

Sec. 7.17. - Etowah Valley historic district (special district).

*7.17.1 Purpose.* It is the purpose and intent of the county in enacting these regulations to provide for the identification of and protection of historical and cultural artifacts and sacred locations of the Muscogee (Creek) Nation and the Eastern Band of the Cherokee Nation, which are two Native American Nations that are historically connected to the Etowah River Valley (referred to collectively as "Native American Nations"). The identification and protection of such artifacts and locations is of great benefit to the public welfare, in that it preserves and promotes understanding of the county's and the nation's history, enhances the aesthetic environment, encourages proper economic development, provides tourism opportunities, and benefits all citizens. This ordinance further honors the agreement made with the Nations by the county. Property in the Etowah Valley historic district is subject to additional procedures prior to rezoning or development, in order to achieve these purposes.

*7.17.2 District established.* The Etowah Valley historic district is an overlay district, the boundaries of which are depicted on the map described in section 7.17.3. All provisions of the underlying zoning district shall continue to apply in addition to the requirements of this section. In cases of conflict, the stricter requirement shall control.

*7.17.3 District boundaries.* The boundaries of the Etowah Valley historic district shall be as depicted on the map designated "Bartow County Etowah Valley Historic District," dated August 6, 2003, which map is incorporated into this ordinance by reference, and which map shall be kept in the office of the zoning administrator and shall be available for public inspection at all times.

*7.17.4 Rezoning; land use map change.* Application for rezoning or land use map amendment; notification:

- (A) Any applicant seeking an amendment to the land use map, or seeking a rezoning for any property located in the Etowah Valley historic district shall, prior to filing an application, send notice to the Native American Nations at the address given in section 7.17.8. The notice provided to the nations must contain a copy of the proposed application. The notice shall also state that the Nations have 30 days to respond and comment on the application, from the date of their receipt, and that all such comments shall be sent to both the applicant and the county zoning administrator, at 135 W. Cherokee Avenue, Cartersville, Georgia 30120.
- (B) Notices shall be sent certified mail, return receipt requested, to the addresses listed in section 7.17.8. Copies of the notices shall be filed with the application. The return receipt of all notices shall be filed with the zoning administrator within 30 days of the application being filed.
- (C) No planning commission hearing can be held on any application falling under this section until at least 30 days after the date of the last return receipt indicating notice to the Nations. Any comments received shall be included in the file for review by the

planning commission and the county commissioner.

*7.17.5 Development; land disturbance permit.* Application for development or land disturbance; survey required; notification:

- (A) Any applicant seeking a permit or approval for any development (as defined in the county zoning ordinance) or land disturbance permit in the Etowah Valley historic district, other than one seeking to erect a single-family residence on a single lot, shall commission an archaeological survey for any property or portion of property within the boundaries of the district. The survey shall be conducted by a qualified archaeologist, as defined in section 7.17.10. No application will be accepted by the county without a completed archaeological survey.
- (B) The Native American Nations shall be notified prior to the commencement of the archaeological survey by notice stating that a survey is being commenced and describing the subject property, and identifying the archaeologist.
- (C) The Nations shall also be notified of the completion of the archaeological survey and shall be sent a copy of the completed survey and the application (including site plan), prior to submission to the county. This notice shall state that the Nations have 30 days to respond and comment on the application and survey, from the date of their receipt, and that all such comments shall be sent to both the applicant and the Bartow County Zoning Administrator, at 135 W. Cherokee Avenue, Cartersville, Georgia 30120.
- (D) All notices shall be sent to the addresses listed in section 7.17.8, via certified mail, return receipt requested. Copies of all notices sent shall be filed with the application. The return receipt cards of all notices must be filed with the zoning administrator within 30 days of the application being filed.
- (E) If the Nations desire to dispute the recommendation of the applicant's archaeological survey regarding the subject property, they shall be required to submit their own survey and/or recommendation from a qualified archaeologist, as defined in section 7.17.10. Each Nation may submit its own survey. Any survey shall be prepared to the standards of section 7.17.6. The Nations shall submit such survey or recommendation to the applicant and the zoning administrator within 30 days of receipt of the application. If no survey is submitted, the Nations' archaeologist shall at least make a recommendation, consistent with his or her best professional judgment, as to what action should be taken on the site, e.g.: further survey, removal, avoidance, mitigation, preservation in place, data recovery, or other actions.

*7.17.6 Archaeological survey standards.*

- (A) Archaeological surveys shall be prepared by a qualified archaeologist, as defined in section 7.17.10. Archaeological surveys shall be prepared pursuant to the standards

contained in the archaeological assessment report guidelines and components, produced by the state department of natural resources, historic preservation division ("HPD"). Surveys shall be "intensive level surveys" as defined in that document. Surveys shall identify any Significant sites, historic sites or artifacts, or prehistoric sites or artifacts on the property. A "significant" site is a site that is listed, or potentially would be eligible for listing, in the National Register for Historic Places.

