

2022

## HB 1405: Amendments to the Zoning Procedures Law

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## LOCAL GOVERNMENT

***Zoning Procedures: Amend Title 36 of the Official Code of Georgia Annotated, Relating to Local Governments, so as to Revise “The Zoning Procedures Law”; Revise Provisions Related to Judicial Review of Zoning Decisions; Revise Definitions; Provide for Requirements for Zoning Decisions by Boards or Agencies Using Delegated Powers; Provide Additional Notice and Hearing Provisions for Changes to Zoning Ordinances that Revise Single-Family Residential Classifications and Definitions so as to Authorize Multifamily Residential Property Uses; Require Review Procedures for Decisions Made by Boards or Agencies Using Delegated Powers; Provide for Judicial Review of Zoning Decisions; Require Certain Designations Relating to Appeals of Quasi-Judicial Decisions; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 36-66-1 -2, -3, -4, -5 (amended); 36-66-5.1 (new)
BILL NUMBER:	HB 1405
ACT NUMBER:	881
GEORGIA LAWS:	2022 Ga. Laws 825
EFFECTIVE DATE:	July 1, 2022
SUMMARY:	The Act amends the zoning procedures law to clarify the process for challenging and appealing certain land use decisions. The Act codifies the long-standing appeals process for zoning decisions that existed prior to 2017 such that legislative zoning challenges will be reviewed de novo by a superior court. Additionally, the Act designates which local government employees receive notice of such zoning appeals.

*History*

In the United States, the amount of affordable housing has reached a historic low.<sup>1</sup> From 2018 to 2020, America's housing shortage increased from 2.5 million units to 3.8 million units.<sup>2</sup> This crisis has even been recognized by the White House—in September 2021, the Biden Administration proposed regulatory changes to make home ownership more feasible and enticing for first-time homebuyers.<sup>3</sup>

Unsurprisingly, Georgia, a state with rising housing costs and average wages lower than pre-Great Recession levels, has felt the brunt of this housing crisis.<sup>4</sup> In Atlanta, between 2000 and 2017, the “median rent rose by over 70%, but [the] median income only increased by 48%.”<sup>5</sup> Additionally, in 2017, 46% of Georgians who rented “spent more than 30[%] of their household income on rent.”<sup>6</sup> The COVID-19 pandemic has exacerbated this existing crisis nationally and in Georgia.<sup>7</sup> While housing prices in the country skyrocketed—

1. SAM KHATER, LEN KIEFER & VENKATARAMANA YANAMANDRA, FREDDIE MAC, HOUSING SUPPLY: A GROWING DEFICIT 2 (2021), [http://www.freddiemac.com/fmac-resources/research/pdf/202105-Note-Housing\\_Supply-08.pdf](http://www.freddiemac.com/fmac-resources/research/pdf/202105-Note-Housing_Supply-08.pdf) [<https://perma.cc/NPT9-Q4VX>]. Between 2018 and 2020, the American housing market saw an increase in the housing stock deficit by approximately 52%. *Id.* at 1. The causes of this housing supply shortage include the lack of willing and able construction workers, local regulations on zoning and land use, increasing costs of raw materials, and the lack of land to develop. *Id.* at 2.

2. *Id.* at 1.

3. Ben Winck, *Biden's New Plan to Fix the Housing Crisis Includes 100,000 New Homes When the US Needs as Many as 7 Million*, INSIDER (Sept. 1, 2021, 3:48 PM), <https://www.businessinsider.com/biden-housing-market-crisis-plan-home-construction-affordability-price-surges-2021-9> [<https://perma.cc/Q7ZL-DTW4>].

4. See Jennifer Owens, *Striking New Data Shines Light on Statewide Affordable Housing Crisis*, GA. BUDGET & POL'Y INST. (Aug. 21, 2018), <https://gbpi.org/striking-new-data-shines-light-on-statewide-affordable-housing-crisis/> [<https://perma.cc/XKP7-YCDD>] (identifying the “average Fair Market Rent (FMR) for a two-bedroom apartment” in Georgia as \$911). To be able to afford this average rent without spending over 30% of their housing on income, a household in Georgia must earn “\$3,038 monthly or \$36,459 annually.” Meanwhile, the annual wage of a typical worker in Georgia was about \$34,000 in 2017. *Id.*; see also Wesley Tharpe, *People-Powered Prosperity Background: Georgia's People Hold Untapped Value*, GA. BUDGET & POL'Y INST. (Jan. 22, 2018), <https://gbpi.org/people-powered-prosperity-background/> [<https://perma.cc/69C4-8TWG>].

5. *Housing Affordability Action Plan*, CITY OF ATLANTA, GA., <https://www.atlantaga.gov/government/mayor-s-office/projects-and-initiatives/housing-affordability-action-plan> [<https://perma.cc/E3VT-JZ62>].

6. Laura Harker, *Georgia's COVID-19 Public Health Response Must Include Support for Stable, Quality Housing*, GA. BUDGET & POL'Y INST. (May 7, 2020), <https://gbpi.org/georgias-covid-19-public-health-response-must-include-support-for-stable-quality-housing/> [<https://perma.cc/QB2N-PP6Q>].

