezoning will adversely affect the existing use or usability of adjacent or nearby property;
- iii. Whether the property to be affected by a proposed rezoning has a reasonable economic use as currently zoned;
- iv. Whether the proposed rezoning will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;
- v. Whether the proposed rezoning is in conformity with the policy and intent of the Comprehensive Plan and Future Development Map; and
- vi. 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 proposed rezoning.

The initiating party, if a party other than the Board of Commissioners, shall be required to file, with its application for rezoning, a written analysis of the impact of the proposed zoning with respect to each of the matters enumerated i-vi above.

- b. The Planning Commission and Board of Commissioners shall also consider the following factors in evaluating rezoning applications:
 - i. Impact on the road system and traffic flow;
 - ii. Adequacy of the water service system to the area proposed for development;
 - iii. Availability or adequacy of sanitary sewer systems or whether the soils in the area proposed for development are suitable to absorb the projected flows from septic tank systems;
 - iv. Impact on economic values in the area;
 - v. Impact on schools;
 - vi. Impact on the health, safety, and general welfare of the area; and
 - vii. Suitability of the site for the proposed use in overall size, topography and neighborhood compatibility.
- c. If the application is for a Special Use Permit, the additional criteria set forth in 18.4-6 shall also be considered.

9. Public Hearing

Pursuant to the duties and powers delegated herein, the Planning Commission shall be authorized to conduct and shall conduct public hearings on specific applications for an amendment to the official zoning map, and Special Use Permits, consistent with Georgia law, unless the Board of Commissioners exercises its discretion to conduct the public hearing on a county-initiated map amendment or Special Use Permit or otherwise in the discretion of the Board.

a. Amendment of application

An application may not be amended by the applicant after the regularly scheduled Planning Commission Work Session. “Amendment” of an application for rezoning or a Special Use Permit is defined to mean, but is not limited to, the addition, change or revision to a site plan, zoning district, request for concurrent variance, or proposed stipulations or conditions. However, the Planning Commission may allow an application to be withdrawn prior to the conduct of the public hearing without prejudice with respect to the twelve (12) month limitation of this section.

At the public hearing, the Planning Commission may recommend to the applicant to amend an application to reduce its size; to change the district required to a less intensive or lower density district than that requested; to specify as part of the zone district classification the particular use or uses proposed by the applicant; and/or to apply conditions, or alternatively, the Planning Commission may unilaterally include such recommendations in its recommendation to the Board.

b. Amendment after public hearing

Following the public hearing, an amendment to an application recommended by the Planning Commission for rezoning or Special Use Permit and/or an amendment proffered by the applicant may be submitted up to seven (7) days prior to the regular meeting of the Board of Commissioners, after which no further amendments to an application shall be accepted. It shall be in the Board's discretion as to whether additional staff review or an additional public hearing is required for full consideration of the amendment.

c. Postponement of an application.

An applicant may request postponement of the consideration of an application for rezoning or Special Use Permit prior to the public hearing one time, provided such request is in writing and received by the Department of Planning and Land Use no later than fourteen (14) days in advance of the public hearing date. The applicant shall be responsible for the payment of all costs associated with the re-posting of notice, legal advertisement and adjoining property owner notifications for the forthcoming public hearing. (Ord. No. 2020-O-007, 09/15/2020)

10. Planning Commission Action

- a. In considering an application for rezoning or Special Use Permit, including any concurrent variance subject to the limitations and requirements of this Article, action shall be considered by vote of the members present.
- b. The Planning Commission shall, with respect to each such request for a map amendment, evaluate and make a recommendation with respect to each of the matters enumerated in Section 18.3-5 (A) (8) (a) and (b).
- c. The Planning Commission shall recommend to :
 - i. Continue the case to the next scheduled public hearing date upon a request by the applicant, staff, and / or by its own motion; or