- (B) If any archaeological survey reveals any significant sites, historic sites or artifacts, or prehistoric sites or artifacts, the archaeologist preparing the survey shall make a recommendation, consistent with his or her best professional judgment, as to what action should be taken on the site, e.g.: further survey, removal, avoidance, mitigation, preservation in place, data recovery, or other actions. If the survey reveals no significant sites, historic sites or artifacts, or prehistoric sites or artifacts, the archaeologist shall so state.
- (C) The survey shall also include a resume, CV, or other documents demonstrating that the author is a qualified archaeologist as defined in section 7.17.10.
- (D) Potential applicants are advised, but not required, to commission a "reconnaissance level survey" well in advance of significant development expenditures, to identify issues as early as possible. Neither notice nor filing of that report is required.

*7.17.7 Survey review and decisions; referral to state historic preservation division.*

- (A) The "intensive level" archaeological survey shall be submitted with the application for development permits, and shall be available to the public. Comments shall be accepted from the Native American Nations and any other party wishing to comment, in written form. The Nations may also submit a survey or recommendation from a qualified archaeologist, as discussed in section 7.17.5, above. Each nation may submit its own recommendation. The zoning administrator shall have the longer of 60 days from the date of filing of the application and survey, or 30 days from the date of receipt of the last certified mail "return receipt" indicating notice to the Nations, or 30 days from the receipt of the Nations' survey or comments, for initial review of the archaeological survey. One extension of up to 60 days may be granted of this period at the discretion of the zoning administrator.
- (B) In regards to whether any significant historic or prehistoric sites or artifacts exist, and what action if any should be taken with such sites or artifacts, the county shall follow the recommendation of the applicant's qualified archaeologist, unless the Nations submit a different recommendation from their own qualified archaeologist.
- (C) In the event there is a dispute between the applicant's archaeologist and the Nations' archaeologist over the existence of significant historic or prehistoric sites or artifacts, or a dispute over what action should be taken with such sites or artifacts, the surveys and

recommendations from both the applicant and the Nations shall be submitted to the state department of natural resources, historic preservation division ("HPD"), at 156 Trinity Avenue, SW, Suite 101, Atlanta, GA 30303-3600, with a request for technical resource assistance, and a recommendation on action to take. The HPD shall be informed in the request that if no recommendation is received within 60 days from the date the request is mailed, the recommendation of the applicant's archaeologist shall be accepted.

- (D) In the event assistance is requested from the historic preservation division, the county shall await the HPD's recommendation, and shall refer to and rely upon the HPD's comments, and implement the HPD's recommendation. If no response is received from the HPD within 60 days from the date the request is mailed, the recommendation of the applicant's archaeologist shall be accepted.
- (E) All other provisions of applicable county ordinances must also be satisfied prior to permits being issued.

*7.17.8 Native American Nations; notification addresses.* The terms "Native American Nations" and "Nations," as used in this ordinance, refer exclusively to the Muscogee (Creek) Nation and the Eastern Band of the Cherokee Nation. Any required notice shall be sent to the Nations at the following addresses:

For the Muscogee (Creek) Nation:

Attn: Joyce A. Bear or successor

Cultural Preservation Office

Muscogee (Creek) Nation

P.O. Box 580

Okmulgee, OK 74447

(918) 756-8700 ext. 603; email: cultural@ocevnet.org

For the Eastern Band of the Cherokee Nation:

Attn: Lee Clauss or successor

Cultural Resources/THPO

Eastern Band of Cherokee Indians

P.O. Box 455

Cherokee, NC 28719

(828) 497-1589 or -1594; email: leeclauss@nc-chokeee.com

7.17.9 *Human remains, cemeteries and burial grounds.* No known cemetery, burial ground, human remains, or burial object (as those terms are defined in O.C.G.A. § 36-72-2) shall be knowingly disturbed by the owner or occupier of the land on which the cemetery or burial ground is located for the purposes of developing or changing the use of any part of such land unless a permit is first obtained from the county pursuant to the provisions of O.C.G.A. § 36-72-1 et seq., which are incorporated herein by reference. Any discovery of any human remains, cemetery, burial ground or burial object must be reported to the zoning administrator and the Native American Nations.

7.17.10 *Qualifications for archeologist.* A "qualified archaeologist" is an archaeologist who meets the U.S. Department of the Interior, National Park Service professional qualification standards for archaeologists, as published in the Code of Federal Regulations, 36 CFR Part 61, as follows:

- (A) The minimum professional qualifications in archaeology are a graduate degree in archaeology, anthropology, or closely related field plus:
  - (i) At least one year of full-time professional experience or equivalent specialized training in archaeological research, administration or management;
  - (ii) At least four months of supervised field and analytical experience in general North American archaeology; and
  - (iii) A demonstrated ability to carry research to completion.
- (B) In addition to those minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archaeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archaeological resources of the historic period.

7.17.11 *Fees.* A surcharge fee for review of an application for a land use map amendment, rezoning or any development in the Etowah Valley historic district shall be charged, in the amount of \$150.00. This fee shall be in addition to the normal fee, and relates to the costs of additional administration and review.

7.17.12 *Appeals.* Any aggrieved party shall have 15 days from the date of the zoning administrator's decision to file an appeal of the zoning administrator's decision, which shall be heard by the board of appeals. Appeal shall be initiated by filing a written appeal stating the grounds with the zoning administrator. The board of appeals shall hear the appeal within 45 days of the date of appeal.

(Ord. of 9-11-2019(1).)