7. See generally Elliot Anenberg and Daniel Ringo, *Housing Market Tightness During COVID-19: Increased Demand or Reduced Supply?*, BD. OF GOVERNORS OF THE FED. RSRV. SYS. (July 8, 2021),

increasing by 5.7% during 2020—renters earning less than \$25,000 annually became much more likely to lose income due to the pandemic shutdowns.<sup>8</sup> By November 2020, nearly 25% of Georgia renters had missed at least one month’s payment.<sup>9</sup> Although the federal government tried to offer relief for tenants by passing the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), many counties in Georgia were unable to give out all of these federal funds because many residents did not meet the federal guidelines since they were “already in trouble” before the COVID-19 pandemic.<sup>10</sup>

In 2021, given Atlanta’s housing shortage and estimates that its population could more than double in the next few decades, city council members proposed to rezone over 2,000 residential lots from single-family to multi-family.<sup>11</sup> But after nineteen of Atlanta’s Neighborhood Planning Units (organizations that give local residents power over the rezoning and development process) provided vocal opposition to the plan, city officials “backed off” from the proposal.<sup>12</sup>

One year later, after witnessing the increase in public debate about the mechanisms to challenge such zoning decisions, members of the Georgia General Assembly addressed some of these concerns in House

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<https://www.federalreserve.gov/econres/notes/feds-notes/housing-market-tightness-during-covid-19-increased-demand-or-reduced-supply-20210708.htm> [https://perma.cc/CCR5-HUV8]; Jim Burress & Lily Oppenheimer, *COVID-19 Impact: Struggles Continue for Georgia Renters*, In *Atlanta Housing Sector*, WABE (Nov. 13, 2020), <https://www.wabe.org/covid-19-impact-struggles-continue-for-georgia-renters-atlanta-housing-sector/> [https://perma.cc/9ZS4-6A6Z].

8. JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, *THE STATE OF THE NATION’S HOUSING* 2020, at 1, 22 (2020) [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_The\\_State\\_of\\_the\\_Nations\\_Housing\\_2020\\_Report\\_Revised\\_120720.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2020_Report_Revised_120720.pdf) [https://perma.cc/DQ3G-9ATR]; Winck, *supra* note 3.

9. Burress & Oppenheimer, *supra* note 7. In November of 2020, economists estimated that renters in Georgia were “behind on about \$388 million of rent, since the start of the coronavirus crisis.” *Id.* (quoting Tendayl Kapfidge, Lending Tree’s chief economist).

10. Meris Lutz, Stephen Deere & Tyler Estep, *Housing Crisis Will Outlast Aid Money*, ATLANTA J.-CONST. (Dec. 27, 2020), <https://www.ajc.com/news/atlanta-news/housing-crisis-will-outlast-aid-money/HLMK5RIAGZHIFLISBVQ5ZZU7TE/> [https://perma.cc/KH5X-NU8A]. By “already in trouble,” the authors could be referring to extenuating circumstances that existed not due to the COVID-19 pandemic, but rather, due to something else. For instance, if someone lost their job before the pandemic or had been unable to pay rent on time due to bills accrued before the COVID-19 pandemic, the resident would not qualify for the federal assistance provided by the CARES Act.

11. Bob Irvin, *Opinion: Single-family Homeowners Need Say on City Density Too*, ATLANTA J.-CONST. (May 14, 2022), <https://www.ajc.com/opinion/opinion-single-family-homeowners-need-say-on-city-density-too/51VWCC5TV5EONJ46KHUTNSUBM4/> [https://perma.cc/9AZ3-SEHH].

12. *Id.*

Bill (HB) 1405.<sup>13</sup> In Georgia, courts have divided land use decisions into two classifications: legislative and quasi-judicial.<sup>14</sup> Legislative decisions, including rezoning and special land use permits, are made by a local legislative body such as a county commission or city council.<sup>15</sup> Quasi-judicial land use decisions, such as receiving a variance for housing renovations, are made by a delegated body with the power to make decisions only when applying very specific criteria.<sup>16</sup> HB 1405 codifies that all legislative land use decisions may be appealed to superior court for de novo review.<sup>17</sup>

Representative Shea Roberts (D-52nd), a land use attorney and the bill's sponsor in the Georgia House of Representatives, claimed that the purpose of HB 1405 "is to take us back to what the law was prior to 2017."<sup>18</sup> Before 2017, appeals of zoning decisions were conducted de novo, meaning that the superior court could look at the legal and factual issues anew.<sup>19</sup> Thus, lawyers, citizens, and local governments who prepared and reviewed materials for zoning decisions were able to provide far more evidence—including appraisal information, fair market value of property to prove diminution of value, and expert traffic reports—at the court level in addition to what was provided at the local government level.<sup>20</sup>

In 2017, the language in the Georgia Supreme Court's *City of Cumming v. Flowers*, a variance case, appeared to call into question

13. See *id.*; Video Interview with Sen. Elena Parent (D-42nd) (June 14, 2022) [hereinafter Parent Interview] (on file with the Georgia State University Law Review).

14. Video Recording of Senate Judiciary Committee Meeting Part 2 at 1 hr., 58 min., 49 sec. (Mar. 24, 2022) [hereinafter Senate Judiciary Committee Video] (remarks by Rep. Shea Roberts (D-52nd)), <https://vimeo.com/showcase/8821960/video/691966765> [<https://perma.cc/Y7WW-67TY>].

15. *Id.*

16. *Id.*

17. *Id.* at 1 hr., 59 min., 20 sec.; 2022 Ga. Laws 825, § 1, at 831–32 (codified at O.C.G.A. § 36-66-5.1(a)(1) (2022)).

18. Video Recording of House Governmental Affairs Committee Meeting at 1 hr., 2 min., 45 sec. (Mar. 2, 2022) [hereinafter House Governmental Affairs Committee Video] (remarks by Rep. Shea Roberts (D-52nd)), <https://www.youtube.com/watch?v=AaryDa9SDKU&t=2144s> [<https://perma.cc/JYG5-BU76>]; Georgia General Assembly, HB 1405, Bill Tracking [hereinafter HB 1405, Bill Tracking], <https://www.legis.ga.gov/legislation/62238> [<https://perma.cc/9NJU-ZXVJ>].

