

AGENDA
CITY OF BERKELEY LAKE
PLANNING & ZONING COMMISSION
June 13, 2023 at 7:15 PM
4040 South Berkeley Lake Road
Berkeley Lake, GA 30096

I. CALL TO ORDER

II. APPROVAL OR CHANGES TO THE AGENDA

III. PUBLIC HEARING

- a) PZTA-23-05, O-23-248 – Proposed Zoning Ordinance Amendments pursuant to H.B. 1405

IV. APPROVAL OF MINUTES

- a) May 9, 2023

V. OLD BUSINESS

VI. NEW BUSINESS

- a) PZTA-23-05, O-23-248 – Proposed Zoning Ordinance Amendments pursuant to H.B. 1405

VII. CITIZEN COMMENTS

VIII. DISCUSSION SESSION

IX. ADJOURNMENT

**CITY OF BERKELEY LAKE
4040 SOUTH BERKELEY LAKE ROAD
BERKELEY LAKE, GEORGIA 30096
PLANNING & ZONING COMMISSION
DRAFT MINUTES
MAY 9, 2023
7:15 PM**

Those in attendance at the meeting were as follows:

Commission Members: Dan Huntington, Chair
 George Kaffeazakis
 Rand Kirkus
 Robin Sansone

City Administrator: Leigh Threadgill

Citizens Present: 2

I. CALL TO ORDER

Huntington called the meeting to order at 7:15 PM. A quorum of the commission along with City Administrator, Leigh Threadgill, were present at the meeting.

II. APPROVAL OF OR CHANGES TO THE AGENDA

Huntington asked if there were any suggested changes to the agenda.

Kaffeazakis moved to approve the agenda as submitted. Sansone seconded and all voted to approve the agenda.

III. MINUTES

1. Minutes of April 11, 2023

Sansone moved to approve the minutes of the April 11th meeting. Kaffeazakis seconded and all voted to approve the minutes.

IV. OLD BUSINESS

1. PZV-23-02 – 498 Lakeshore Drive variance to expand a non-conforming structure (Sec. 78-141) and increase the lot and building coverage by 11.2% and 3.2% respectively (Sec. 78-197(10) and (11)) and reduce the side setback from 12.5 feet to 11.5 feet (Sec. 78-197(7)).

Threadgill noted that the lot and building coverage are already non-conforming, but the proposed increases are very small over what exists. The percentage change noted in the staff report and in the agenda item title represent the difference between the proposal and the standard, not the proposal and existing condition.

Huntington recognized the applicant for comment on the application.

Janine Brinton, 498 Lakeshore Drive, noted that a tree fell on their house last July that caused significant damage, taking out the garage, the kitchen and part of the upstairs bedroom. She noted that the plan has evolved because they were already going to have to replace the garage and re-do the kitchen from the damage and this was an opportunity to expand the house to increase the living space and address some other issues like difficulty with the sun. She continued to describe some of the earlier iterations of potential plans for the expansion. After exploring the options with the builder, the project was getting too expensive. The final plan is to expand the garage by 5 feet to accommodate laundry facilities and create an eat-in kitchen, which addresses the issues with the sun. Environmental Health approved the expansion plan. Brinton went through the proposed plans and noted the expansion area of 120 square feet. She went on to talk about the lot constraints that make it difficult to do anything that complies. She mentioned the close rear setback to the lake, the long driveway that adds impervious area and the pie shape of the lot. The current building coverage is 17.12% and the request is a 1.08% increase bringing it to 18.2%. The current lot coverage is 40.2% and the request is a 1% increase bringing it to 41.2%. The average lot is around 28,000 square feet and the subject lot is 13,500 square feet. This lot is much smaller than average. The addition will result in a roof overhang that will encroach 1 foot into the 12.5 feet setback at one corner for a total encroachment into the side setback of 2.5 square feet.

There was discussion regarding the plans and other improvements on the property.

Sansone asked about the height of the proposed addition. Brinton said no height change. Huntington clarified that the roof will be extended five feet at the original height.

There was further discussion.

Kaffezakis noted that he struggles with encroachments and increasing non-conformities. He acknowledged that the original application was going to be difficult to approve, but this is much less impactful. He suggested Brinton consider mitigating the impervious amount and lot coverage non-conformity with rain barrels or rain gardens to allow runoff from the gutters to be soaked into the ground instead of running off directly to the lake, but he did not recommend this as a condition of approval. He acknowledged that the current variance request is reasonable.

There was further discussion regarding rain barrels.