- ii. Approve the application, including any concurrent variance in whole or in part, as requested; or
 - iii. Approve the application, including any concurrent variance in whole or in part, with modifications and/or conditions; or
 - iv. Approve a substitute zoning classification with or without conditions; or
 - v. Deny the proposed map amendment, or special use permit, in its entirety.
- d. A motion to recommend approval or denial of an application for rezoning or a special use permit must be passed by an affirmative vote of a majority of the members present in order for the motion to carry.
 - e. If a motion to recommend approval or denial of an application for rezoning or a special use permit fails to get a second, another motion would be in order.
 - f. A tie vote on a motion to recommend approval or denial of an application for rezoning or a special use permit shall result in no action being taken, if no other motion is offered.
 - g. If no action is taken on an application for rezoning or a special use permit, it shall be considered tabled and action deferred to the next scheduled meeting. If no action is taken at the next scheduled meeting, the application shall move on to the Board of Commissioners with no recommendation from the Planning Commission.
 - h. Failure of the applicant or his agent(s) to be present at the public hearing will constitute abandonment and dismissal of the case. Where the applicant produces, within 7 days of the Planning Commission's vote to deem the application abandoned, sufficient cause and/or explanation for their absence and requests a new public hearing, the Planning Commission will consider such request to set a new public hearing at its next regular meeting. The applicant's explanation and request shall be in writing and delivered to the Planning and Zoning Department. Should a new public hearing be scheduled by affirmative vote of the Planning Commission, the applicant shall be responsible for the payment of all costs associated with the re-posting of notice, legal advertisement, and adjoining property owner notifications for the forthcoming public hearing. Otherwise, the case shall be considered abandoned and shall constitute a denial of such application for purposes of this ordinance. (Ord. No. 2020-O-007, 09/15/2020)
 - i. The decision of the Planning Commission is advisory only.
11. Action by Board of Commissioners.

Following the public hearing and after receipt of the Planning Commission's recommendation, if applicable, on an application for rezoning or Special Use Permit, including any concurrent variance, the Board of Commissioners may:

- a. Approve the application, including any concurrent variance in whole or in part, as requested;
- b. Approve the application, including any concurrent variance in whole or in part, with modifications and/or conditions;
- c. Approve a similar or less intense use, with or without conditions;
- d. Deny the application in its entirety;

- e. Remand the application back to the Planning Commission for re-hearing with direction;
- f. Before the Board of Commissioners votes on a motion to approve a more intense zoning district than recommended by the Planning Commission, the Board of Commissioners will first schedule and hold an additional public hearing for purposes of considering such more intense zoning district; (Ord. No. 2020-O-007, 09/15/2020)
- g. Table final action to a future regularly scheduled meeting. If the Board of Commissioners has not taken action on such application as enumerated in items a-e above within ninety (90) days of the Planning Commission's recommendation and the applicant has not requested postponement, the application shall be deemed to be denied without prejudice. A request from an applicant to postpone action by the Board of Commissioners shall be in writing and received by the Board of Commissioners no later than seven (7) days in advance of their regular meeting. (Ord. No. 2020-O-007, 09/15/2020)

B. Limitation on Permits.

Once an application is submitted, no application for a land disturbance, building, development or other similar permit (collectively "Permit Applications"), or for a Variance or Special Use Permit not otherwise included within the pending application for the affected property shall be accepted for processing or acted upon until final action is taken by the Board of Commissioners on the application. Permit Applications and applications for a Variance or a Special Use Permit shall be accepted during the application process if the proposed use is authorized under the same conditions in both the existing and proposed zoning district.

If the Board of Commissioners does not take final action on the rezoning application within six (6) months from the date of a complete application, Permit Applications, and applications for a Variance and Special Use Permit shall again be accepted and reviewed pursuant to existing zoning.

C. Concurrent Variances.

An application for a rezoning or a Special Use Permit may include a request for variance to the provisions of the Zoning Ordinance. Concurrent variances must be advertised with the application, specifically identifying the section(s) of the ordinance from which relief is requested.

The purpose of a variance request concurrent with an application for rezoning or for special use permit is to address factors that affect a significant portion of the proposed development of the property such as significant topographic, environmental, or access challenges on or to the site. It is further intended as a matter of transparency to ensure that all aspects of the intended project are disclosed for the consideration of the Planning Commission and the Board, rather than having an applicant secure an approval of an application and then proceed to pursue variances that undermine the Board's decision on the application. It is the burden of the applicant to demonstrate the hardship that necessitates a concurrent variance, consistent with the criteria for granting a variance set forth in the Zoning Ordinance, 15.14(B).

Variations to permitted uses or minimum lot size are not permitted.

A variance requested concurrent with an application for rezoning or a Special Use Permit shall only be valid where specifically included in a motion by the Planning Commission to recommend its approval, in whole or in part, or as part of a motion by the Board of Commissioners to approve such request, in whole or in part.

18.3-6 Modification of Existing Conditions.

Applications for changes to the conditions of an approved rezoning or Special Use Permit shall follow a streamlined process but must meet the minimum standards in accordance with the requirements of the State Zoning Procedures Law (Ga. Laws 1985, page 1139; O.C.G.A. Sections 36-66-1 through 36-66-5).

These applications shall be submitted to the Department of Planning and Land Use for analysis per Section 18.3-5 (A) (8) (a) and (b). The public shall be notified in accordance with 18.3-3 and 18.3-5(A)(7). The requisite public hearing will be held by the Board of Commissioners and the decision shall be made by the Board of Commissioners.