19. House Governmental Affairs Committee Video, *supra* note 18 at 1 hr., 2 min., 10 sec.; § 36-66-5.1(a)(1) (“[C]hallenges shall be by way of de novo review by the superior court wherein such review brings up the whole record from the local government and all competent evidence shall be admissible in the trial thereof . . .”).

20. Video Interview with Rep. Shea Roberts (D-52nd) (June 7, 2022) [hereinafter Roberts Interview] (on file with the Georgia State University Law Review); Senate Judiciary Committee Video, *supra* note 14, at 1 hr., 59 min., 40 sec.

whether challenges to rezoning decisions were also to be treated as “quasi-judicial” subject to on-the-record appeals.<sup>21</sup> In *Flowers*, the court used “overly broad language,” which has been interpreted to mean that all zoning decisions could only be appealed by certiorari.<sup>22</sup> This interpretation altered the way that people prepared for legislative zoning hearings because the appellate court could only review the record that was previously in front of the zoning review board, the county commissioner, or the city council.<sup>23</sup> This interpretation introduced more uncertainty into the zoning process, forcing parties and decision-making bodies to expend more resources on establishing thorough records in zoning hearings than was previously necessary.<sup>24</sup>

Further, those attempting to appeal zoning decisions were frustrated by the difficulty of finding the person to whom they needed to serve the notice of appeal within a limited time frame.<sup>25</sup> To remedy this issue, HB 1405 sought to require local governments to designate a local government employee to receive notice in a location that is open at normal business hours and located within the county or city.<sup>26</sup>

Thus, Representative Roberts—in consultation with the Association for County Governments, the Georgia Municipal Association, the Georgia Realtors Association, and fellow legislators—introduced HB 1405 to clarify the distinction between legislative and quasi-judicial jurisdiction; establish that all legislative land use decisions may be challenged in superior court by de novo review; ease the unnecessarily heavy burden of preparing for zoning decision hearings; and create a reliable and accessible method for localities to receive notices of appeal.<sup>27</sup>

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21. Senate Judiciary Committee Video, *supra* note 14, at 1 hr., 59 min., 40 sec. *See generally*, City of Cumming v. Flowers, 300 Ga. 820, 797 S.E.2d 846 (2017).

22. Senate Judiciary Committee Video, *supra* note 14, at 1 hr., 59 min., 55 sec.

23. *Id.* at 2 hr., 0 min., 10 sec.

24. *Id.* at 2 hr., 0 min., 24 sec.

25. Roberts Interview, *supra* note 20.

26. *Id.*; 2022 Ga. Laws 825, § 1, at 832 (codified at O.C.G.A. § 36-66-5.1(c) (2022)).

27. *See* Senate Judiciary Committee Video, *supra* note 14, at 1 hr., 58 min., 39 sec; Roberts Interview, *supra* note 20.

*Bill Tracking of HB 1405**Consideration and Passage by House*

Representative Shea Roberts (D-52nd) sponsored HB 1405 in the House with Representative Dale Washburn (R-141st), Representative Clint Crowe (R-110th), Representative David Dreyer (D-59th), Representative Miriam Paris (D-142nd), and Representative Marvin Lim (D-99th) cosponsoring.<sup>28</sup> The House first read the bill on February 22, 2022, and read it for a second time on February 24, 2022.<sup>29</sup>

The House Governmental Affairs Committee favorably reported the bill by substitute on March 3, 2022.<sup>30</sup> The substitute added language to specify the Act's effective date and applicability and removed repetitive language regarding the process for serving an elected official or his or her designee when appealing a quasi-judicial decision.<sup>31</sup> The substitute also removed duplicative language that required the applicant for a zoning or a quasi-judicial decision to be a named defendant in the action.<sup>32</sup>

The House read the bill for a third time on March 15, 2022.<sup>33</sup> On that same day, the House adopted the Committee substitute and passed the bill by a vote of 160 to 1.<sup>34</sup>

*Consideration and Passage by Senate*

Senator Elena Parent (D-42nd) sponsored the bill in the Senate.<sup>35</sup> The Senate read the bill on March 16, 2022, and the Senate referred it to the Senate Judiciary Committee on that same day.<sup>36</sup>

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28. HB 1405, Bill Tracking, *supra* note 18.

29. State of Georgia Final Composite Status Sheet, HB 1405, May 19, 2022.

30. *Id.*; HB 1405, Bill Tracking, *supra* note 18.

31. Compare HB 1405 (HCS), § 2, p. 12, 2022 Ga. Gen. Assemb., with HB 1405, as introduced, § 2, p. 12, 2022 Ga. Gen. Assemb. Compare HB 1405 (HCS), § 1, pp. 9–10, ll. 214–35, with HB 1405, as introduced, § 1, pp. 9–10, ll. 212–45.

32. Compare HB 1405 (HCS), § 1, p. 10, ll. 223–35, with HB 1405, as introduced, § 1, pp. 9–10, ll. 212–45.

33. State of Georgia Final Composite Status Sheet, HB 1405, May 19, 2022.

34. *Id.*; Georgia House of Representatives Voting Record, HB 1405, #745 (Mar. 15, 2022).

35. HB 1405, Bill Tracking, *supra* note 18.

36. *Id.*; State of Georgia Final Composite Status Sheet, HB 1405, May 19, 2022.

