

AN ORDINANCE TO AMEND THE CODE OF ATHENS-CLARKE COUNTY, GEORGIA, WITH RESPECT TO APPEAL PROCEDURES FOR TYPE IV PLANNING ACTIONS; AND FOR OTHER PURPOSES.

The Commission of Athens-Clarke County, Georgia hereby ordains as follows:

SECTION 1. Section 1-5-1 entitled “*Administrative Hearing Officer*” of the Code of Athens-Clarke County, Georgia, paragraph four (4), subsection (a) thereof, is hereby amended by adding a new subsection (a)(3) thereto, which shall read as follows:

“3. Any final decision by the Athens-Clarke County Planning Department as provided for in Section 1-5-2(a).”

SECTION 2. Section 1-5-1 entitled “*Administrative Hearing Officer*” of the Code of Athens-Clarke County, Georgia, paragraph four (4), subsection (c) thereof, is hereby amended by deleting the last sentence of subsection (c) in its entirety and the following new sentence is inserted in lieu thereof as follows:

“All service shall be by any sworn Athens-Clarke County police officer or any Athens-Clarke County Code Enforcement officer.”

SECTION 3. Chapter 1-5 of the Code of Athens-Clarke County, Georgia, entitled “*Administrative Hearing Officer*” is hereby amended by adding a new Section 1-5-2 thereto, which shall be entitled “*Review of planning staff decisions and interpretations,*” and which shall read as follows:

“(a) The administrative hearing officer shall hereby have jurisdiction over appeals of any final decision by the Athens-Clarke County Planning Department as follows:

(1) Appeals of staff permit decisions described in section 9-4-7 of this Code shall be heard and decided by the administrative hearing officer.

(2) Any interpretation by the Athens-Clarke County Planning Director of any word, phrase, or term within Title 9 of the Code of Athens-Clarke County, Georgia.

(b) A person appealing a final decision described in this code section must file his or her appeal in the time and manner described in section 9-4-8. Upon the filing of an appeal, the Athens-Clarke County Planning Department shall timely submit a copy of the appeal and the full administrative record to the administrative hearing officer.

(c) After docketing of the appeal, the administrative hearing officer shall set a date for the appeal hearing and shall timely inform the appellant (or the appellant's authorized attorney) and the Athens-Clarke County Planning Department (or its authorized attorney) of the same. The Athens-Clarke County Planning Department will be responsible for issuing, posting, and advertising all official notices of the hearing as required under the Zoning Procedures Law, O.C.G.A. §§ 36-66-1, et seq., and will supplement the record with proof of the same. The appeal hearing must be set for a date that ensures compliance with the Zoning Procedures Law.

(d) The administrative hearing officer's review of the final decision shall be confined to the administrative record, and no new evidence shall be submitted. Unless otherwise in conflict with state law standards for appellate review of administrative decisions, the administrative hearing officer shall review the record to determine whether any evidence supports the final decision of the Athens-Clarke County Planning Department, and the administrative hearing officer may review any applicable final legal conclusions of the Athens-Clarke County Planning Department on a de novo basis. The administrative hearing officer shall only consider the errors or issues explicitly raised in the written appeal.

(e) The appellant and the Athens-Clarke County Planning Department may provide oral argument during the hearing. Each side shall be afforded ten (10) minutes. The administrative hearing officer shall first hear argument from the appellant, then from the Athens-Clarke County Planning Department. The appellant may reserve up to three (3) minutes for rebuttal. Upon prior written request and for good cause shown, the administrative hearing officer may provide additional time for oral argument, provided that each side is afforded the same total amount of time. The administrative hearing officer, in his or her reasonable discretion, may request that the parties submit memoranda or briefs in support of their respective positions with page limits and other criteria as may be set by the administrative hearing officer.

(f) After the hearing, the administrative hearing officer shall issue a written decision on the appeal. If the administrative hearing officer finds it to be appropriate, he or she may remand the matter back to the Athens-Clarke County Planning Department to further develop the administrative record. The written decision of the administrative hearing officer shall constitute the final decision of the Unified Government of Athens-Clarke County, Georgia, pertaining to its subject matter, and either party may petition for review of this decision in accordance with state law.

(g) The administrative hearing officer shall be authorized to rule on any motions or objections properly raised by either party that are related to the appeal. The administrative hearing officer shall have control of the process and procedure of the appeal and may issue procedural orders and directives pertaining to the appeal, provided that such orders and directives do not otherwise conflict with this code section, any applicable procedures set forth in Title 9 of the Code of Athens-Clarke County, Georgia, or state law.”