18.3-7 Actions to be Taken if Application Not Acted Upon Within Specified Time Limits.

- A. Purpose: The purpose of this section is to reduce map amendments of a speculative nature in Cherokee County. Where a rezoning application is approved on or after Jan. 1, 2018, and as a part of their approval the Board stipulates that within a specified time if no discernable development activity has occurred in reliance of the approved application, the following process shall be applied.
1. Upon the expiration of the specific time established in the conditional approval, a notice shall be delivered to the property owner(s) of record, by the Department of Planning and Land Use advising that a county-initiated rezoning to a constitutional zoning designation for the subject property may occur if the property owner does not initiate some action within thirty (30) days of said notice.
 2. The property owner may submit a written request for an extension of time not to exceed twelve (12) months from the date of the notice sent by the Department of Planning and Land Use as described herein.
 - a. If the request for extension is the first such extension requested by the property owner, the extension shall be granted administratively by the Community Development Agency Director, or designee.
 - b. Any subsequent request for extension of time shall be heard and decided by the Board.
 3. Alternatively, in response to the notice of a potential County-initiated rezoning, the property owner may present evidence to the Community Development Agency Director, or designee, of specific actions constituting discernable development activity taken in reliance upon the approved rezoning of the property.
 4. Discernable development activity would include, but not be limited to, the preparation of documents and/ or plans by a professional surveyor, engineer, architect or landscape architect for the clearing, grading, installation of infrastructure, or other activity for submission to Cherokee County in

anticipation of the approval of a land disturbance permit, final plat, subdivision plat, site development permit or building permit.

5. If past the expiration of the specific time established in the conditional approval there has been no discernable development activity on the property and no extension of time being requested by the property owner, the property shall be placed upon a Board agenda for consideration of a County-initiated rezoning.
 6. Nothing contained herein shall obligate the Board to initiate a rezoning of property or shall impair or otherwise limit the Board's authority to initiate a rezoning of property at any time subject only to vested right considerations.
- B. Where an approved zoning map amendment conforms with the criteria of 18.3-7 (A) above and the approved zoning map amendment is not AG, R-80, R-60, or R-40, the Board of Commissioners may consider whether to initiate a zoning map amendment that will return the property to its prior zoning district classification.
- C. If the Board of Commissioners decides to initiate a map amendment, the application shall follow the same process as any other County-initiated map amendment .

18.3-8 Review of a Decision by Board of Commissioners

Subject to the laws concerning legal standing to bring a claim, any person, persons or entities jointly or severally aggrieved by any decision of the Board of Commissioners regarding a rezoning application or a special use permit, with or without a concurrent variance, or a modification of existing zoning conditions may seek review of the Board's decision to the extent provided by law.

18.4 SPECIAL USE PERMITS.

18.4-1 Purpose.

The purpose of a Special Use Permit is to provide a process for review of a use that is generally compatible with the use characteristics of a zoning district, but requires individual review of its location, design, height, intensity, configuration and public facility impact to determine the appropriateness of the use for any particular site and its compatibility with adjacent uses.

18.4-2 Authority.

The Board of Commissioners shall take final action on applications for Special Use Permits in accordance with the procedures, standards and limitations of the Zoning Ordinance. To accommodate these special uses, the Special Use Permit allows the Board of Commissioners to approve a special use on a particular parcel without changing the general zoning district. Such approval shall be subject to the requirements set forth in this Zoning Ordinance and any additional conditions deemed necessary to ensure the compatibility of the special use with the surrounding properties. All Special Use Permit applications shall be for a specific proposed use only. The Special Use Permit shall not be used for securing early approval for conceptual proposals that may not be undertaken for some time.

18.4-3 Special Use Permit Procedure.

The application and review process for a Special Use Permit shall be the same as those contained in Section 18.3-5 concerning Map Amendments.

In addition to the information and/or site plans that are required to be submitted for the proposed special use, additional information deemed necessary by the Planning Director to evaluate a proposed special use and its relationship to the surrounding area shall be submitted as requested.

18.4-4 Staff Analysis.

The staff analysis on each application for a Special Use Permit shall follow the same procedures as those contained in Section 18.3-5. In the review process, particular emphasis shall be given to the evaluation of the characteristics of the proposed special use in relationship to neighboring properties and the compatibility of the proposed special use with its surroundings.

18.4-5 Public Hearing Required

The public hearing is a required element for all Special Use Permit applications and shall follow the same procedures as those contained in 18.3-3 and 18.3-5.

18.4-6 Additional Special Use Permit Review Criteria.