Huntington concurred that the request tonight is much more reasonable than the original and requested that the applicant consider some stormwater management to offset the amount of impervious on the lot. However, Huntington reiterated that this was not suggested to be a condition of variance approval.

Draft Minutes

Planning & Zoning Commission Special Called Meeting

May 9, 2023

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There was further discussion.

Kaffeidakis moved to approve the variance as requested. Sansone seconded the motion. All were in favor and the motion passed.

V. NEW BUSINESS

There was no new business.

VI. CITIZEN COMMENTS

There were none.

VII. DISCUSSION

There was no further discussion.

VIII. ADJOURNMENT

There being no further business, Huntington adjourned the meeting at 7:45 PM.

Respectfully submitted,

Leigh Threadgill
City Administrator

**City of Berkeley Lake
Staff Analysis**

CASE NUMBER:	PZTA-23-05, O-23-248
CODE SECTIONS:	VARIOUS SECTIONS OF CHAPTER 78, ZONING
PURPOSE:	COMPLIANCE WITH STATE LAW, HB 1405
MEETING DATE:	JUNE 13, 2023 P&Z COMMISSION

BACKGROUND:

The City Attorney requested these amendments to ensure the city's compliance with a new state law, House Bill 1405. After a review of the city's zoning ordinance against the new state standards, the attorney prepared the various zoning code amendments. City Council had a first reading of the draft ordinance on May 18, 2023 in order to meet the required deadline of adoption by July 1, 2023. City Council will hold the public hearing and second reading on June 15, 2023 following your review and recommendation.

Generally, these amendments have to do with variance notification and appeals procedures as well as procedures for certain types of rezonings/text amendments. The proposed changes will have the following impacts:

- Increase the notification requirements to include notification of the applicant and publication of the notice as well as posting a sign on the property from 15 days prior to the public hearing to at least 30 days before the public hearing. This will result in the deadlines for variance applications being changed such that there is more time between application and public hearing.
- Appeals of variance decisions will no longer go to City Council but will go directly to Superior Court.
- Adoption of notices and procedures for text amendments allowing multi-family uses in single-family districts.

ORDINANCE NO. 23-248

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF BERKELEY LAKE TO AMEND THE CHAPTER 78. “ZONING,” TO COMPLY WITH STATE LAW; TO ADOPT DEFINITIONS; TO PROVIDE NOTICE; TO PROVIDE FOR APPEALS; TO PROVIDE PROCEDURE FOR HEARING SPECIAL EXCEPTIONS, VARIANCES AND OTHER APPEALS; TO PROVIDE FOR CONCURRENT VARIANCES; TO PROVIDE FOR PROCEDURES FOR HEARINGS; TO PROVIDE FOR PROCEDURES AND NOTICE FOR CERTAIN REZONINGS; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

SECTION I.

IT IS HEREBY ORDAINED, by the governing authority of the City of Berkeley Lake that Chapter 78 of the Code of Ordinances, entitled “Zoning,” shall be amended as follows:

- a. Subsection 78-366(b) shall be amended by deleting the title and text thereof in its entirety and inserting in lieu thereof the following:
 - (b) *Required notification.* Before the planning and zoning commission acts upon an application for a variance:
 - (1) The notice of the time and place of the hearing shall be published at least 30 days and not more than 45 days prior to the hearing in the official organ of the county in which the sheriff's advertisements are published.
 - (2) The chair of the planning and zoning commission shall ensure that a sign is erected in a conspicuous place on the property involved, which shall contain information as to the variance applied for and the time and place of the hearing. This required sign shall be erected at least 15 days and not more than 45 days prior to the hearing. Failure to erect and maintain the sign as specified shall invalidate any subsequent determination by the planning and zoning commission.
 - (3) Written notice must be sent via first class mail to the subject property owner at least 30 days before the public hearing to be held by the planning commission. Written notices must indicate the nature of the proposed use or activity and the date, time, place and purpose of the public hearing.

- b. Section 78-369 shall be amended by deleting the title and text thereof in its entirety and inserting the in lieu thereof the following:

78-369. Appeals to the planning and zoning commission.

