RESOLUTION
TO ADOPT AMENDMENTS TO THE
UNIFIED DEVELOPMENT CODE OF OCONEE COUNTY, GEORGIA

WHEREAS, the Oconee County Board of Commissioners has adopted a Unified Development Code on October 4, 2006; and

WHEREAS, it is necessary to make certain Amendments to the Unified Development Code (UDC): to delete and replace UDC Article XIII in its entirety with Amendments attached hereto as "Exhibit A;" and

WHEREAS, on May 20, 2019, this Amendment was first presented and discussed at the public hearing conducted by the Oconee County Planning Commission in its regular meeting. On June 4, 2019, this amendment was presented and discussed at a public hearing conducted by the Oconee County Board of Commissioners;

NOW THEREFORE, be it resolved that the Oconee County Board of Commissioners adopts the amendments to the Unified Development Code of Oconee County which are attached hereto in said "Exhibit A" and incorporated herein by reference, to become effective on adoption; and

BE IT FURTHER RESOLVED, that the Oconee County Planning Director is directed to make the changes set forth in Amendments to the Unified Development Code as provided for in said "Exhibit A" and to renumber any such sections, paragraphs, or pages as are necessary to reflect said amendments; and

BE IT FURTHER RESOLVED, that the Unified Development Code of Oconee County, Georgia, as Amended, is hereby Ratified, Confirmed and Readopted as of this **4th day of June, 2019.**

OCONEE COUNTY BOARD OF COMMISSIONERS

BY: _____
John Daniell, Chairman

_____
Mark Thomas, Member

_____
Chuck Horton, Member

_____
William E. Wilkes, Member

_____
Mark Saxon, Member

ATTEST: _____
Kathy Hayes
Clerk, Board of Commissioners

Oconee County Memorandum

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Planning and Code Enforcement Department

DATE: May 29, 2019

TO: Oconee County Board of Commissioners

CC: Kathy Hayes
Gabriel Quintas
Deanna Ruark

FROM: Guy Herring, Director of Planning & Code Enforcement

RE: Text Amendments to Articles 12 and 13 of the UDC

Attached is a copy of the proposed amendments to Article 12 and Article 13 of the Unified Development Code for consideration at the June 4, 2019, BOC meeting.

In Article 12, the following edits have been made:

- Update development review and zoning processes
- Amend zoning review standards
- Replacement of outdated terms and department labels with the updated terms and labels

In Article 13, the following edits have been made:

- Replacement of outdated terms and department labels with the updated terms and labels
- Amend limitations for special exception variances

Comments from the County Attorney have been incorporated into the proposed amendments, and all proposed changes are highlighted in the attached text. On May 20, 2019, the Planning Commission recommended approval of the proposed text amendments subject to six suggested revisions. The Planning Commission's recommended revisions and corresponding staff comments are attached to this memo. Please feel free to contact me should you have any questions or if you would like to discuss the proposed amendments.

Article 13. Appeals

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Article 13. Appeals

Sec. 1301. Purpose of Article 13.

This Article describes the process for addressing unusual situations or unique problems that may arise from the strict interpretation or enforcement of this Development Code, including appeals from an administrative decision, for a special exception, and for unique hardships restricting reasonable use of a property.

Sec. 1302. Types of appeals.

Persons may appeal for relief under the following circumstances:

a. Special exception variance.

When an exception is desired for a particular property from certain requirements of this Development Code, as specified in this Article.

b. Hardship variance.

When compliance with the requirements of this Development Code would create a particular and unique hardship.

c. Flood damage prevention variance.

When the requirements of this Development Code for flood damage prevention would create an exceptional hardship that would adversely affect the use of a property or an historic structure.

d. Administrative decision.

When aggrieved by an action or an interpretation of the Planning Director or any other administrative official of the County made under this Development Code. An administrative official is defined as the head of any department subject to these regulations.

Sec. 1303. Special exception variances.

Sec. 1303.01. Appellant.

A request for a special exception variance on a property shall be brought by the property owner or, with the owner's permission, the holder of or applicant for a permit for development or construction on the property.

Sec. 1303.02. General limitations on relief.

