

## **ARTICLE 14. BOARD OF ADJUSTMENT**

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

The Board of Adjustment of the City of Archdale is established under Article 4 of Chapter 4 of the City of Archdale Code of Ordinances.

### **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 Chapter 160D 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.

Members of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter

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 4/5 of the members of the Board shall be required to grant a variance. A simple majority of the Board shall be required 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. 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 3 of the 5 regular members, or any combination of 3 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.

### **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 30 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.

### **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.

### **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. Vested Rights. To hear and decide approvals of 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. 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 a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
  - c. The hardship did not result from 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.
4. 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.

#### **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.