

**AN ORDINANCE TO ADOPT AN AMENDMENT TO THE COMPREHENSIVE
ZONING ORDINANCE FOR THE CITY OF WINDER TO ADOPT A NEW ARTICLE
XI ADMINISTRATION AND FOR OTHER PURPOSES**

It is hereby ordained by the City Council of the City of Winder, Georgia, that the Comprehensive Zoning Ordinance of the City of Winder, Georgia is hereby amended as follows:

SECTION I:

Article XI Administration is hereby deleted in its entirety and a new Article XI is inserted in lieu thereof to read as follows:

ARTICLE XI. ADMINISTRATION

Sec. 11-1. Administration, interpretation, and application.

A. The provisions of this ordinance shall be administered by the Zoning Administrator. The Zoning Administrator shall be responsible for interpretation of the provisions of the Zoning Ordinance, the Official Zoning Map, Subdivision Ordinance, and all other ordinances that are applicable to the development and growth of the city. The Zoning Administrator shall be the City official for all purposes of appeal as set forth in O.C.G.A. §36-66-5.1(c). In the event there is a vacancy in the office of Zoning Administrator, the City Administrator shall serve as the said official.

B. The provisions of this ordinance shall govern all land, buildings, and structures within the present and future incorporated limits of the City of Winder, Georgia ("city").

C. This Zoning Ordinance shall coordinate its policies and regulations, as well as future codes, standards, and guidelines with the Comprehensive Plan.

D. In their interpretation and application, the provisions of this Zoning Ordinance shall be held to be minimum requirements.

E. This Zoning Ordinance does not nullify any private agreement or covenant. However, when this Zoning Ordinance is more restrictive than a private agreement or covenant, this Zoning Ordinance controls. The City will not enforce any private agreement or covenant.

F. If any condition or requirement imposed by this Zoning Ordinance is more restrictive than a condition or requirement imposed by any other law, rule, or regulation of any kind, the more restrictive condition or requirement governs.

G. If any condition or requirement imposed by this Zoning Ordinance contains an actual, implied, or apparent conflict, the more restrictive condition or requirement controls, except when specifically stated otherwise.

H. Whenever a provision of this Zoning Ordinance refers to any other part of the Winder Code of Ordinances or to any other law, the reference applies to any subsequent amendment of that law.

I. Illustrations and graphics are included in this Zoning Ordinance to illustrate the intent and requirements of the text. In the case of a conflict between the text of these regulations and any Illustrations or graphics, the text governs.

J. All other Zoning Ordinances are hereby repealed, provided that nothing herein shall be construed as repealing or modifying the zoning conditions of operation or conditions of site development accompanying those zoning approvals, variances, conditional use permits, or

condition/compliance requirements issued under previous Zoning Ordinances; however, modification or repeal of these past conditions of approval may be accomplished through use of the procedures set forth in this Zoning Ordinance.

Sec. 11-2. Rezoning requests, text amendments, and conditional use permits.

A. An application for a rezoning of property shall be considered a simultaneous request for an amendment to the official City zoning map.

B. A request for rezoning, change of zoning conditions, or amendment to the text of the Zoning Ordinance may be proposed to the City Council by any public agency or department of the City of Winder, Georgia.

C. Applications for rezoning, change of zoning conditions, or conditional use permit may also be submitted by an individual with 51 or more percent ownership in fee simple of the subject property, or their legal agent authorized in writing over the owner's signature.

D. All requests by private groups, individuals, businesses and other nonpublic organizations for conditional use permits, rezoning, or change of zoning conditions shall be accompanied by a filing fee which is established from time to time by City Council and the fee schedule shall be maintained in the office of the Planning Department.

E. For applicants requesting a rezoning to MU or DT zoning districts, a pre-submittal conference is required with appropriate City staff. In some instances, more than one pre-submittal conference may be required. City staff may take up to three weeks to review information presented at the pre-submittal conference(s).

F. If an amendment to the zoning ordinance to accomplish a rezoning is denied by the City Council, the same property may not again be considered for rezoning until the expiration of at least six months immediately following the date of denial of the rezoning by City Council.