Special exception variances shall be limited to relief from the following requirements of this Development Code:

a. Minimum building setbacks.

b. Maximum building height.

c. Minimum lot width.

d. Minimum floor area requirements for dwellings.

e. Minimum separation between agricultural and residential uses.

f. Public street frontage.

g. Automobile parking requirements.

h. Parking lot improvements for intermittent, occasional or temporary uses.

i. Minimum separation between driveways serving a single property.

j. Inter-parcel access requirements between parking lots.

k. Zoning buffers and screening.

l. Grading and draining requirements for individual building sites.

m. Required improvements to private access drives and number of lots off a private access drive.

Sec. 1303.03. **Standards for special exception variance approval.**

A special exception variance may be granted upon a finding that the relief, if granted:

a. Would not cause substantial detriment to the public good; and

b. Would not be injurious to the use and enjoyment of the environment or of other property in the immediate vicinity; and

c. Would not diminish and impair property values within the surrounding neighborhood; and

d. Would not impair the purpose and intent of this Development Code.

Sec. 1303.04. **Administrative approval.**

a. Special exception variances shall be considered by the Board of Commissioners unless the variance is approved administratively. Only those variances listed in this Subsection, below, and within the parameters stated, may be considered for administrative approval.

b. The Planning Director, upon a finding that a special exception variance meets the standards for approval contained in this Section, may administratively approve such special exception variance within and not exceeding the following parameters:

(1) Minimum building setbacks.

Not to exceed a reduction in the minimum setback required by 10%, except the front setback may be reduced or waived if the parking is located in the side or rear yards.

(2) Maximum building height.

Not to exceed an additional 4 feet above the maximum allowed.

(3) Minimum floor area requirements for dwellings.

For a residence to be constructed by a nonprofit organization only, floor area reduction to no less than 1,000 square feet.

(4) Automobile parking requirements

Not to exceed a change by more than 10% in the number of spaces required, shared parking, or the proximity of spaces to the use served.

(5) Parking lot improvements for intermittent, occasional or temporary uses.

Approval subject to the provisions for such waivers in the Parking and Loading Article of this Code, and to the imposition of such time limits or operational limitations appropriate to the proposed use of the parking lot.

(6) Inter-parcel access.

Modification or waiver of inter-parcel access requirements.

(7) Grading and draining requirements for individual building sites.

Variances from the requirements of the grading and draining requirements for individual building sites under the Erosion Control and Stormwater Management Article of this Development Code may be granted by the Planning Director upon the submission of such information as may be required by the Director, and the Director's satisfaction that the public health, safety and general welfare will be adequately protected if the variance is granted.

Sec. 1303.05. **Restriction on re-filing a special exception variance if denied.**

If denied, an appeal for a special exception variance affecting the same property shall not be reconsidered for a period of 6 months from the date of denial; provided, however, that the Board of Commissioners may reduce the waiting period under extenuating circumstances or on its own motion.

Sec. 1303.06. **Limitations on special exception variance approval.**

In no case shall a special exception variance be granted from the conditions of approval imposed on a property through a zoning change granted by the Board of Commissioners.

Sec. 1304. Hardship variances.

Sec. 1304.01. **Appellant.**

A request for a hardship variance on a property shall be brought by the property owner or, with the owner's permission, the holder of or applicant for a permit for development or construction on the property.

Sec. 1304.02. **Hardship variances; general.**

a. The Board of Commissioners may authorize upon appeal in specific cases such variances from the terms of this Development Code as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the this Development Code will, in an individual case, result in unnecessary hardship, so that the spirit of this Development Code shall be observed, public safety and welfare secured and substantial justice done.

b. The existence of a nonconforming use of neighboring land, buildings or structures in the same district or of permitted or nonconforming uses in other districts shall not constitute a reason for approval of the requested variance.

c. Such relief may be granted only to the extent necessary to alleviate such unnecessary hardship and neither as a convenience to the applicant nor to gain any advantage or interest over similarly zoned properties.