- (a) In cases of ordinance interpretations, planning and zoning commission chair decisions, enforcement officer or building inspector rulings, appeals to the planning and zoning commission may be made by any person aggrieved or by any official of the city affected by any decision of the ordinance enforcement, building inspector, or the planning and zoning commission chair. Such appeal shall be taken within 30 days by filing with the ordinance enforcement officer, building inspector or the planning and zoning commission chair, depending from which body's decisions the appeal is made, and with the City Clerk a notice of appeal specifying the grounds thereof. The ordinance enforcement officer, building inspector or the planning and zoning commission chair shall promptly transmit to the planning and zoning commission all the papers constituting the record upon which the action appealed from was taken. An appeal stays all legal proceedings in furtherance of the action appealed from unless the ordinance enforcement officer, building inspector or the planning and zoning commission chair certifies that, by reason of facts stated in the certificate, a stay would, in their opinion, cause immediate peril to life and property. In such case, proceedings shall not be stayed otherwise than by the planning and zoning commission or by restraining order that may be granted by the superior court of the county.
- (b) Before the planning and zoning commission may act upon an appeal to review any grant or denial of a permit, interpretation, ruling or decision:
- (1) A public hearing shall be held thereon. A notice of the time and place of the public hearing shall be published at least 15 days and not more than 45 days prior to the hearing in the official organ of the county in which the sheriff's advertisements are published.
 - (2) The applicant for a special exception, variance or appeal shall erect in a conspicuous place on the property involved, a sign which shall contain information as to the special exception applied for or the ruling being appealed and the time and place of the hearing. This required sign shall be erected at least 15 days and not more than 45 days prior to the hearing. Failure to erect and maintain the sign as specified above shall invalidate any subsequent determination by the mayor and council.
 - (3) Written notice must be sent via first class mail to the subject property owner at least 30 days before the public hearing to be held by the planning and zoning commission. Written notices must indicate the nature of the proposed use or activity and the date, time, place and purpose of the public hearing.

- c. Section 78-370 shall be amended by deleting the text thereof in its entirety and inserting the in lieu thereof the following:

The planning and zoning commission shall hear and decide requests for special exceptions to this chapter upon which the planning and zoning commission are required to pass.

- d. Section 78-371 shall be amended by deleting the title and text thereof in its entirety and inserting the in lieu thereof the following:

78-371. Procedure before the planning and zoning commission under this article.

- (a) Meetings of the planning and zoning commission shall be at the call of the chair, and at such other times as the members of the planning and zoning commission may determine. The chair, or, in his absence, the vice chair, may administer oaths and compel the attendance of witnesses by subpoena. The planning and zoning commission shall keep minutes of its proceedings, showing the vote of each member on each question, or, if absent or failing to vote, indicating that fact.
- (b) The planning and zoning commission shall keep records of its examinations and other official actions, all of which shall be filed immediately in the office of the city clerk and shall be a public record. The minutes required hereunder shall be kept separate from the minutes of the regular council meetings.
- (c) The planning and zoning commission shall establish rules of procedure for conducting hearings. Each side in any public hearing before the planning and zoning commission shall be allowed no less than 10 minutes per side to speak.

- e. Section 78-372 shall be amended by deleting the title and text thereof in its entirety and inserting the in lieu thereof the following:

78-372. Reapplication to planning and zoning commission.

If an application for a special exception is denied by the planning and zoning commission, or an application for a variance is denied, a reapplication for such special exception or variance may not be made earlier than 12 months from the date of the original application.

- f. Section 78-373 shall be amended by deleting the title and text thereof in its entirety and inserting the in lieu thereof the following:

78-373. Appeals from decisions of planning and zoning commission.

Any person or entity with an interest in the decision may seek review of such decision by petitioning the Gwinnett County Superior Court for a review, setting forth the alleged errors. The petition for review must be filed within 30 days of the date that the planning and zoning commission renders its final decision. When a petition for review is filed, the planning and zoning commission must be designated the respondent in the petition for review and the city the defendant in the petition for review. The secretary of the planning and zoning commission is authorized to approve or issue any form or certificate necessary to perfect the petition and to acknowledge service of a copy of the petition and writ on behalf of the planning and zoning commission, as respondent. Service upon the city as defendant may be upon the City Administrator or as otherwise provided by law.

- g. Section 78-392 shall be amended as follows:

Subsection 78-392(b) shall be amended by inserting after “15 days” the phrase “and not more than 45 days.”

Subsection 78-392(e) shall be amended by inserting after “15 days” the phrase “and not more than 45 days.”

There shall be a new Subsection 78-392(f) that shall read as follows:

- (f) In enacting an amendment to the zoning map and zoning ordinance for a particular property or properties, the mayor and council may consider any variances or conditions offered or sought in conjunction with that amendment without those variances or conditions being separately considered or approved by the planning and zoning commission. Nothing in this section shall preclude the planning and zoning commission from recommending variances or conditions in conjunction with an amendment. If there is an appeal related to any such amendment, variances or conditions offered or sought in conjunction with that amendment, shall be included as part of that appeal.