The Committee favorably reported the bill by substitute on March 25, 2022.<sup>37</sup> The substitute incorporated language to require local governments to make printed copies of the quasi-judicial decision-making standards available for the general public.<sup>38</sup> Additionally, the substitute specified that a de novo review of zoning decisions “brings up the whole record from the local government” and allows for “all competent evidence [to] be admissible in the trial.”<sup>39</sup> It also codified the standard for overcoming a zoning decision by “showing by clear and convincing evidence that the zoning classification is a significant detriment to the petitioner and is insubstantially related to the public health, safety, morality, or general welfare” to overcome “the presumption that a governmental zoning decision is valid.”<sup>40</sup> Furthermore, the substitute clarified that quasi-judicial decisions must be in compliance with Title 5 of the Georgia Code.<sup>41</sup>

The Senate read the bill a second time on March 28, 2022.<sup>42</sup> The Senate tabled the bill on April 1, 2022, and the bill was taken from the table in the Senate on April 4, 2022.<sup>43</sup>

On April 4, 2022, the Senate read the bill for a third time.<sup>44</sup> On that same day, Senator Parent and Senator Brian Strickland (R-17th) introduced the first floor amendment to the bill, and Senator Parent and Senator Max Burns (R-23rd) introduced the second floor amendment to the bill.<sup>45</sup> The first amendment clarified that a petitioner challenging a zoning decision can “substantively” overcome the presumption that the zoning decision is valid with “clear and convincing evidence that the zoning classification is a significant detriment to the petitioner and is insubstantially related to the public health, safety, morality, or general welfare.”<sup>46</sup> The second amendment provided for “additional notice and hearing provisions for changes to zoning ordinances that

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37. State of Georgia Final Composite Status Sheet, HB 1405, May 19, 2022.

38. HB 1405 (SCS), § 1, p. 8, ll. 175–81, 2022 Ga. Gen. Assemb.

39. *Id.* § 1, p. 9, ll. 205–06.

40. *Id.* § 1, p. 9, ll. 207–11.

41. *Id.* § 1, pp. 9–10, ll. 212–17, 223–28, 233–40; *see infra* note 113 and accompanying text.

42. State of Georgia Final Composite Status Sheet, HB 1405, May 19, 2022.

43. *Id.*

44. *Id.*

45. HB 1405 (SFA) (1 AM), 2022 Ga. Gen. Assemb.; HB 1405 (SFA) (2 AM 47 0049), 2022 Ga. Gen. Assemb.

46. HB 1405 (SFA) (1 AM), 2022 Ga. Gen. Assemb.; HB 1405 (SCSFA), § 1, p. 11, ll. 254–58, 2022 Ga. Gen. Assemb.



revise single-family residential classifications and definitions so as to authorize multifamily residential property uses.”<sup>47</sup> Both amendments passed, and the Senate adopted the bill by substitute by a vote of 53 to 0.<sup>48</sup>

### *House Agreed to the Senate Substitute*

On April 4, 2022, the House agreed to the Senate substitute, and the bill passed by a vote of 130 to 25.<sup>49</sup> The House sent the bill to Governor Brian Kemp (R) on April 7, 2022, and he signed it into law as Act 881 on May 13, 2022.<sup>50</sup> The Act’s effective date is July 1, 2022.<sup>51</sup>

### *The Act*

The Act amends various portions of Title 36 of the Official Code of Georgia Annotated.<sup>52</sup> Its overall purpose is to provide “requirements for zoning decisions by boards or agencies using delegated powers,” to provide notice and hearing requirements for zoning ordinances that authorize multifamily residential properties, to establish review procedures for boards and agencies, to allow for judicial review of zoning decisions, and to establish designations for appeals of quasi-judicial decisions.<sup>53</sup>

### *Section 1*

#### *Code Section 36-66-1*

Section 1 of the Act amends Code section 36-66-1 by providing the title of the chapter as “Zoning Procedures Law.”<sup>54</sup>

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47. HB 1405 (SFA) (2 AM 47 0049), 2022 Ga. Gen. Assemb.

48. State of Georgia Final Composite Status Sheet, HB 1405, May 19, 2022; Georgia Senate Voting Record, HB 1405, #835 (Apr. 4, 2022).

49. State of Georgia Final Composite Status Sheet, HB 1405, May 19, 2022; Georgia House of Representatives Voting Record, HB 1405, #916 (Apr. 4, 2022).

50. State of Georgia Final Composite Status Sheet, HB 1405, May 19, 2022.

51. HB 1405, Bill Tracking, *supra* note 18; 2022 Ga. Laws 825, § 2, at 834.

52. 2022 Ga. Laws 825.

53. *Id.*

54. 2022 Ga. Laws 825, § 1, at 826 (codified at O.C.G.A. § 36-66-1 (2022)).

*Code Section 36-66-2*

Section 1 of the Act amends subsection (a) and subsection (b) of Code section 36-66-2.<sup>55</sup> Subsection (a) establishes “state policy minimum procedures governing the exercise and means of judicial review” of the exercise of zoning powers.<sup>56</sup> This subsection “assure[s] that due process is afforded to the general public.”<sup>57</sup> It also clarifies that the chapter shall not invalidate zoning decisions prior to July 1, 2023, nor shall it “require a local government to exercise its zoning power.”<sup>58</sup>

Section 1 amends paragraph (1) of subsection (b) of Code section 36-66-2 to specify that local governments may create “administrative officers, boards, or agencies” to make the exercise of “delegated, quasi-judicial zoning powers” more efficient.<sup>59</sup> The local governments may also “establish procedures and notice requirements for hearings before such quasi-judicial officers, boards, or agencies.”<sup>60</sup>

Section 1 amends paragraph (2) of subsection (b) of Code section 36-66-2 to allow for local governments to establish “procedures and requirements in addition to or supplemental to those required by [the] chapter.”<sup>61</sup> Any of the additional or supplemental procedures and requirements would then become a part of the minimum procedures required by the local government.<sup>62</sup>

*Code Section 36-66-3*

Section 1 of the Act amends Code section 36-66-3 to provide additional definitions used within the chapter.<sup>63</sup> Subsection (1.1) of the Code section defines “quasi-judicial officers, boards, or agencies” as “an officer, board, or agency appointed by a local government to

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55. 2022 Ga. Laws 825, § 1, at 826 (codified at § 36-66-2(a)–(b)).