Sec. 1304.03. **Standards for hardship variance approval.**

Such variances may be granted in such individual case of unnecessary hardship upon a finding by the Board of Commissioners that all of the following conditions exist:

a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.

b. The application of this development code to this particular piece of property would create an unnecessary hardship.

c. Such conditions are peculiar to the particular piece of property involved.

d. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this ordinance.

Sec. 1304.04. **Limitations on hardship variance approval.**

In no case shall a hardship variance be requested or granted for any of the following:

a. A condition created by the applicant, including the result of an unwise investment decision or real estate transaction.

b. A change in the conditions of approval imposed through a zoning change granted by the Board of Commissioners.

c. Reduction of a minimum lot size required by a zoning district.

d. A use of land or buildings or structures that is not allowed by the zoning district that is applicable to the property.

e. Any increase in the number of dwelling units or nonresidential building floor area otherwise allowed by the zoning district that is applicable to the property.

f. Any item or matter regulated under Article 7 of this Development Code.

Sec. 1304.05. **Restriction on re-filing a hardship variance if denied.**

If denied, an appeal for a hardship variance affecting the same property shall not be reconsidered for a period of 6 months from the date of denial; provided, however, that the Board of Commissioners may reduce the waiting period under extenuating circumstances or on its own motion.

Sec. 1305. Flood damage prevention variance.

Sec. 1305.01. **Flood damage prevention variances; general.**

a. A flood damage prevention variance may be considered when there is an alleged error in any requirement, decision or determination made by the County in the enforcement or administration of the flood damage prevention provisions found under the Erosion Control and Stormwater Management Article of this Development Code.

b. A flood damage prevention variance may be considered for the reconstruction, rehabilitation or restoration of a building listed on the National Register of Historic Places or the State Inventory of Historic Places provided that the proposed reconstruction, rehabilitation or restoration will not result in the building losing its historical designation.

c. A flood damage prevention variance may be considered for the construction of a use or structure that otherwise could not be used for its intended purpose unless located or carried out in close proximity to water (such as a dock), provided that no reasonable alternative exists, the development is protected by methods that minimize flood damage during the base flood, and the use will not pose a threat to public safety.

Sec. 1305.02. **Standards for approval.**

In passing upon a flood damage prevention variance, the Board of Commissioners shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Development Code relating to flood damage prevention, and the:

a. Danger that materials may be swept onto other lands to the injury of others;

b. Danger to life and property due to flooding or erosion damage;

c. Susceptibility of the facility and its contents to flood damage and the effect of such damage on the individual owner;

d. Importance of the services provided by the facility to the community;

e. Necessity of the facility to a waterfront location, in the case of a functionally dependent facility;

f. Availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

g. Compatibility of the use with existing and anticipated development;

h. Relationship of the use to the comprehensive plan and flood plain management program for that area;

i. Safety of access to the property in times of flood for ordinary and emergency vehicles;

j. Expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

k. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

Sec. 1305.03. **Limitations on approval.**

a. Upon consideration of the standards listed above, and the purposes of this Development Code, the Board of Commissioners may attach such conditions to the granting of the variance as it deems necessary to further the purposes of flood damage prevention.

b. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

c. Conditions for variances are as follows:

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of an historical building, a determination that the variance is the minimum necessary so as not to destroy the historical character and design of the building.

(2) Variances shall only be approved upon:

(a) Showing of good and sufficient cause;

(b) Determination that failure to grant the variance would result in exceptional hardship; and

(c) Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expenses, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or Development Codes.

Sec. 1305.04. **Requirements if approved.**

a. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the building is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

b. The Planning Department shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

Sec. 1305.05. **Restriction on re-filing a flood damage prevention variance if denied.**

If denied, an appeal for a hardship variance affecting the same property shall not be reconsidered for a period of 6 months from the date of denial; provided, however, that the Board of Commissioners may reduce the waiting period under extenuating circumstances or on its own motion.

Sec. 1306. Appeals of an administrative decision.

Sec. 1306.01. **Appellant.**

Any person aggrieved by an administrative action or interpretation of an administrative official may initiate an appeal to the Board of Commissioners.

