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## **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 Administrative Hearing Officer shall be the final decision of Athens-Clarke County on all staff permit decisions and interpretations.
2. Type IV planning actions. The decision of the planning commission **Administrative Hearing Officer** shall be the final decision of Athens-Clarke County **pertaining to all** ~~on~~ actions subject to the Type IV 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 including all variances not subject to the staff review process.~~
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, 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 Code of Athens-Clarke County, Georgia.
  - 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, including any variances not subject to the staff review process, shall be heard and decided by the **Athens-Clarke County Planning Commission** **Administrative Hearing Officer of Athens-Clarke County** in accordance with the procedures set forth in Chapter 1-5 of the Code of **Athens-Clarke County, Georgia**.
  - 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 **alleged grounds or errors** for which the hearings board's decision should be overturned, ~~based on the applicable criteria or procedural irregularity~~.
  - 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.** The appeal hearing shall be scheduled for a regular Athens-Clarke County Planning Commission meeting. Notice of such meeting shall be published in a newspaper of general circulation in Athens-Clarke County at least 30 days, but not more than 45 days prior to the hearing, and shall contain the location of the property, by street address and tax map number, the date, time, place, and purpose of the appeal hearing.

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3. Appeals of Type III planning commission decisions shall be heard and decided by the Athens-Clarke County Mayor and Commission. Payment of the standard appeal fee shall be required as part of the application.
  - a. The appeal shall be filed within 15 days after the final decision is rendered, as defined in section 9-4-14.
  - b. The appeal shall be in writing and filed in the office of the Athens-Clarke County Clerk of Commission. Such appeal shall include the appellant's name, address, and specifically state the grounds for which the planning commission'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 Mayor and Commission meeting allowing adequate time to meet the public notice requirements of section 9-4-9.
  - d. The commission shall receive a complete record of the planning commission'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 planning commission.
  - e. The hearing before the Athens-Clarke County Mayor and 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 planning commission that applicable criteria were or were not met, or based on procedural irregularity. At such hearing, the Athens-Clarke County Mayor and 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. After concluding the hearing, the Athens-Clarke County Mayor and 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 planning commission for further development of the record.
4. Judicial review of Type I and Type II Athens-Clarke County Mayor and Commission decisions may be taken to a court of competent jurisdiction, within the time allowed by law.

C. Appeals or petitions for judicial review may only be filed by parties to the planning action. "Parties" shall be defined as the following:

1. The applicant. Parties fitting this description may appeal all planning decision types (Types I—IV and staff permits).
2. Adjoining property owners and owners of properties that are affected by the proposed change differently than the general public as determined by standards set forth in Georgia law. Parties fitting this description may challenge planning decision Types I—IV only.
3. The unified government. The Athens-Clarke Mayor and Commission may appeal all final decisions made by the hearings board.

(Ord. of 12-5-2000, § 1; Ord. of 6-5-2001, § 3.1; Ord. of 9-1-2020(2), § 1; **Ord. of 2-6-2024(2), §§ 4—7**)

## **Sec. 9-4-10. Administrative hearings.**

A. Administrative hearings shall be conducted for Type III and Type IV planning actions. The purpose of an administrative hearing is to apply the zoning ordinance to factual situations pursuant to which a permit or approval is sought. The burden shall be upon the applicant to demonstrate by clear and convincing evidence that all criteria for issuance of the requested action has been satisfied.