A. The Board of Commissioners may grant a Special Use Permit only for those uses designated with an “S” in Table 7.2 Permitted Uses of this Zoning Ordinance. The granting of a Special Use Permit is based upon the site plan presented to the Board and is subject to the following process and review procedure in addition to those procedures set forth in Section 18.3-5.

- B. The Board may grant Special Use Permits for limited periods of time with identified expiration dates and may also restrict the Special Use Permit to a particular owner, provided the criteria for the grant of a Special Use Permit is met.
- C. In addition to compliance with the existing zoning classification requirements contained in the Zoning Ordinance and the criteria for consideration of applications set forth in 18.3-5(A)(8)(a) and (b), the Board shall consider, at a minimum, the following in its determination of whether to grant a Special Use Permit, whether to limit the time such Special Use is allowed and whether to restrict the Special Use to a particular owner or party:
1. Whether or not there will be a significant adverse effect on the surrounding area in which the proposed use will be located.
 2. Whether or not the use is otherwise compatible with the surrounding area.
 3. Whether or not the use proposed will result in a nuisance as defined under state law.
 4. Whether or not quiet enjoyment of surrounding property will be adversely affected.
 5. Whether or not property values of surrounding property will be adversely affected.
 6. Whether or not adequate provisions are made for parking and traffic considerations.
 7. Whether or not the site or intensity of the use is appropriate.
 8. Whether or not special or unique conditions created by the use are consistent with the purpose, intent and goals of the Comprehensive Plan.
 9. Whether or not adequate provisions are made regarding hours of operation.
 10. Whether or not adequate controls and limits are placed on commercial and business deliveries.
 11. Whether or not adequate landscape plans are incorporated to ensure appropriate transition between adjacent or nearby properties.
 12. Whether or not the public health, safety, welfare or moral concerns of the surrounding neighborhood will be adversely affected.
 13. Whether the application complies with any applicable specific requirements set forth in the Zoning Ordinance for particular types of uses.
 14. Whether the applicant has provided sufficient information to allow a full consideration of all relevant factors.
 15. Whether the Special Use requested emits or creates unusual odors which would warrant use of an odor elimination/attenuation system as recommended by industry standards.
- D. In all applications for a Special Use Permit the burden shall be on the applicant both to produce sufficient information to allow the Board of Commissioners to fully consider all relevant factors and to demonstrate that the proposal complies with all applicable requirements and is otherwise consistent with the policies reflected in the factors enumerated in this Article for consideration by the Board.

18.4-7 Voluntary Termination of a Special Use Permit.

The owner of the property approved for a Special Use Permit may voluntarily request termination of the Special Use Permit by notifying the Community Development Agency Director, or designee, in writing. The Director shall notify the Board of Commissioners of voluntary terminations as they occur. The approval of a Special Use Permit for a specific use that may be operated by a lessee under a private agreement with a lessor in any zoning district shall not obligate the Board of Commissioners to be responsible for or be required to resolve any disputes that may arise out of the voluntary termination of the Special Use Permit by the property owner.

18.4-8 Change in Conditions or Modification of a Special Use Permit.

Changes to the conditions or modification of an approved Special Use Permit shall be subject to the same application, review and approval process as a new application, including the payment of current relevant fees.

18.4-9 Development of an Approved Special Use.

- A. The issuance of a Special Use Permit shall only constitute approval of the proposed use, and development of the use shall not be carried out until the applicant has secured all other permits and approvals required. The Department shall not issue a Certificate of Occupancy for the specific use until and unless all requirements and conditions of the Special Use Permit have been fulfilled by the owner of the property.
- B. If an application is approved and a Special Use Permit is granted, all conditions which may have been attached to the approval are binding on the property. All subsequent development and use of the property shall be in accordance with the approved plan and conditions. Once established, the special use shall be in continuous operation. Upon discovery that the operation of the special use has or had ceased for a period of ninety (90) days or more and the owner of the property has not requested voluntary termination of the Special Use Permit, the Director may forward a report to the Board of Commissioners to recommend that action be taken to remove the Special Use Permit from the property.

18.4-10 Compliance with Special Use Permit Requirements.

The Department of Planning and Land Use shall have the right to enter upon the property to periodically examine the operation of the specific use to determine compliance with the requirements and any conditions. If the Community Development Agency Director, or designee, determines that the requirements and conditions are being violated, a written notice shall be issued to the owner of the property outlining the nature of the violation and giving the owner of the property a maximum of ten (10) days to come into compliance. If after ten (10) days the violations continue to exist, the Director shall forward a report to the Board of Commissioners for consideration of pursuing action to remove the Special Use Permit from the property and may pursue any other available remedies for the violation.