SECTION 4. Section 9-4-8 entitled “*Appeals*” of the Code of Athens-Clarke County, Georgia, subsection one (1) of paragraph A thereof, is hereby amended by deleting said paragraph in its entirety and the following new paragraph is inserted in lieu thereof:

“1. Staff permit decisions made under the authority of section 9-4-7 of this title. The decision of the Administrative Hearing Officer shall be the final decision of Athens-Clarke County on all staff permit decisions and interpretations.”

SECTION 5. Section 9-4-8 entitled “*Appeals*” of the Code of Athens-Clarke County, Georgia, subsection one (1) of paragraph B thereof, is hereby amended by deleting said paragraph in its entirety and the following new paragraph is inserted in lieu thereof:

“1. Appeals of staff permit decisions made pursuant to section 9-4-7, shall be heard and decided by the Administrative Hearing Officer of Athens-Clarke County in accordance with the procedures set forth in Chapter 1-5 of the Athens Clarke County Code.”

SECTION 6. Section 9-4-8 entitled “*Appeals*” of the Code of Athens-Clarke County, Georgia, paragraph B, subsection one (1)(b) thereof, is hereby amended by inserting the clause “a. and b.” at the end of the existing sentence so that said subsection (b) now reads as follows:

“b. The appeal shall be in writing and filed with the Athens-Clarke County Planning Department pursuant to the procedure set forth in section 9-4-8 B.2. a. and b.”

SECTION 7. Section 9-4-8 entitled “*Appeals*” of the Code of Athens-Clarke County, Georgia, paragraph B, subsection one (1) thereof is hereby amended by adding a new subsection (c) thereto which shall read as follows:

“c. The standards for any such appeal shall be governed by the provisions of Chapter 1-5 of the Code of Athens-Clarke County, Georgia.”

SECTION 8. Should any provision, paragraph, sentence, or word of this Ordinance be rendered or declared invalid by any final court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, paragraphs, sentences, or words of this Ordinance as hereby issued shall remain in full force and effect. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 9. The Clerk of Commission is authorized, in consultation with the Athens-Clarke County Attorney, to correct any scrivener’s errors that may be found in this Ordinance after the adoption and approval hereof.

SECTION 10. This Ordinance shall become effective once approved by the Mayor or as set forth in Section 2-204 of the Charter of the Unified Government of Athens-Clarke County, Georgia.

**ATHENS-CLARKE COUNTY PLANNING COMMISSION
RECOMMENDATION**

DATE: January 4, 2024				FILE NO: N/A			
PETITIONER: Athens-Clarke County Unified Government							
REQUEST: Amend Title I and Title IX of the Code of Ordinances regarding appeal procedures for Type V Planning Actions.							
PLANNING COMMISSION MOTION AND RECOMMENDATION:							
NAME	YEA	NAY	ABSTAIN	NAME	YEA	NAY	ABSTAIN
Chair: Matthew Hall Present				Kristen Morales Present	X		
Vice-Chair: Alice Kinman Present	X			Taylor Pass Present	X		
Catherine Goodrum Present	X			Alexander Sams Present	X		
Sara Beresford Absent				Monique Sanders Present	X		
Sarah Gehring Present	X			Joey Tucker Present		X	
NOTE: Chair does not vote except in case of tie.					TOTAL VOTES:	7	1
<p>For: None</p> <p>Against: None</p> <p>Discussion: One Commissioner stated that he would prefer appeals to stay with public boards rather than administrative officers.</p> <p>Motion: Ms. Kinman made a motion to recommend approval. Ms. Gehring seconded the motion, which passed 7-1.</p>							

Sec. 1-5-1. Administrative hearing officer.

There is hereby created the position of administrative hearing officer whose term and duties shall be as set out below:

