

## ARTICLE X APPEALS AND VARIANCES

### Section 1. Appeals.

- A. Notice.** An appeal from any final order or decision of the Zoning Administrator may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing a written notice of appeal with the Zoning Administrator and the Board of Adjustment which specifies the grounds for the appeal. A notice of appeal shall be considered filed when delivered to the Zoning Administrator. The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the Town, shall be present at the evidentiary hearing as a witness.
- B. Timing.** An appeal must be taken within thirty (30) days after the date the decision or order is made. It is presumed that a notice of determination sent by mail is received on the third business day after being sent pursuant to GS 160D-405 (e).
- C. Materials.** The Zoning Administrator shall transmit to the Board of Adjustment all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the applicant and to the landowner if that person is not the applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.
- D. Stays.** An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed.

- E. Appearance of Official.** The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness.
- F. Powers of the Board of Adjustment.** The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed from and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end, the Board shall have all the powers of the Zoning Administrator from whom the appeal is taken. The board shall follow quasi-judicial procedures pursuant to NCGS 160D-406 in determining appeals of administrative decisions.

## **Section 2. Variances.**

- A. Applications.** An application for a variance shall be submitted to the Board of Adjustment by filing with the Zoning Administrator.
- B. Public Notice.** The Zoning Administrator shall set a date and time for an evidentiary hearing before the Board of Adjustment to gather competent, material, and substantial evidence to establish the facts of the case. The Zoning Administrator shall cause to be mailed, at least ten (10) days before the hearing, a first-class letter to all adjoining property owners, the names of whom he has made a good faith effort to obtain notifying them of the Variance request. For the purpose of this section, properties are “adjoining” even if separated by a street, railroad, or other transportation corridor. The person mailing such notice shall certify that such notices have been mailed. In addition, a notice shall be posted on the property for which the Variance is requested not more than twenty-five (25) days and not less than ten (10) days before the evidentiary hearing. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.
- C. Materials.** The Zoning Administrator shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the applicant and to the landowner if that person is not the applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

**D. Presentation of Evidence.** The applicant, the Town, and any person who would have standing shall have the right to fully participate including presenting competent, material, and substantial evidence relevant to the case at the evidentiary hearing, cross-examining witnesses, objecting to evidence, and making legal arguments. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Opinion testimony from a lay witness shall not be considered evidence for technical matters such as property values and traffic impacts.

Pursuant to NCGS 160D-406, the Board of Adjustment through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the local government, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

**E. Oaths.** The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

**F. Determination.** The Board of Adjustment shall only consider the application and competent, material, and substantial evidence presented at the evidentiary hearing and may grant or deny the Variance requested. In considering all proposed variances to this Ordinance, the Board of Adjustment shall, before making any finding in a specific case, first determine that the proposed variance ***will not***:

- 1) allow the establishment of a use not otherwise permitted;
- 2) extend, in area, or expand a nonconformance;
- 3) change the district boundaries shown on the Zoning Map;
- 4) materially diminish or impair established property values within the surrounding area; or
- 5) in any other respect impair the public health, safety, morals and general welfare.

**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.

**G. Findings of Fact.** 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:

- 1) 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.
- 2) 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.
- 3) 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.
- 4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secure and substantial justice is achieved.

**H. Conditions.** Before granting a variance, the Board of Adjustment may attach such conditions thereto which are necessary to further ensure the public health, safety, morals, and general welfare. Such conditions may address the location, size and nature of proposed buildings, structures or uses and any other development criteria the Board deems appropriate which are in harmony with the spirit and intent of this Ordinance.

**Section 3. Requests to be Heard Expediently.**

The Board of Adjustment shall hear and decide all appeals, variance requests and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures and obtain the necessary information to make sound decisions.

**Section 4. Burden of Proof in Appeals and Variances.**

The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions on these issues remains with the applicant seeking the variance or interpretation of appeal.

**Section 5. Board Action Required on Appeals and Variances.**

**A. Motions on Appeals.** With respect to appeals, a motion to reverse, affirm or modify the order, requirement, decision, or determination appealed from shall include a statement of the specific reasons and findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the majority vote necessary for adoption, then the decision of the Zoning Administrator is upheld.

**B. Motions on Variances.** Before granting a variance, the Board of Adjustment must vote affirmatively (by 4/5 majority) on the required findings stated.

The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

**Section 6. Re-hearings.**

The Board of Adjustment shall refuse to hear an appeal or application previously denied if it finds there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

**Section 7. Review by Certiorari.**

Any person or persons, jointly or severally, aggrieved by any decision of the Board, or any taxpayer, or any Officer or Board of the Town of Ramseur, may present to a court of competent jurisdiction a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality; whereupon such decision of said Board shall be subject to review by certiorari as provided by law. Any appeal to the

Superior Court shall be taken within thirty (30) days after the decision of the Board is filed with the Town Clerk and a written copy thereof is delivered to the appellant by personal service or registered mail, whichever is later.