Sec. 1306.02. **Initiation of administrative appeal.**

a. An administrative appeal shall be taken within 30 days of the action or interpretation appealed from, by filing the appeal in writing with the Planning Director. The Planning Director shall transmit a notice of said appeal to the Board of Commissioners specifying the grounds thereof.

b. The holder of or applicant for a development permit or a building permit may appeal any action taken by an administrative official, including the following:

(1) The suspension, revocation, modification or approval with conditions of a development permit or building permit upon finding that the holder is not in compliance with the approved erosion and sedimentation control plan or other approved plans.

(2) The determination that the holder is in violation of development permit or building permit conditions.

(3) The determination that the holder is in violation of any other provision of this Development Code.

Sec. 1306.03. **Temporary suspension of legal proceedings.**

An appeal of an administrative decision stays all legal proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is made certifies to the Board of Commissioners, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate a stay would, in such administrator's opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Commissioners or by a court of record on application, on notice of the Planning Director and on due cause shown.

Sec. 1306.04. **Action by the Board of Commissioners.**

a. The Board of Commissioners, upon an administrative appeal by an aggrieved party or at the request of the Planning Director, shall:

(1) Decide appeals from any order, determination, decision or other interpretation by any person acting under authority of this Development Code, where a misinterpretation or misapplication of the requirements or other provisions of this Development Code is alleged.

(2) Interpret the use of words or phrases within the context of the intent of this Development Code.

(3) Determine the boundaries of the various zoning districts where uncertainty exists.

(4) Interpret such other provisions of this Development Code as may require clarification or extension in specific or general cases.

b. Decisions of the Board of Commissioners.

In exercising its powers on administrative appeals, the Board of Commissioners may, in conformity with the provisions of this Development Code, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination and to that end shall have all the powers of the official from whom the appeal is taken and may issue or direct the issuance of a permit.

Sec. 1307. Process for granting an appeal.

Sec. 1307.01. **Application and initial actions.**

a. Upon receiving a notice of an appeal, the Planning Director shall assemble such memos, papers, plans, or other documents from the appellee as may constitute the record for the appeal or as may provide an understanding of the issues involved.

b. An application for an appeal shall include such descriptions, maps or drawings as needed to clearly illustrate or explain the action requested. The Planning Director may request such additional information from the appellant as necessary to provide a full understanding of the appellant's request. For guidance, see the application checklist in the Appendix to this Development Code that contains the Oconee Departmental Checklists.

c. Once the record has been assembled, the Planning Director shall:

(1) Review appeals for a special exception variance eligible for administrative approval;

(2) Schedule unresolved appeals for consideration at the next meeting of the Board of Commissioners for which adequate public notice can be given; and

(3) Notify the appellate of either 1) administrative resolution of the matter or 2) the date, time and place of the public hearing

Sec. 1307.02. **Public notice.**

a. At least 15 days prior to the public hearing, notice shall be published in a newspaper of general circulation within the county. The notice shall state the time, place and purpose of the hearing.

b. A request for an unresolved special exception variance, a hardship variance or a flood damage prevention variance shall be heard at a public hearing only upon:

(1) The published notice, in addition to the requirements above, shall include the location of the property, the present zoning classification of the property, and the nature of the requested action; and

(2) At least 15 days prior to the public hearing, the Planning Director shall post a sign or signs providing the date, time and place for the public hearing. One such sign shall be placed in a conspicuous location on the property frontage in such manner as to be legible from the public road. On lots with more than one road frontage, a sign will be placed facing each public road. If the property has no road frontage, the sign shall be placed on each road at the location from which access will be gained to the property.

Sec. 1307.03. **Withdrawal.**

Any applicant wishing to withdraw an appeal prior to final action by the Board of Commissioners shall file a written request for withdrawal with the Planning Director.

a. The withdrawal request must be in writing and signed by the owner, the applicant, or the owner's authorized agent.

b. If the request for withdrawal is received prior to the publication of notice for the public hearing as required under Sec. 1307.02 and 5 work days prior to the Board of Commissioners' Public Hearing, the application shall be withdrawn administratively by the Planning Director.

c. Should any request for withdrawal be within 5 work days of the Board of Commissioners Public Hearing, the application shall remain on the Board of Commissioners' public hearing agenda and the withdrawal request shall be considered for approval or denial by the Board of Commissioners.