56. § 36-66-2(a).

57. *Id.*

58. *Id.*

59. 2022 Ga. Laws 825, § 1, at 826 (codified at § 36-66-2(b)(1)).

60. § 36-66-2(b)(1).

61. 2022 Ga. Laws 825, § 1, at 826 (codified at § 36-66-2(b)(2)).

62. § 36-66-2(b)(2).

63. 2022 Ga. Laws 825, § 1, at 826 (codified at § 36-66-3).

exercise delegated, quasi-judicial zoning powers.”<sup>64</sup> Such powers include “hearing appeals of administrative decisions [made by the] officers, boards, or agencies and hearing and rendering decisions on applications for variances, special administrative permits, special exceptions, conditional use permits, or other similar permits not enumerated” within the chapter.<sup>65</sup>

Section 1 also amends paragraph (4) of Code section 36-66-3.<sup>66</sup> Paragraph (4) states that a “[z]oning decision” means final legislative action by a local government which results in” the decisions described within subparagraphs (A) through (F) of paragraph (4) as follows:

- (A) The adoption or repeal of a zoning ordinance;
- (B) The adoption of an amendment to a zoning ordinance which changes the text of the zoning ordinance;
- (C) The adoption or denial of an amendment to a zoning ordinance to rezone property from one zoning classification to another;
- (D) The adoption or denial of an amendment to a zoning ordinance by a municipal local government to zone property to be annexed into the municipality;
- (E) The grant or denial of a permit relating to a special use of property; [and]
- (F) The grant or denial of a variance or conditions concurrent and in conjunction with a decision pursuant to subparagraphs (C) or (E) of [paragraph (4)].”<sup>67</sup>

*Code Section 36-66-4*

Section 1 of the Act clarifies the requirements within Code section 36-66-4 relating to notices and hearings.<sup>68</sup> Subsection (a) explains that a local government must provide for a hearing on a proposed action that would result in a zoning decision.<sup>69</sup> The subsection specifies that

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64. § 36-66-3(1.1).

65. *Id.*

66. 2022 Ga. Laws 825, § 1, at 827 (codified at § 36-66-3(4)).

67. § 36-66-3(4).

68. 2022 Ga. Laws 825, § 1, at 827–30 (codified at § 36-66-3(4)).

69. § 36-66-4(a).

if the proposed action includes “any combination of zoning decisions under subparagraphs (C), (E), or (F) of paragraph (4) of Code [s]ection 36-66-3 for the same property, only one hearing shall be required.”<sup>70</sup> The local government must publish a notice for a hearing within a local newspaper at least fifteen days, but no more than forty-five days, before the hearing date.<sup>71</sup> Such a notice must include the “time, place, and purpose of the hearing.”<sup>72</sup>

Subsection (b) of Code section 36-66-4 explains the requirements for notice when a zoning decision is made on the rezoning of property and the party initiating that rezoning is not the local government.<sup>73</sup> In addition to the requirements of subsection (a) of 36-66-4, the notice of the hearing on such decisions must “include the location of the property, the present zoning classification of the property, and the proposed zoning classification of the property.”<sup>74</sup> At least fifteen days prior to the date of the hearing, a sign with information required by local laws must be “placed in a [visible] location on the property.”<sup>75</sup>

Subsection (c) of Code section 36-66-4 provides that if an amendment to the zoning ordinance for rezoning of property is “defeated by local government, then the same property may not [] be considered for rezoning until . . . at least six months” after the defeat.<sup>76</sup>

Subsection (d) of Code section 36-66-4 explains the requirements for “property to be annexed into a municipality.”<sup>77</sup> The subsection provides the timeline by which the local government must complete the procedures required by the chapter, the requirements for notice of a hearing, and the dates on which the zoning classification may become effective.<sup>78</sup> Paragraph (1) of subsection (d) requires that a municipal government complete the zoning procedures, “except for the final vote[,]” before the “adoption of the annexation ordinance or resolution or the effective date of any local Act but no sooner than the date the notice of the proposed annexation is provided to the governing

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70. *Id.*

71. *Id.*

72. *Id.*

73. § 36-66-4(b).

74. § 36-66-4(b)(1).

75. § 36-66-4(b)(2).

76. § 36-66-4(c).

77. § 36-66-4(d).