- (1) The administrative hearing officer shall be nominated by the mayor and confirmed or rejected by the commission. The initial appointment shall run until the first Tuesday in January 1993. Thereafter, the term of office of the administrative hearing officer shall run concurrently with the term of office of the municipal court judge as prescribed in section 1-4-17 of this Code. The salary of the hearing officer shall be as set by the mayor. The administrative hearing officer shall be an attorney who is a member in good standing of the State Bar of Georgia Association.
- (2) The duties of the administrative hearing officer shall be the hearing of all issues under the ordinances of Athens-Clarke County which would determine the granting, denial, probating, suspending or revoking of any license or permit granted under Athens-Clarke County ordinances.
- (3) The jurisdiction of the hearing officer over the licenses or permits shall be in addition to and concurrent with that of the municipal court of Athens-Clarke County, except that the hearing officer is specifically prohibited from awarding any punishment involving imprisonment. The administrative hearing officer may award civil fines where specifically provided for in other sections of this Code.
- (4) Jurisdiction of and procedures for administrative hearing officer:
 - a. The administrative hearing officer shall have jurisdiction over:
 1. Any action against any licensee or permittee holding a license or permit issued by any department of Athens-Clarke County. Said action shall be brought by the Athens-Clarke County Attorney, the manager, police chief, or any department head with administrative responsibility for such permit or license;
 2. Any claim by any citizen aggrieved by an administrative decision made by any Athens-Clarke County department authorized to make such decisions; and
 3. Any final decision by the Athens-Clarke County Planning Department as provided for in Section 1-5-2(a) of this Chapter.
 - b. Any hearing before the administrative hearing officer shall be on a date and time certain which shall be reflected on the summons issued by the attorney or any other person specifically authorized by this Code or other law to issue such summons to appear in municipal court, or by the clerk of the municipal court on behalf of any aggrieved citizen.
 - c. The notice of administrative hearing shall contain a place, date and time certain and shall be served on responding party more than five days before any scheduled hearing. The notice of administrative hearing shall be served as follows:
 1. By certified mail return/receipt requested; or
 2. By leaving a copy thereof at the licensed business location with an employee working therein (and in the case of an alcohol licensee, said notice shall also be sent by regular mail to the agent set out on the license or listed on the license application); or
 3. By personal service on the responding party or on an agent authorized by law or by appointment to receive service of process.All service shall be by ~~an authorized person in the Athens-Clarke County Marshal's office or by any sworn Athens-Clarke County police officer or any Athens-Clarke County Code Enforcement officer.~~
 - d. The administrative hearing officer shall have the authority to hear evidence and subpoena witnesses on behalf of Athens-Clarke County or the aggrieved citizen and shall generally conduct

the hearings in accordance with the requirements of due process as required by the United States Constitution and the Constitution of the State of Georgia. The administrative hearing officer shall entertain any and all evidence relevant to the matter without regard to evidentiary rules regarding hearsay.

- e. The standard of review for a citizen aggrieved by an administrative decision is arbitrary and capricious.
 - f. The standard for an action against a licensee or permittee is preponderance of the evidence.
 - g. The administrative hearing officer may promulgate any rules of procedure not in conflict with this ordinance or other law.
- (5) Whenever, from any cause, the administrative hearing officer is unable to be in attendance, or it should appear that he or she is disqualified in any case, it shall be the duty of the administrative hearing officer to appoint a hearing officer pro hac vice to preside over the hearing in place and stead of the administrative hearing officer, and all actions of the appointee shall be binding as if performed by the administrative hearing officer.
- (6) In the event of any vacancy in the office of administrative hearing officer for any cause, whether by death, resignation, sickness, vacancy or removal, one or more persons to fill the vacancy shall be nominated by the mayor and confirmed or rejected by the commission. The person or persons appointed to fill the vacancy shall serve for a term as set by resolution of the mayor and commission at the time of appointment and shall be a member in good standing of the State Bar of Georgia. The compensation of such administrative hearing officer shall be set by the mayor and commission.

Sec. 1-5-2. – Review of planning staff decisions and interpretations.

- (a) The administrative hearing officer shall hereby have jurisdiction over appeals of any final decision by the Athens-Clarke County Planning Department as follows:
- (1) Appeals of staff permit decisions described in section 9-4-7 of this Code shall be heard and decided by the administrative hearing officer.
 - (2) Any interpretation by the Athens-Clarke County Planning Director of any word, phrase, or term within Title 9 of the Code of Athens-Clarke County, Georgia.
- (b) A person appealing a final decision as described in this code section must file his or her appeal in the time and manner described in section 9-4-8. Upon the filing of an appeal, the Athens-Clarke County Planning Department shall timely submit a copy of the appeal and the full administrative record to the administrative hearing officer.
- (c) After docketing of the appeal, the administrative hearing officer shall set a date for the appeal hearing and shall timely inform the appellant (or the appellant's authorized attorney) and the Athens-Clarke County Planning Department (or its authorized attorney) of the same. The Athens-Clarke County Planning Department will be responsible for issuing, posting, and advertising all official notices of the hearing as required under the Zoning Procedures Law, O.C.G.A. §§ 36-66-1, et seq., and will supplement the record with proof of the same. The appeal hearing must be set for a date that ensures compliance with the Zoning Procedures Law.
- (d) The administrative hearing officer's review of the final decision shall be confined to the administrative record, and no new evidence shall be submitted. Unless otherwise in conflict with state law standards for appellate review of administrative decisions, the administrative hearing officer shall review the record to determine whether any evidence supports the final decision of the Athens-Clarke County Planning Department, and the administrative hearing officer may review any applicable final legal conclusions of the Athens-Clarke County

Planning Department on a de novo basis. The administrative hearing officer shall only consider the errors or issues explicitly raised in the written appeal.