- h. Section 78-395 shall be amended as follows:

There shall be a new Subsection 78-395(a) that shall read as follows:

- (a) *Required notification.* Before the mayor and council acts upon an application:

- (1) The notice of the time and place of the hearing shall be published at least 15 days and not more than 45 days prior to the hearing in the official organ of the county in which the sheriff's advertisements are published.
- (2) The City Administrator shall ensure that a sign is erected in a conspicuous place on the property involved, which shall contain summary information as to the application and the time and place of the hearing. This required sign shall be erected at least 15 days and not more than 45 days prior to the hearing. Failure to erect and maintain the sign as specified shall invalidate any subsequent determination by the planning and zoning commission.

The currently designated Subsections 78-395(a), (b), (c), and (d) shall be redesignated respectively 78-395(b), (c), (d) and (e).

Newly redesignated Subsection 78-395(b) shall be amended by striking from the final sentence "78-367" and inserting in lieu thereof "78-394."

- i. There shall be a new Section 78-400 that shall read as follows:

Sec. 78-400. Special Provisions for City-Initiated Amendments for Applicable Zoning Decisions

(a) *Applicability.*

The provisions of this section shall apply to any amendments, initiated by the City of Berkeley Lake, that provide for the abolition of all single-family residential zoning classifications within the territorial boundaries of the City of Berkeley Lake or zoning decisions that result in the rezoning of all property zoned for single-family residential uses within the territorial boundaries of the City of Berkeley Lake to multifamily residential uses of property. This section shall not apply to zoning decisions for the rezoning of property from a single-family residential use of property to a multifamily residential use of property when the rezoning is initiated by the owner or authorized agent of the owner of such property.

(b) *Public Hearings.*

Prior to the City council decision, at least two public hearings shall be held on the proposed action. Such public hearings shall be held at least three months and not more than nine months prior to the date of final action on the zoning decision. Furthermore, at least one of the public hearings must be held between the hours of 5:00 P.M. and 8:00 P.M. The hearings required by this paragraph shall be in addition to the hearing required in Section 27-334.

(c) *Public Hearing Notices.*

(1) *Content of the Public Hearing Notices.*

Both the posted notice and the published notice shall include a prominent statement that the proposed zoning decision relates to or will authorize multifamily uses or give blanket permission to the property owner to deviate from the zoning requirements of a single-family residential zoning of property in classification previously relating to single-family residential uses. The published notice shall be at least nine column inches in size and shall not be located in the classified advertising section of the newspaper. The notice shall state that a copy of the proposed amendment is on file in the office of the clerk or the recording officer of the local government and in the office of the clerk of the superior court of the county of the legal situs of the local government for the purpose of examination and inspection by the public. The local government shall furnish anyone, upon written request, a copy of the proposed amendment, at no cost.

(2) *Published notice.* At least 15 days before but not more than 45 days before the date of the public hearing, notice of the public hearing must be published in a newspaper of general circulation in the city. This required notice must indicate the date, time, place and purpose of the public hearing.

(3) *Written (mailed) notice.* Written notice is required for all proposed amendments initiated by the city. The community development director is responsible for sending written notice via first class mail to all property owners within 500 feet of the boundaries of the subject property (or properties), as those property owners are listed on the tax records of the city. The notices must be mailed at least 15 days but not more than 45 days before the date of the public hearing. Written notices must indicate the nature of the proposed amendment and the date, time, place and purpose of the public hearing.

(4) *Posted notice.* A public hearing notice sign must be placed in a conspicuous location on the subject property (or properties), provided, however, that when more than 500 parcels are affected, in which case posting notice is required every 500 feet in the affected area, at least 15 days before the date of the public hearing. This notice sign must indicate the date, time, place and purpose of the public hearing.

(d) *City Council Decision.*

The amendment decision shall be adopted at two regular meetings of the City council, during a period of not less than 21 days apart.

SECTION 2:

Should any article, section, subsection, paragraph, clause, phrase or provision of this ordinance be adjudged invalid or held unconstitutional, such decision shall not affect or invalidate the remaining portions of this ordinance.

SECTION 3:

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 4.

This ordinance shall be effective upon adoption.

Passed and adopted by the Mayor and Council on this _____ day of _____ 2023.

LOIS D. SALTER
Mayor

ATTEST:

LEIGH THREADGILL
City Clerk

1st Reading: May 18, 2023

Planning Commission
Consideration: June 13, 2023

2nd Reading: June 15, 2023

Council Adoption: June 15, 2023