78. *Id.*

authority of the county as required under Code [s]ection 36-36-6.”<sup>79</sup> Paragraph (2) of subsection (d) requires that the hearing must be conducted before the annexation of the property.<sup>80</sup>

Paragraph (3) of subsection (d) of Code section 36-66-4 specifies that in addition to other notice requirements under this section, the municipality must publish a notice of the hearing within “a newspaper of general circulation” within the county where the property to be annexed is located.<sup>81</sup> The municipality must also place “a sign on the property when required by subsection (b)” of Code section 36-66-4.<sup>82</sup> Paragraph (4) of subsection (d) states that the zoning classification, once approved, will take effect on either “[t]he date the zoning is approved by the municipality[,]” “[t]he date that the annexation becomes effective pursuant to Code [s]ection 36-36-2[,]” or “the date provided in paragraph (8) of subsection (c)” where a county has objected pursuant to Code section 36-36-11—whichever is later.<sup>83</sup>

Subsection (e) of Code section 36-66-4 specifies that zoning ordinances may be adopted to require that the use of an annexed or deannexed property remain the same as its use prior to the annexation or deannexation.<sup>84</sup> The subsection clarifies that a qualified municipality or county adopting such ordinances must have a common zoning-classification ordinance with the municipality or county within which the property is located.<sup>85</sup>

Subsection (f) of Code section 36-66-4 provides the requirements for a public hearing when “a proposed zoning decision relates to or will allow the location or relocation of a halfway house, drug rehabilitation center, or other facility for treatment of drug dependency.”<sup>86</sup>

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79. §§ 36-66-4(d)(1), -6 (providing requirements for governing authority of annexing municipality to provide notice to county governing authority where the area for proposed annexation is located).

80. § 36-66-4(d)(2) (referring to the hearing required by subsection (a) of Code section 36-66-4).

81. § 36-66-4(d)(3) (referring to the notice requirements under subsection (a) or subsection (b) of Code section 36-66-4).

82. *Id.*

83. § 36-66-4(d)(4); § 36-36-2 (providing effective date of annexation); § 36-36-11(c)(8) (specifying that the zoning or rezoning decision will not be effective until “[twenty-eight] calendar days following the completion of the process authorized by [Code section 36-36-11] and the zoning or rezoning vote by the municipal governing authority.”).

84. § 36-66-4(e).

85. *Id.*

86. § 36-66-4(f).

Section 1 of the Act adds paragraph (g) to Code section 36-66-4.<sup>87</sup> Paragraph (g) requires that a local government that delegates “decision-making power to a quasi-judicial officer, board, or agency shall provide for a hearing on each proposed action described in paragraph (1.1) of Code [s]ection 36-66-3.”<sup>88</sup> The notice of such a hearing must be given at least thirty days prior to the quasi-judicial hearing.<sup>89</sup> The notice must comply with subsection (a) of Code section 36-66-4, and the local government must mail the notice to “the owner of the property that is the subject of the proposed action.”<sup>90</sup>

Section 1 of the Act adds paragraph (h) to Code section 36-66-4.<sup>91</sup> Subparagraph (1) of paragraph (h) explains the procedures by which zoning decisions must be adopted when a zoning ordinance will revise the zoning classifications relating to single-family residential uses of property to authorize multifamily uses or when an ordinance will grant “blanket permission . . . for property owners to deviate from the existing zoning requirements of a single-family residential zoning.”<sup>92</sup> Such zoning decisions must be adopted at two regular local government meetings that are at least twenty-one days apart.<sup>93</sup> Before the first meeting, at least two public hearings must be held “at least three months and not more than nine months prior to the date of the final action on the zoning decision.”<sup>94</sup> At least one of the public hearings must be held between 5:00 PM and 8:00 PM.<sup>95</sup>

Subparagraph (1) of paragraph (h) to Code section 36-66-4 also specifies the procedures the local government must follow when providing notice of the public hearings.<sup>96</sup> In addition to publishing the notice within local newspapers and posting notice on “affected premises,” the notice must include the proposed amendment.<sup>97</sup> The

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87. 2022 Ga. Laws 825, § 1, at 829 (codified at § 36-66-4(g)).

88. § 36-66-4(g).

89. *Id.*

90. *Id.*

91. 2022 Ga. Laws 825, § 1, at 829–30 (codified at § 36-66-4(h)).

92. § 36-66-4(h)(1).

93. § 36-66-4(h)(1)(A).

94. § 36-66-4(h)(1)(B).

95. *Id.*

96. *Id.*

97. *Id.*

local government must provide “anyone, upon written request, a copy of the proposed amendment, at no cost.”<sup>98</sup>

Subparagraph (2) of paragraph (h) of Code section 36-66-4 clarifies that the provisions of subparagraph (1) will also apply to “any zoning decisions” that abolish “all single-family residential zoning classifications” or result in rezoning single-family residential uses of property to multifamily uses.<sup>99</sup>

Subparagraph (3) of paragraph (h) of Code section 36-66-4 explains that paragraph (h) does “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.”<sup>100</sup>

#### *Code Section 36-66-5*

Section 1 of the Act amends Code section 36-66-5.<sup>101</sup> Subsection (a) extends the scope of government entities required to establish a minimum time period for presentation of data, evidence, and opinion at zoning hearings to include those making quasi-judicial decisions.<sup>102</sup> Further, subsection (b) requires that local governments “rendering a zoning decision” must adopt standards governing zoning power and distribute printed copies of those standards to the public.<sup>103</sup>

Subsection (b.1) clarifies that any local government that establishes a quasi-judicial decision-making body for zoning may adopt specific standards governing that body in addition to the policies discussed in subsection (a).<sup>104</sup> Further, subsection (b.1) states that if a local government does adopt specific standards for the quasi-judicial body, those standards must (1) include the factors by which the local government will evaluate quasi-judicial matters, and (2) be made available for public distribution.<sup>105</sup>

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98. § 36-66-4(h)(1).

99. § 36-66-4(h)(2).

100. § 36-66-4(h)(3).

101. 2022 Ga. Laws 825, § 1, at 831 (codified at § 36-66-5).

102. § 36-66-5(a).

103. § 36-66-5(b).

104. § 36-66-5(b.1).