Sec. 1307.04. **Attendance requirements.**

The appellant or representative of the appellant shall be required to attend all public hearings on the appeal. The failure to attend may result in dismissal with prejudice, rejection of the appeal, or continuance of the hearing at the board's sole discretion. In the case of continuance, failure of the appellant or appellant's representative to appear at the second scheduled hearing shall result in automatic dismissal with prejudice.

Sec. 1307.05. **Board of Commissioners public hearing.**

a. The Chair or the Board of Commissioners' designee, who shall act as the Presiding Official, shall convene the public hearing at the scheduled time and place.

b. The Presiding Official may administer oaths and compel the attendance of witnesses by subpoena.

c. The Planning Director shall submit the assembled record of the appeal to the Board of Commissioners. The Planning Director, or other appropriate party if the appeal was taken from an administrative action or interpretation, shall provide such information or explanation as appropriate to the circumstances of the appeal.

d. At the public hearing, the appellant may appear in person or may be represented by counsel. The following rules shall apply in the conduct of the public hearing:

(1) The presiding official shall conduct the public hearing informally, as strict adherence to the rules of evidence is not required. The goal is a fair hearing.

(2) The appellant shall first present evidence to the Board. After the appellant has completed the presentation of evidence, opponents shall present such relevant evidence as they think appropriate after being recognized by the presiding official.

(3) All parties participating in the public hearing shall introduce only relevant evidence.

(4) All parties participating shall have the right to present witnesses and to cross-examine witnesses.

(5) The appellant shall have an opportunity to present rebuttal evidence, but such evidence shall be limited to points or issues raised by the opponents.

(6) The public hearing shall be tape recorded, either by videotape or by audiotape, in order to provide a verbatim record of the hearing.

e. Following the public hearing, the Board of Commissioners shall make a decision and adopt reasons supporting the decision. Such decision shall reflect the vote of the Board, as follows:

(1) A motion to approve or deny an appeal must be approved by an affirmative vote of at least a quorum of the members in order for the motion to be approved.

(2) If a motion to approve an appeal fails, the appeal is automatically denied. If a motion to deny an appeal fails, another motion would be in order.

(3) A tie vote on a motion for approval of an appeal shall be deemed a denial of the appeal. A tie vote on any other motion shall be deemed to be no action, and another motion would be in order.

f. In taking action on an appeal, the Board of Commissioners may:

(1) Approve, approve with changes, or deny the request; or,

(2) Table the appeal for consideration at its next scheduled meeting; or,

(3) Allow withdrawal of the appeal at the request of the appellant.

Sec. 1308. Decisions by the Board of Commissioners.

Sec. 1308.01. Written decision.

On all appeals brought before the Board of Commissioners, the appellant shall be informed in writing of the Board's decisions within 10 days of the date of the decision. Failure to receive notice within 10 days shall not constitute a procedural error on the part of the County, nor affect the decision of the Board in any manner.

Sec. 1308.02. Conditional approval.

In approving an appeal, the Board of Commissioners may impose conditions of approval which it deems necessary in order to make the requested action acceptable and consistent with the purposes of this Development Code and of the zoning district(s) involved, to ameliorate negative issues identified through evaluation of the appeal, or to further the goals and objectives of any County adopted plans.

Sec. 1308.03. Decision final.

a. A decision of the Board of Commissioners shall be final and may be appealed only to a court of competent jurisdiction. Such appeal must be taken within 30 days of the decision of the Board of Commissioners.

b. Alternative actions.

Based on these proceedings and the decision of the court, Oconee County may, within the time specified by the court, elect to:

(1) Institute negotiated purchase or condemnation proceedings to acquire an easement or fee interest in the applicant's land,

(2) Approve the permit application with lesser restrictions or conditions (i.e., grant a variance); or,

(3) Institute other appropriate actions ordered by the court that fall within the jurisdiction of Oconee County.

Sec. 1309. Temporary suspension of permitting.

Upon submission of a valid application for the granting of an appeal on a property, no permits shall be issued nor shall any actions be undertaken on the property that may be affected by the outcome of such application.

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