G. The Zoning Administrator shall transmit all applications for conditional use permits, rezonings, change of zoning conditions, or text amendments to City Council to approve, approve with conditions, or deny the application, with reasons set forth based on the standards provided Section 11-5.

H. Conditional zoning. In deciding upon any application for rezoning or conditional use permit, the City Council may, on their own motion or upon the suggestion of the applicant, or on consideration of the recommendations of the Zoning Administrator, grant the application subject to any of the following conditions.

1. Such conditions deemed necessary to promote and protect the health, safety, and general welfare.

2. Such conditions deemed necessary to protect neighboring properties and to lessen any potentially adverse effects of the zoning change.

3. Such conditions set forth on an approved site plan such as, but not limited to, the following:

i. Setback requirements from any lot line

ii. Specified or prohibited locations for buildings, parking, loading or storage areas

iii. Restrictions on land use activities to be permitted

iv. Maximum building dimensions and height

v. Landscaping or planted area which may include the location, type and maintenance of plant materials within a designated buffer area. Fences, walls, earth berms, or other landscape buffer provisions or protective measures

vi. Preservation of existing trees and vegetation

vii. Special conditions to eliminate or reduce undesirable views, light, glare, dust or odor

- viii. Hours of operation
 - ix. Architectural details to be compatible with existing buildings in the area
 - x. Adherence to specific site plans as adopted
 - xi. Any other requirements that the City Council may deem appropriate and necessary for the protection of public health and welfare
- I. Prior to a final vote being taken on any application for which conditions shall be imposed, such conditions shall be announced at the public hearing and made a part of the motion to approve. If the applicant finds such conditions to be unacceptable, they may, before the final vote by City Council, withdraw the application. Such withdrawal shall not prevent the applicant from refileing a request for the same property until at least six months have elapsed from the date of withdrawal.
- J. The applicant or any successor in title may construct only those uses established as conditions and only in such a manner substantially consistent with any site plan submitted and approved with the application. Any zoning map amendment which is adopted with conditions shall be indicated on the Official Zoning Map. The property shall be indicated on the Official Zoning Map with the suffix "C" to indicate that the property has been rezoned with conditions. Such conditions shall remain imposed upon the property until removed or modified by the City Council.

Sec. 11-3. Application requirements.

Applications for conditional use permits, rezonings, except those initiated by City Council, must contain the following:

- A. A completed signed application, application fee, and written letter of authorization (if required).
- B. A summary of the project, the purpose of the application, and any unique aspects of the proposed project.
- C. A copy of any proposed restrictive covenants to be placed upon the property which is subject to the application.
- D. A legal description of the area which is subject to the application.
- E. A site plan representing information on the location, extent and type of proposed development, which shall include, depending upon the type of development, the following minimum types of information:
 - 1. North arrow and scale.
 - 2. Present zoning and names of owners of all adjacent parcels.
 - 3. Uses proposed.
 - 4. The location of the parcel relative to existing or proposed public streets.
 - 5. Topographic information sufficient to show elevation and drainage conditions of the land.
 - 6. Existing conditions or improvements on the property, including any which are proposed to be removed or demolished.
 - 7. The location and extent of required buffer areas, including the extent of natural vegetation or fences as required.
 - 8. Existing property lines and proposed lot dimensions and layout (if applicable).
 - 9. All required yards and buffers.
 - 10. All easements and streets or other rights-of-way.
 - 11. Development phases (if applicable).
 - 12. All parking, buildings, and other structures.
 - 13. All rivers, streams, creeks, and other water features.