18.4-11 Actions to be Taken if Plans of Property Owner are not Implemented within Specified Time Limits.

The use for which a Special Use Permit is granted shall commence operations or construction within twelve (12) months of the date of approval by the Board of Commissioners. If, at the end of this twelve (12) month period, the Community Development Agency Director, or designee, determines that active efforts are not

proceeding toward operation or construction, a report may be forwarded to the Board of Commissioners for consideration of pursuing action to remove the Special Use Permit from the property.

18.4-12 Appeal of a Special Use Permit Decision.

Subject to the laws concerning legal standing to bring a claim, any person, persons or entities jointly or severally aggrieved by any decision of the Board of Commissioners regarding a special use permit, with or without a concurrent variance, may seek review of the Board's decision to the extent provided by law.

18.5 CONDITIONAL APPROVALS.

18.5-1 Purpose.

In adopting a map amendment to the Official Zoning Map, or approving a Special Use Permit, the Planning Commission may recommend, and the Board of Commissioners may impose, special conditions that are deemed necessary to make the requested action acceptable and consistent with the purposes of the district(s) involved and to further the goals and objectives of the Comprehensive Plan.

18.5-2 Such conditions may consist of (but are not limited to):

- A. Restrictions as to what land uses or activities shall be permitted;
- B. Permitted hours of operation;
- C. Setback requirements from any lot line;
- D. Specified or prohibited locations for buildings, parking, loading or storage areas or other land uses;
- E. Maximum building heights or other dimensions;
- F. Architectural style, or exterior treatments;
- G. Driveway curb cut restrictions, or inter-parcel access requirements;
- H. Landscaping or planted areas which may include the location, type and maintenance of plant materials;
- I. Preservation of existing trees or other vegetation;
- J. Fences, walls, berms, or other buffering provisions or protective measures;
- K. Special measures to alleviate undesirable views, light, glare, noise, dust or odor;
- L. A requirement that the existing building(s) be removed or retained, or a limitation on exterior modifications of existing buildings;
- M. Special drainage or erosion provisions;
- N. A requirement that developers must build according to the site plans as adopted;
- O. A requirement that should no discernible development activity occur within a certain period of time, the property may be subject to a County initiated action to return the property to its previous zoning district and/or to rezone the property to a constitutional zoning designation, as outlined in 18.3-7
- P. Any other requirement that the Board of Commissioners may deem appropriate and necessary as a condition of rezoning or issuance of a Special Use Permit.

18.5-3 Such conditions shall:

- A. Only be valid if they are included in the motion approving the map amendment, or special use permit, for adoption;
- B. Be recorded in the Resolution of the Board of Commissioners if enacted pursuant to an amendment of the Official Zoning Maps, or for issuance of a Special Use Permit.
- C. Be continually in effect, or for the period of time specified in the amendment or permit.
- D. Be required of the property owner and all subsequent owners as a condition of their use of the property and shall run with the land.
- E. Be interpreted and continually enforced by the Director in the same manner as any other provision of this Zoning Ordinance.

18.5-4 Violations of Conditions

Notwithstanding any other remedies available in this Zoning Ordinance and under local and state law, violations of conditions imposed pursuant to this Section 18.5 shall be handled in accordance with Article 19.

18.6 WITHDRAWAL OF AN APPLICATION.

Once an application for an amendment to the Official Zoning Map, other than those initiated by the Board of Commissioners, or an application for a Special Use Permit has been submitted and deemed complete, the applicant may withdraw such application without prejudice only until such time as the official withdrawal deadline published in the Public Hearing Schedule, maintained by the Department of Planning and Land Use.

An application may not be withdrawn by an applicant or property owner under any circumstance after the official withdrawal deadline. Once past the published withdrawal deadline, all applications shall be considered by the Board of Commissioners and shall receive final action. At their discretion, the Board of Commissioners may allow an application to be withdrawn without prejudice at any time.

18.7 LAPSE OF TIME REQUIREMENT FOR REAPPLICATION.

The following shall apply to the reapplication for a Zoning Map Amendment, or Special Use Permit.

No application or reapplication for any zoning map amendment affecting the same land or any portion thereof shall be acted upon within twelve (12) months from the date of last action by the Board of Commissioners unless such 12-month period is waived by the Board of Commissioners, and in no case may such an application or reapplication be reconsidered in less than six (6) months from the date of last action by the Board of Commissioners or as otherwise may be required by the state Zoning Procedures Law.

No application or reapplication for the same type of Concurrent Variance or Special Use Permit affecting the same land or any portion thereof shall be acted upon within twelve (12) months from the date of last action by the Board of Commissioners.

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