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- B. In Type III proceedings, the planning commission shall conduct the hearing and act as decision-maker. A quorum shall consist of a majority of the total members on the planning commission. A majority vote of the planning commission members present and eligible to vote is required for action. In the event of a planning commission member's abstention based on conflict or other disqualification, the abstention shall count as if that member were absent and the number of persons necessary for a majority shall be reduced accordingly without affecting the quorum.
- C. Administrative hearings shall be conducted informally, but in such a manner as to preserve decorum at all times. The chairman, or in his/her absence the acting chairman, may administer oaths and compel the attendance of witnesses by subpoena. The board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, which shall be of public record. A written record of the hearing shall be prepared, either from notes taken by the secretary of the planning commission or hearings board, or by recording the proceedings. The record shall be an accurate account of the proceedings, including a listing of all documents considered, a summary of testimony presented, and any rulings upon motions or objections raised. The applicant or any other party to the proceeding may have a verbatim transcript prepared by an official court reporter, certified in the State of Georgia, at his or her own expense; provided, however, a copy of the transcript shall be filed with the secretary of the planning commission or hearings board and copies made available to other parties at actual cost. The planning commission or hearings board shall make the decision on the requested action based on the criteria found in the zoning ordinance and development ordinance.
- D. A written decision shall be issued by the planning commission or hearings board, containing findings and conclusions, either approving, approving with conditions, or denying the application. A decision shall be rendered within 10 business days after completion of the hearing, except the hearings board shall render its report within five business days.
- E. The planning commission members shall be governed by the provisions of O.C.G.A. § 36-67A-1 et seq., (chapter 67A, Conflict of Interest in Zoning Actions). The hearings board shall adopt similar conflict of interest provisions in their by-laws.
- F. In Type IV proceedings, the hearing shall be conducted by a hearings board, who shall act as decision-maker. A hearings board shall be composed of seven members. Members shall be appointed by the Athens-Clarke County Mayor and Commission. The term of office of the members of the board shall be four years or until their successors are appointed. No one may serve on the board more than two consecutive terms. In order to achieve staggered terms, initial appointments shall be: two members for two years; two members for three years; and three members for four years. Members of the board shall be removed for just cause by the commission upon written charges and after a public hearing. Vacancies caused by resignation or for other reasons shall be filled for the unexpired term in the same manner as for a full term. None of the members of the board shall be employees or elected officials of Athens-Clarke County. Members of the board shall be reimbursed for travel expenses associated with their duties at a rate of \$10.00 per meeting attended. The board shall elect one of its members as chair, who will serve for one year or until a successor is elected. The chair shall not serve more than two consecutive one-year terms as chair. The chair shall be a voting member, and a minimum of four affirmative votes by the membership of the board present and voting is needed to affirm a motion. To constitute a quorum for the transaction of business, there shall be required to be present at any meeting of the board at least five members. The Athens-Clarke County Planning Director or lawful designee shall serve as the board's secretary. The board shall adopt rules of procedure and by-laws not in conflict with the provisions of this title. Meetings of the board shall be held at the call of the chair and at such other times as the board may determine. Regular meetings of the hearings boards shall be held monthly. Called meetings may be held as needed.
- G. The procedures described in this code section shall not apply to administrative hearings or appeals held before the Administrative Hearing Officer of Athens-Clarke County. Those types of hearings and appeals

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shall be governed by the procedures described in Chapter 1-5 of the Code of Athens-Clarke County, Georgia, or otherwise set forth in state law.

**(Ord. of 12-5-2000, § 1; Ord. of 6-5-2001, §§ 6—8; Ord. of 6-7-2005, § 1; Ord. of 2-3-2009, § 2)**

**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; and
    2. Any claim by any citizen aggrieved by an administrative decision made by any Athens-Clarke County department authorized to make such decisions.
    3. Any final decision by the Athens-Clarke County Planning Department as provided for in Section 1-5-2(a).
    4. An appeal of any action subject to the Type IV planning procedure, as provided for in section 1-5-3(a).
  - 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

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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 any sworn Athens-Clarke County police officer or any Athens-Clarke Country 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.

(Ord. of 1-7-92, § 1; Ord. of 7-2-96, § 1; Ord. of 7-1-97, §§ 1, 2; Ord. of 7-6-99, § 1; Ord. of 3-5-2002, § 1; Ord. of 4-1-2003, § 1; Ord. of 3-29-2005, § 2; Ord. of 6-30-2005, § 1; Ord. of 4-4-2006, §§ 2, 3; Ord. of 1-17-2017(2), § 1; Ord. of 2-6-2024(2), §§ 1, 2)

### **Sec. 1-5-3. – Review of variances and other actions subject to the Type IV planning procedure.**

- (a) The administrative hearing officer shall hereby have jurisdiction over appeals of any final decision by the Athens-Clarke County Hearings Board or any other body subject to the Type IV planning procedure. For purposes of clarity, staff permitting and interpretive decisions shall be governed by section 1-5-2 of this Code.
- (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) If the Unified Government of Athens-Clarke County, Georgia, is not the appellee or the appellant, it may intervene in the matter, acting by and through the Athens-Clarke County Planning Department.

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- (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), the appellee (or the appellee'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 the types of decisions described herein, the administrative hearing officer shall review the record to determine whether any evidence supports the final decision, and the administrative hearing officer may review any applicable final legal conclusions on a de novo basis. The administrative hearing officer shall only consider the errors or issues explicitly raised in the written appeal.
- (e) The parties may provide oral argument during the hearing. Each party shall be afforded ten minutes. The administrative hearing officer shall first hear argument from the appellant, then from the appellee. The appellant may reserve up to three minutes for rebuttal. If the Athens-Clarke County Planning Department is an intervenor in the matter, the administrative hearing officer shall also afford it ten minutes, and the administrative hearing officer shall decide the appropriate time and manner during the proceedings for the Athens-Clarke County Planning Department to be heard. Upon prior written request and for good cause shown, the administrative hearing officer may provide additional time for oral argument, provided that all parties are 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 to the Athens-Clarke County Hearings Board, or other appropriate body, 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 any 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.