14. Environmentally sensitive areas, historical structures or sites, archeological sites, and cemeteries. Location of water and sewer facilities.
15. Flood zones and wetlands.
16. Standards for the physical development of the property, which may include illustrations of proposed architectural, landscape, open space, signage and other hardscape concepts.
17. The Zoning Administrator may require additional information to properly evaluate the application.
 - F. A table showing the following:
 1. Acreage to be developed by use, including required open space where applicable.
 2. Total heated square footage of each building.
 3. Total square footage of each proposed use.
 4. Lot coverage for each parcel.
 - G. When the proposed development exceeds 50 residential units or 10,000 total non-residential square feet, the Zoning Administrator may require a traffic analysis to be prepared by a certified traffic engineer.
 - H. The applicant shall submit all disclosures of campaign contributions to local government officials as required by O.C.G.A. § 36-67A-3, as amended.

Sec. 11-4. Public hearing and notice.

- A. Before adopting any change to the zoning map, zoning conditions, or zoning ordinance, or variance or conditional use permit, the City Council shall hold a public hearing.
- B. Upon receiving a rezoning application, and not less than fifteen (15) days prior to the date of the hearing, the City shall erect in a conspicuous place on the property in question a rezoning notification sign of not less than 4 square feet, with not less than one and one-half inch letters upon a white background.
- C. At least fifteen days but not more than forty-five (45) days prior to the date of the City Council meeting, the Planning Department shall cause to be published within a newspaper of general circulation within the city a notice of the hearing. The notice shall state the time, place, and purpose of the hearing and include the location of the property, the present zoning classification of the property and the proposed zoning classification of the property.
- D. All zoning decisions of the City Council shall be final. Appeals of the decision of the City Council may be appealed to the Barrow County Superior Court within 30 days of the written decision of the challenged or appealed action in accordance with law.

Sec. 11-5.1. Hearing Procedures.

- A. Sign up. All persons who wish to address the Council at a hearing concerning a matter under consideration may first sign up on a form to be provided by the City prior to the commencement of the hearing. Any party may appear in person or by agent or by attorney and offer testimony or present opinions by expert witnesses qualified in the subject to which they are testifying.
- B. Matter presented; out of order applications. The presiding officer at the Council meeting will read the proposed appeal or variance under consideration in the order it appears on the meeting agenda. The Zoning Administrator, or his designee, shall then present the basis of the appeal or variance, along with the pertinent departmental reviews, if any, prior to receiving public input on

the matter. Any application or matter that has not complied with all notice and other requirements of this Article may be deemed out of order and be postponed by motion to table approved the Council until the next meeting or a future date as specified in the motion.

C. Speakers. The presiding officer shall call each person who has signed up to speak on the matter then before the Council in the order in which the persons have signed up to speak, except the applicant who will always speak first. The presiding officer may then call for others who may wish to speak. Prior to speaking, the speaker will identify himself and state his current address.

D. Time limits. The applicant or appellant and those in favor of the matter shall have at least 10 minutes to speak, total. Those opposed to the matter shall have at least 10 minutes to speak, total. The Council may extend these times upon majority vote. Each individual speaker shall have no more than three minutes to speak, except the applicant, who can take as much of the 10 minutes as is desired. The applicant may reserve time for rebuttal. Upon vote of a majority of the Council, either side may be granted additional time in any amount the Council desires, but in such event, the other side shall be granted the same additional time.

E. Evidence, cross examination. Each side shall have the opportunity to present evidence and witnesses which shall be entered into the record. Cross examination of opposing witnesses shall be allowed by the presiding officer, but decorum shall be maintained. The board may require the applicant and opponents to designate one person to conduct any desired cross examination.

F. Decorum and order. Each speaker shall speak only to the merits of the matter under consideration and shall address his remarks only to the members of the Council. Each speaker shall refrain from personal attacks on any other speaker or the discussion of facts or opinions irrelevant to the matter under consideration. The presiding officer may limit or refuse a speaker the right to continue if the speaker, after first being cautioned, continues to violate this subsection. Nothing contained herein shall be construed as prohibiting the presiding officer from conducting the hearing in an orderly and decorous manner to ensure that the public hearing on the matter is conducted in a fair and orderly manner.

Sec. 11-5. Standards.

The following standards shall be considered by the City Council in reviewing applications for proposed rezonings, change of zoning conditions, or text amendments:

A. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.

B. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.

C. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.

D. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;

E. Conformity with the Comprehensive Plan.

F. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.

Sec. 11-6. Zoning reversion.

If, 24 months after a rezoning has been approved by City Council, either a preliminary plat has not been approved or a building permit has not been issued for the rezoned property, the Zoning

Administrator may review the situation and report their findings with recommendations to the City Council. The City Council, after notifying the property owner in writing, can at a public hearing, change the zoning category to its prior or other appropriate zoning district. Decisions of the City Council shall be final. Appeals of the decision of the City Council may be appealed to the Barrow County Clerk of Superior Court within 30 days of the written decision of the challenged or appealed action in accordance with law.

Sec. 11-7. Variances.

A. The City Council is authorized upon application in specific cases to consider such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will, in an individual case, result in unnecessary hardship so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done. Such variance may be granted in such individual case of practical difficulty or unnecessary hardship upon a finding by the City Council that:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; and
2. The application of the ordinance to this particular piece of property would create an unnecessary hardship; and
3. Relief, if granted, would not cause a substantial detriment to the public good or impair the purpose of this ordinance, provided, however, that no variance shall be granted for the use of land or building or structure that is prohibited by this ordinance; and
4. The special circumstances or justifications for the variance are not the result of self-imposed actions or misfortunes of the applicant; and
5. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.

B. Should the City Council deny a variance request on a parcel(s) of land, then the same request may not be considered until the expiration of at least 12 months from the date of denial.

C. Decisions of the City Council shall be final. Appeals of the decision of the City Council may be appealed to the Barrow County Superior Court within 30 days of the written decision of the challenged or appealed action in accordance with law.

D. The Zoning Administrator may grant administrative variances only for the following requirements. All administrative variances shall be based on the criteria established in Sec. 11-7A.

1. Setback reduction (maximum of 10% reduction allowed by administrative variance).
2. Building height increase (maximum of 5 feet increase allowed by administrative variance).
3. Minimum house size (maximum of 10% reduction allowed by administrative variance).
4. Minimum garage size (maximum of 10% reduction allowed by administrative variance).
5. Interparcel access (see Sec. 3-9).
6. Parking lot landscaping requirements (see Sec. 3-12).
7. Mixed-Use District requirements (see Sec. 8-1 D).

Sec. 11-8. Reserved.

Editor's note(s)—Ord. (W-1-22) adopted February 8, 2022, § IV, repealed § 11-8, which pertained to planning board and derived from Prior Code.

Sec. 11-9. Appeals of administrative decisions.

A. When it is alleged that an error has been made in interpretation of the provisions of this ordinance by the administrative staff, or when a decision relating to provisions of this ordinance aggrieves any person, an appeal to the City Council may be made within 30 days of receipt of notification of the decision.

B. Such appeal shall be filed with the Zoning Administrator and the purpose of the appeal shall be specified in writing.

C. The City Council shall hold a public hearing in accordance with Section 11-5.1 for the appeal within 60 days of the filing of the appeal. The hearing shall be advertised in a newspaper of general circulation within the city at least 15 and not more than 45 days prior to the date of the scheduled meeting. Due notice shall also be provided to the parties in interest. The City Council shall decide the appeal within 30 days after the hearing. Decisions of the City Council shall be final. Appeals of the decision of the City Council may be appealed to the Barrow County Superior Court within 30 days of the written decision of the challenged or appealed action in accordance with law.

SECTION II:

This Ordinance adopted hereby shall be codified and certified in a manner consistent with the laws of the State of Georgia and the City.

SECTION III:

It is hereby declared to be the intention of the Mayor and Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since the same would have been enacted by the Mayor and Council without the incorporation in this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION IV:

All ordinances and parts of ordinances in conflict herewith are hereby expressly repealed.

SECTION V:

This Ordinance shall take effect immediately upon its adoption the public health, safety and welfare requiring same.

IT IS SO ORDAINED this 6th day of June, 2023.

CITY OF WINDER

By: *Daf May*
Mayor

Attest: *Anne Chi*
City Clerk

