Ord. No. 2026-03

AN ORDINANCE MAKING REVISIONS TO THE BURKE COUNTY ZONING ORDINANCE

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF BURKE IN REGULAR SESSION ASSEMBLED:

The following changes are hereby made to the Burke County Zoning Ordinance. These changes shall be considered effective on the date that this ordinance is approved by the Burke County Board of Commissioners. Additions are indicated by underlined text, and deletions are indicated by ~~struck-through text~~.

SECTION 8.16 THE BOARD OF ADJUSTMENT

A Board of Adjustment consisting of seven (7) members ~~(5 regular and 2 alternate members)~~ shall be appointed by the Board of Commissioners~~., with appointments and terms of office as follows.~~

1. The ~~five (5)~~ seven (7) Board of Adjustment members shall be appointed to serve a term ~~shall serve for terms of one (1) year for one (1) member, two (2) years for two (2) members, and~~ of three (3) years each. ~~for two (2) members. Subsequent appointments shall be for terms for three (3) years each.~~ Members may be re-appointed to succeed themselves but may not serve more than ~~four (4)~~ three (3) consecutive terms.

~~2. The Board of Commissioners shall also appoint two (2) alternate members to serve on the Board of Adjustment in the absence, of any regular member. The alternate members shall be appointed for three (3) year terms. In the case of the first appointment of alternate members, one (1) shall be appointed for a two (2) year term, and one (1) shall be appointed for a three (3) year term. Alternate members, of the Board of Adjustment serving in the absence of any regular member, shall have and exercise all the powers and duties of the absent member.~~

~~3.~~ 2. The members of the Board of Adjustment shall be residents of the county. Two (2) members shall be from the eastern portion of the County, and two (2) members shall be from the western portion of the County. The fifth, sixth and seventh (5^{th}, 6^{th}, 7^{th}) members shall serve at-large~~. The alternates will be at-large seats. 1702.01 Board of Adjustment — Membership and Duties~~

~~4.~~ 3. A member whose term expires shall continue to serve until a successor is appointed.

~~5.~~ 4. The secretary of the Board of Adjustment shall notify the Board of Commissioners in advance of the expiration of any term of office, and if a vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term.

~~6.~~ 5. Any member may be removed for misconduct while in office, failure to perform the duties of office, or for other just cause, by the Board of Commissioners once a hearing is held at least fifteen (15) days after notice.

Item 2.

8.18 Duties and Powers

The Board of Adjustment shall have the following duties and powers:

1. ~~To~~ **Hear and decide appeals** from any order, requirement, decision, or determination made by the Zoning Administrator, or an administrative official in the administration or enforcement of this ordinance described in this article.

2. **Hear and decide Special Use Permit applications** for specific uses designated as such under the conditions of the zoning ordinance.

3. **Hear and decide requests for variances** — exceptions to specific zoning regulations where strict application would cause undue hardship.

Specific Considerations regarding Variances- When unnecessary hardships would result from carrying out the strict letter of a zoning regulation. The board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

A. Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
B. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
C. The hardship did not result from the actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
D. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

Any other development regulation that regulates land use or development may provide for variances from the requirements of those ordinances consistent with the provisions of this subsection.

~~2. To authorize upon appeal, in specific cases, variances from the terms of this ordinance not contrary to public interest, when under special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this ordinance shall be observed and substantial justice done as follows:~~

~~a. When a property owner can show that their property was acquired in good faith and the exceptional narrowness, shallowness, size, or shape of a specific piece of property or where by reason of exceptional topographic conditions or other extraordinary situation or conditions of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of this ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board of Adjustment is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrated hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this ordinance.~~

~~b. No variance shall be authorized by the Board of Adjustment unless it finds that all three (3) of the following conditions apply: 1. That the strict application of this ordinance would produce undue hardship; 2. That such hardship is not shared generally by other properties in the county and the same vicinity; and~~

~~3. That the authorization of such variance will not be a substantial detriment to adjacent property and that the character of the area will not be changed by the granting of the variance.~~

~~c. No variance shall be authorized until a public hearing is held.~~

~~d. No variance shall be authorized unless the Board of Adjustment finds that the condition or situation of the property or the intended use of the property is not general or recurring in nature to create a general regulation to be adopted as an amendment to this ordinance.~~

~~e. When authorizing a variance the Board of Adjustment may impose conditions regarding the location, character, and other features of the proposed structure for use as it deems necessary in the public interest and may require a guarantee or bond to ensure that the property owners are or will comply with the conditions imposed.~~

~~f. No such variance shall be authorized that effects a change in permitted uses of land, building, or structure denoted in the permitted table of uses.~~

~~3. To hear and decide applications of interpretation of the use district map where there is any uncertainty as to the location of a district boundary. The rules for determining boundaries per this ordinance will be utilized. After the affected property owners are notified, and after proper notice and a public hearing, the Board of Adjustment may interpret the map in a way that carried out the intent and purpose of the ordinance for the particular section or district in question. The~~

~~Board of Adjustment shall not have the power to change substantially the locations of district boundaries established by this ordinance.~~

~~4. No provisions of this ordinance shall be construed as granting the Board of Adjustment the power to change the use of a parcel of land except as prescribed in this ordinance.~~

Item 3.

8.25 The Planning Board

Planning Board Membership and Duties

A Planning Board consisting of seven (7) members shall be appointed by the Board of Commissioners with appointments and terms of office as follows:

1. The Planning Board members appointed shall serve for a term~~s~~ of ~~one (1) year for one (1) member, two (2) years for three (3) members, and three (3) years for three (3) members. Subsequent appointments shall be for terms of~~ three (3) years ~~each~~. Members can be re-appointed to succeed themselves but may not serve more than ~~two~~ three (3) consecutive terms.

2. The members of the Planning Board shall be residents of the County. Three (3) members shall be from the eastern portion of the County and three (3) members shall be from the western portion of the County. The seventh (7th) member shall serve at large.

3. A member whose term expires shall continue to serve until ~~his~~ their successor qualifies and is appointed.

4. The secretary of the Planning Board shall notify the Board of Commissioners in advance of the expiration of any term of office, and if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term.

5. Any member may be removed for misconduct while in office, failure to perform the duties of office, or for other just cause, by the Board of Commissioners once a hearing is held at least fifteen (15) days after notice.

Item 4.

8.27 Duties and Powers

The Planning Board shall have the following duties and powers:

1. Review applications for zoning map amendments and provide a recommendation to the Board of Commissioners along with a consistency statement comparing the request with the adopted comprehensive plan and other relevant adopted plans.

2. Review of proposals for zoning text amendments and provide a recommendation to the Board of Commissioners along with a consistency statement regarding the amendment considering the goals and priorities in the adopted comprehensive plan and other relevant plans.
3. Providing an administrative review of major subdivisions and major development plans.
4. Undertaking planning, mapping, research and analysis regarding planning matters as deemed appropriate by the Planning Board or the Board of Commissioners.
5. Preparing, maintaining, and periodically updating and recommending to the Board of Commissioners, the comprehensive plan, and such other specific plans as needed or required.

Adopted this 20th day of April 2026.

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Jeffrey C. Brittain, Chairman
Burke Co. Board of Commissioners

Attest:

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Katherine Wright
Interim Clerk to the Board