105. *Id.*

Subsection (c) requires, rather than allows, that any policies or procedures adopted according to subsections (a) through (b.1) be adopted as part of the zoning ordinance.<sup>106</sup> Lastly, the date is altered such that “prior to the adoption of any zoning ordinance enacted on or after July 1, 2022,” the appropriate local government must host a public hearing about the proposed ordinance.<sup>107</sup>

*Code Section 36-66-5.1*

Section 1 of the Act added Code section 36-66-5.1 to update and clarify the appeals process for zoning decisions.<sup>108</sup> Subsection (a)(1) establishes that legislative zoning decisions shall be subject to direct constitutional challenge *de novo* before the superior court of the county where the property is located.<sup>109</sup> The court can hear the “whole record from the local government and all competent evidence” to determine whether the “zoning classification is a significant detriment to the petitioner and is insubstantially related to the public health, safety, morality, or general welfare .”<sup>110</sup>

Subsection (a)(2) outlines that quasi-judicial and special use zoning decisions are subject to appellate review by the superior court, must be brought via a Title 5 petition for such review, and will be reviewed on the record.<sup>111</sup>

Subsection (b) clarifies that all zoning challenges must be brought within 30 days of the initial, written zoning decision.<sup>112</sup>

To reduce the burden on citizens who appeal zoning decisions, subsection (c) mandates that local governments must designate an “officer of the quasi-judicial board or [zoning] agency who shall” automatically have the authority “to approve or issue any form or

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106. § 36-66-5(c).

107. *Id.*

108. 2022 Ga. Laws 825, § 1, at 831–33 (codified at § 36-66-5.1).

109. § 36-66-5.1(a)(1).

110. *Id.*

111. § 36-66-5.1(a)(2). In Georgia, when a party wishes to appeal a judicial decision from a lower judicatory to a superior court, the party must obtain a writ of certiorari by petition (known as a “Title 5 petition”) to the superior court in the county where the case was tried. The clerk of that superior court must then issue a writ of certiorari requiring the tribunal or person who made the lower-level decision to certify and send up all the proceedings in the case to the superior court. O.C.G.A. § 5-4-3 (2022) (repealed 2023). *But see* discussion *infra* regarding HB 916 and its impact on HB 1405.

112. O.C.G.A. § 36-66-5.1(b) (2022).



certificate necessary” to complete a Title 5 petition for review and “who shall have authority to accept service” of an appeal of a quasi-judicial decision on behalf of the local government “during normal business hours, [and] at the regular offices of the local government.”<sup>113</sup>

Lastly, under subsection (d), an appeal “filed pursuant to this chapter shall stay all legal proceedings in furtherance of the action appealed . . . unless the local government [or agent thereof] certifies that . . . a stay would cause imminent peril to life or property.”<sup>114</sup> If the imminent peril element is satisfied, the applicant for the zoning decision must be a necessary party and named as a defendant in the action.<sup>115</sup>

#### *Code Section 36-66-6*

This section details special protocols for zoning decisions made for land adjacent to a military base or within a prescribed distance of a military airport.<sup>116</sup> The Act does not amend this section.<sup>117</sup>

#### *Section 2*

Section 2 sets the effective date for the Act as July 1, 2022, indicating that it will “apply to all zoning and quasi-judicial decisions on and after that date; however, no zoning or quasi-judicial decision prior to July 1, 2023, shall be rendered invalid or void because of a local government’s failure to implement the provisions of Code Section 36-66-5.1.”<sup>118</sup>

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113. § 36-66-5.1(c).

114. § 36-66-5(d).

115. *Id.*

116. § 36-66-6.

117. 2022 Ga. Laws 825, § 1, at 833 (codified at § 36-66-6).

118. 2022 Ga. Laws 825, § 2, at 834.

*Analysis**Increasing Accessibility and Transparency*

When the Lieutenant Governor’s office first reviewed HB 1405, it referred to it as a “good lawyer bill” that provides a needed—and “pretty much universally agreed [upon]”—update to the law, mainly through making the law clearer to those involved in zoning decisions.<sup>119</sup>

By prioritizing due process, HB 1405 “gives citizens and governments equal footing.”<sup>120</sup> The minimum procedures set forth in HB 1405 allow for citizens to understand the steps they must take to challenge a zoning decision and what the local government must provide to the public before zoning decisions may be adopted.<sup>121</sup> These procedures help the appeals process “run more smoothly.”<sup>122</sup> Most notably, prior to HB 1405, citizens who wanted to appeal a zoning decision may have been “unnecessarily burdened” by the process because they could not find the person they needed to serve the notice of appeal.<sup>123</sup> Now, local governments must designate an elected official or designee to have the authority to accept service “during normal business hours, at the regular offices of the local government.”<sup>124</sup> Thus, citizens may have a better opportunity to meet deadlines without having to spend time and resources figuring out who needs to be served.

Additionally, HB 1405 improves convenience for everyone involved in a zoning decision appeal because it clarifies the confusing dicta established in *Flowers*. Parties can now present new evidence at the appellate level rather than relying solely on the record established at the initial zoning decision.<sup>125</sup>

HB 1405 also increases transparency by requiring that the hearings be conducted before adopting zoning ordinances and that notice of

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119. Parent Interview, *supra* note 13.

120. Roberts Interview, *supra* note 20.

121. See 2022 Ga. Laws 825, § 1, at 826–33 (codified at §§ 3-66-2, -3, -4, -5, -5.1, -6).

122. Roberts Interview, *supra* note 20.

123. *Id.*

124. § 36-66-5.1(c).

