

## **ARTICLE XIV. BOARD OF ADJUSTMENT**

### **Section 14.1            Establishment of Board of Adjustment**

A Board of Adjustment is hereby established. Said Board shall consist of the 9 members of the Planning and Zoning Board as they are individually appointed to the Planning and Zoning Board from time to time. The terms of membership and the procedure for filling of vacancies shall be the same as is provided for the Planning and Zoning Board and all other organizational and procedural rules of the Planning and Zoning Board shall apply except as may otherwise be set forth in this Article.

The Board of Adjustment shall be composed of 5 regular members and 4 alternate members. The Chairman and Vice-Chairman of the Planning and Zoning Board shall be regular members of the Board of Adjustment and shall serve as Chairman and Vice-Chairman, respectively, of the Board of Adjustment. Their terms as regular members of the Board of Adjustment shall be coterminous with their office on the Planning and Zoning Board. The Chairman shall appoint three additional members of the Planning and Zoning Board to serve as regular members of the Board of Adjustment for terms of one year. The 5 regular members of the Board of Adjustment shall at all times have the same proportional representation of inside City members and Extraterritorial members as is required for the Planning and Zoning Board.

### **Section 14.2            Proceedings of the Board of Adjustment**

The Board shall adopt rules and bylaws in accordance with the provisions of this Ordinance and of Article 19, Chapter 160A of the General Statutes of North Carolina. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his absence the Vice-Chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the Board shall be open to the public.

The Chairman of the Board of Adjustment, or in his absence the Vice-Chairman, may appoint the alternates to sit for any regular members in case of the absence or disqualification of any regular members, including temporary disqualification due to a conflict of interest in one case when multiple cases are being heard during the meeting. In such case the alternate members shall have the same powers and duties of the regular members they are replacing during such time. In no case, however, shall more than 5 regular members or combination of regular members and the alternate members be empowered to make motions or to vote on any matter that comes before the Board involving the Zoning Ordinance.

The concurring vote of 4 members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with enforcement of this Ordinance or to decide in favor of the applicant in any matter upon which it is required to pass under the Zoning Ordinance or to affect any variation of such Ordinance. Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members. In other Board business, such as procedural and bylaw matters, a simple majority of those present and voting shall be required to

pass on any matter. A quorum of 5 of the total 9 members shall be required to act on general Board business whereas a quorum of 4 of the 5 regular members, or any combination of 4 regular members or alternate members sitting as regular members, shall be required to act on any matter involving the Zoning Ordinance. Although alternate members who are not replacing a regular member on a particular Zoning Ordinance matter are not empowered to make motions and vote on such matters, such alternate members in attendance, and who are not otherwise disqualified, may fully participate in the discussion of such matters to the same extent as any other member sitting as one of the 5 regular voting members.

### **Section 14.3 Appeals, Hearings, and Notice**

An appeal from the decision of the Zoning Administrator may be taken by the aggrieved party to the Board of Adjustment. Such appeal shall be taken within 45 days by filing with the Zoning Administrator a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. The Board of Adjustment shall fix a reasonable time for hearing the appeal, give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

On all appeals, applications, and other matters brought before the Board of Adjustment, said Board shall inform in writing all the parties involved of its decision and the reasons thereof.

### **Section 14.4 Stay of Proceedings**

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment after the notice of appeal shall have been filed with him/her, that by reason of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed, otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Zoning Administrator, on due cause shown.

### **Section 14.5 Powers and Duties of the Board of Adjustment**

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

1. Administrative Review. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this Ordinance.
2. Zoning Permits with Vested Rights. To hear and decide Zoning Permits with Vested Rights in accordance with Article XVI of this Ordinance.
3. Variances. To authorize upon appeal in specific cases such variances from the terms of the Ordinances as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit

of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship where the Board of Adjustment makes the following affirmative findings:

- a. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance.
    1. If he/she complies with the provision of the Ordinance, the property owner can secure no reasonable return from or make no reasonable use of, his/her property.
    2. The hardship results from the application of the Ordinance.
    3. The hardship is suffered by the applicant's property.
    4. The hardship is not a result of the applicant's own action.
    5. The hardship is peculiar to the applicant's property.
  - b. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.
  - c. In granting the variance, the public safety and welfare have been assured and substantial justice done.
4. Variations From Watershed Overlay District Requirements. The Board of Adjustment may authorize variances from the specific requirements of the Watershed Overlay Districts in the same manner and subject to the same procedures and requirements of this Ordinance for authorizing variances, provided that:
- a. A notice be mailed by first class mail to all other local governments having a watershed regulation jurisdiction within the particular watershed where the variance is requested and to each entity using that water supply for consumption.
  - b. If the variance request is for a major variance as defined herein, the following procedure shall apply. If the Board of Adjustment decides in favor of granting the major variance, the Board shall then prepare a preliminary record of the hearing and submit it to the North Carolina Environmental Management Commission (EMC) for review and action. If the Board does not decide in favor of granting the major variance, such unfavorable action shall constitute a denial.
  - c. In the event of a favorable action by the Board on a major variance, the Board shall cause the record of their hearing to be promptly submitted to the EMC. The record of the hearing shall include, but not be limited to:
    1. the variance application;

2. the hearing notes;
  3. the evidence presented;
  4. motions, offers of proof, objections to evidence, and rulings on them;
  5. findings and exception; and
  6. the action of the Board including any conditions proposed.
- d. If the EMC approves the major variance or approves it with conditions or stipulations added, the EMC shall prepare a decision which authorizes the Board of Adjustment to issue a final decision which would include any conditions or stipulations added by the EMC. If the EMC denies the major variance, then the EMC shall prepare and transmit it to the Board of Adjustment. The Board shall then prepare a final decision denying the major variance.
5. Change In Kind or Non-Conforming Use. The Board may permit change in use from one non-conforming use to another as provided for in Section 13.5.

#### **Section 14.6 Appeals from the Board of Adjustment**

Any person or persons, jointly or severally, aggrieved by any decision of the Board, any taxpayer, or any officer, department, board, or bureau of the jurisdiction of this Ordinance may, within 30 days after the filing of the decision in the office of the Board, but not thereafter, present to a court of competent jurisdiction a petition duly verified setting forth that such decision is illegal, in whole or part, specifying the ground of illegality, whereupon such decision of said Board shall be subject to review by certiorari as provided by law.