- (e) The appellant and the Athens-Clarke County Planning Department may provide oral argument during the hearing. Each side shall be afforded ten minutes. The administrative hearing officer shall first hear argument from the appellant, then from the Athens-Clarke County Planning Department. The appellant may reserve up to three minutes for rebuttal. Upon prior written request and for good cause shown, the administrative hearing officer may provide additional time for oral argument, provided that each side is afforded the same total amount of time. The administrative hearing officer, in his or her reasonable discretion, may request that the parties submit memoranda or briefs in support of their respective positions with page limits and other criteria as may be set by the administrative hearing officer.
- (f) After the hearing, the administrative hearing officer shall issue a written decision on the appeal. If the administrative hearing officer finds it to be appropriate, he or she may remand the matter back to the Athens-Clarke County Planning Department to further develop the administrative record. The written decision of the administrative hearing officer shall constitute the final decision of the Unified Government of Athens-Clarke County, Georgia, pertaining to its subject matter, and either party may petition for review of this decision in accordance with state law.
- (g) The administrative hearing officer shall be authorized to rule on any motions or objections properly raised by either party that are related to the appeal. The administrative hearing officer shall have control of the process and procedure of the appeal and may issue procedural orders and directives pertaining to the appeal, provided that such orders and directives do not otherwise conflict with this code section, any applicable procedures set forth in Title 9 of the Code of Athens-Clarke County, Georgia, or state law.

Sec. 9-4-8. Appeals.**A. Actions subject to appeal:**

1. Staff permit decisions made under the authority of section 9-4-7 of this title. The decision of the ~~planning commission shall be the final decision of Athens-Clarke County on staff permit decisions for preliminary plat for subdivisions of five or more lots. The decision of the hearings board~~ Administrative Hearing Officer shall be the final decision of Athens-Clarke County on all ~~other~~ staff permit decisions and interpretations.
2. Type IV planning actions. The decision of the planning commission shall be the final decision of Athens-Clarke County on all planning actions subject to the Type IV planning procedure, except when initially considered by the planning commission as a Type III procedure, which may be appealed to the Athens-Clarke County Mayor and Commission in accordance with procedures set forth below.
3. Type I, II and III planning actions. The decision of the Athens-Clarke County Mayor and Commission shall be the final decision of the unified government on all planning actions subject to the Type I, II, or III planning procedure.

B. Appeal procedures:

1. Appeals of staff permit decisions made pursuant to section 9-4-7, ~~except for preliminary plat for subdivisions of five or more lots~~, shall be heard and decided by the ~~hearings board~~ Administrative Hearing Officer of Athens-Clarke County in accordance with the procedures set forth in Chapter 1-5 of the Athens Clarke County Code.
 - a. The appeal shall be filed within five business days after the final decision, as defined in section 9-4-14, is rendered.
 - b. The appeal shall be in writing and filed with the Athens-Clarke County Planning Department pursuant to the procedure set forth in section 9-4-8 B.2. ~~a. and b.~~
 - c. The standards for any such appeal shall be governed by the provisions of Chapter 1-5 of the Code of Athens-Clarke County, Georgia.
2. Appeals of Type IV decisions shall be heard and decided by the Athens-Clarke County Planning Commission.
 - a. The appeal shall be filed within five business days after the final decision is rendered, as defined in section 9-4-14.
 - b. The appeal shall be in writing and filed with the Athens-Clarke County Planning Department. Such appeal shall include the appellant's name, address, and specifically state the grounds for which the hearings board's decision should be overturned, based on the applicable criteria or procedural irregularity.
 - c. The appeal hearing shall be scheduled for a regular Athens-Clarke County Planning Commission meeting allowing adequate time to meet the public notice requirements of section 9-4-9.
 - d. The planning commission shall receive a complete record of the hearings board's action, including all information presented by the applicant, proponents, and opponents, prior to the appeal hearing. Such record shall also include the adopted findings and conclusions of the hearings board.
 - e. The hearing before the Athens-Clarke County Planning Commission shall be confined to a review of the record of the administrative hearing for error based on insufficiency of evidence to support the findings and conclusions of the hearings board that applicable criteria were or were not met, or based on procedural irregularity. At such hearing, the Athens-Clarke County Planning Commission shall first hear argument from the appellant, then from the appellee, followed by a brief rebuttal from the appellant. Each side shall be confined to ten minutes, with appellant's rebuttal not to exceed three minutes. No new evidence shall be admitted or considered. After concluding the hearing, the Athens-Clarke County Planning Commission may affirm the original planning decision, affirm the decision with conditions, deny the original planning decision, or remand the planning action back to the hearings board for further development of the record.