125. Roberts Interview, *supra* note 20.

such hearings must be published in local newspapers.<sup>126</sup> Furthermore, HB 1405 requires the local government to make proposed amendments to zoning ordinances as well as the standards by which local governments evaluate quasi-judicial matters available to the public.<sup>127</sup> By putting a higher burden on local governments to include the public in their decision-making process, the public will be more informed of decisions that may impact them and their communities.

### *Interplay with House Bill 916*

During the 2022 session, the Georgia General Assembly also passed House Bill (HB) 916, now Act 875, amending the procedure for appealing decisions from lower jurisdictions (such as local government zoning decisions) to a superior or state court.<sup>128</sup> The Act replaces the writ of certiorari process that used to dominate such appeals.<sup>129</sup> Anticipating the passage of this Act, Representative Shea Roberts (D-52nd) and the drafting team amended the text of HB 1405 to “leave it more general as it related to Chapter 5 appeals” to avoid any conflict between the two pieces of legislation.<sup>130</sup> Due to this broad language, HB 916 only impacts HB 1405 by making certain procedural steps, such as designating a local government agent to receive service for a Title 5 certiorari petition, no longer relevant.<sup>131</sup>

### *Impact of the Act on Housing in Georgia*

By clarifying the appeals process for zoning decisions and making it easier for citizens to serve notice on local governments for such appeals, HB 1405 lowers the barrier to challenging zoning decisions.<sup>132</sup> Additionally, HB 1405 mandates that when a zoning proposal would change single-family residential property into multi-family property, the local government must follow very specific

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126. 2022 Ga. Laws 825, § 1, at 829–30 (codified at § 36-66-4(g)–(h)).

127. 2022 Ga. Laws 825, § 1, at 831 (codified at § 36-66-5(b.1)).

128. 2022 Ga. Laws 767.

129. *Id.*

130. Roberts Interview, *supra* note 20.

131. *See generally* 2022 Ga. Laws 767 (detailing the process for “lower judicator[ies]” appealing to superior court).

132. *See* 2022 Ga. Laws 825, § 1, at 826–33 (codified at §§ 36-66-1, -2, -3, -4, -5, -5.1).

procedures to ensure that the public has notice of the change and a larger role in the decision-making process.<sup>133</sup>

Thus, HB 1405 makes it more difficult for single-family housing to be converted into multi-family housing by requiring the process to be more transparent and public.<sup>134</sup> This change does not correlate with what Sarah Saadian, senior vice president of public policy at the National Low Income Housing Coalition, suggested to address Georgia’s affordable housing crisis.<sup>135</sup> She explicitly suggested that zoning laws could be changed “to allow for more dense housing, such as multi-family units.”<sup>136</sup> HB 1405 not only empowers current residents to maintain their neighborhoods but also limits the ability of localities to change their community’s housing landscape.<sup>137</sup> The Act may slow the adoption of affordable housing solutions in Georgia. Specifically, giving more power to residents in single-family housing will likely inhibit cities from passing measures to increase multi-family housing like the Atlanta City Council proposed in 2021.<sup>138</sup> In fact, that city council proposal inspired Representative Chuck Martin (R-49th) to draft the initial language that became the second amendment to HB 1405.<sup>139</sup>

Because the Act makes it more difficult for localities to adopt such multi-family housing solutions, cities and local governments will have one fewer tool at their disposal in combatting Georgia’s ongoing housing crisis.<sup>140</sup> However, the affordable housing discussion is far from over. Members of the Georgia General Assembly have identified affordable housing as an area ripe for future legislative action, and a Senate Study Committee on Unsheltered Homelessness met to discuss these issues in August of 2022.<sup>141</sup>

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133. 2022 Ga. Laws 825, § 1, at 827–28 (codified at § 36-66-4).

134. See Irvin, *supra* note 11 (noting that HB 1405 was drafted, in part, due to the 2021 Atlanta City Housing Design plan to remove all zoning restrictions without notice to residents).

135. Rebecca Grapevine, *Homelessness a Problem in Rural Georgia*, GPBNEWS (Aug. 29, 2022, 11:36 AM), <https://www.gpb.org/news/2022/08/29/homelessness-problem-in-rural-georgia> [https://perma.cc/848Z-TSZX].

136. *Id.*

137. See Irvin, *supra* note 11 (noting that HB 1405 “contains language to ensure that the city . . . will have to make neighborhoods aware if it tries to destroy zoning protections”).

138. *Id.* The 2021 Atlanta City Housing Design Plan’s aimed to “end single family zoning” but was defeated by a group of nineteen Neighborhood Planning Units from across the city. *Id.*

139. Parent Interview, *supra* note 13.

140. See Grapevine, *supra* note 138; see Irvin *supra* note 11.

141. Grapevine, *supra* note 138.

Although only a few legislators opposed the bill, Representative Roberts and other supporters of HB 1405 decided that this amendment would likely improve the bill's chances of getting enacted because a member of the majority party had drafted the amendment.<sup>142</sup> Representative Roberts calculated correctly; despite being the last bill called before the end of the legislative session, HB 1405 passed overwhelmingly.<sup>143</sup>

### *Conclusion*

Representative Shea Roberts (D-52nd) introduced HB 1405 in response to confusing legal precedent and increased debate over zoning decisions. Although some provisions of the Act may restrict the ability of localities to combat the affordable housing crisis, Georgians can now play a more active role in zoning decisions, challenge legislative land use decisions in superior court with de novo review, efficiently prepare for zoning decision hearings, and have a clearer distinction between legislative and quasi-judicial jurisdiction.

*Audra Murphey & Kristy Nguyen*

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142. Parent Interview, *supra* note 13.

143. *Id.*