

Article 5 - Appeals, Variances, Interpretations

Section 16-5.1. Appeals. The Board of Adjustment shall conduct a quasi-judicial hearing and decide appeals of administrative officials charged with enforcement of the Land Use Ordinance in accordance with the provisions of this section.

- a) The Town and any person who has standing under NCGS 160D-405(b) may appeal a decision to the Board. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.
- b) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail, NCGS 160D-403(b).
- c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. Notice sent by first class mail shall be considered received after three (3) days, NCGS 160D-405(c).
- d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property for at least 10 days. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.
- e) The official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- f) An appeal of an administrative decision stays enforcement of the action appealed from, including fines, NCGS 160D-405(c). Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the regulations shall not stay further review of an application for permits or permissions to use such property; in these situations, the appellant may request, and the Board may grant, a stay of a final decision of permit applications or building permits affected by the issue being appealed.
- g) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all powers of the official who made the decision.

- h) When hearing an appeal pursuant to NCGS 160D-1402 or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in NCGS 160D-1402(j)
- h) The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.

16-5.2. Variances. When unnecessary hardships would result from carrying out the strict letter of these regulations, the Board of Adjustment shall conduct a quasi-judicial hearing and vary such regulations upon a showing of all of the following:

- a) Unnecessary hardship would result from the strict application of the regulations. It shall not be 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.
- 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 shall not be regarded as a self-created hardship.
- d) The requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

16-5.2.1. In making the foregoing determinations, the Board of Adjustment shall be guided by the following principles:

- a) The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;
- b) The hardship relates to the applicant's land, rather than personal circumstances;
- c) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
- d) The hardship is not the result of the applicant's own actions;
- e) The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance; and
- f) The variance will neither result in the extension of a nonconforming situation in violation of Article VIII nor authorize the initiation of a nonconforming use of land.

16-5.2.2. In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

16-5.2.3. A variance may be issued for an indefinite duration or for a specified duration only.

16-5.2.4. The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this chapter.

Section 16-5.3. Interpretations. The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Administrator, they shall be handled as provided in Section 16-5.1.

16-5.3.1. An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator in the inspections department. The application shall contain sufficient information to enable the Board to make the necessary interpretation.

16-5.3.2. Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

- a) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such center lines;
- b) Boundaries indicated as approximately following lot lines, Town limits or extraterritorial boundary lines shall be construed as following such lines, limits or boundaries;
- c) Boundaries indicated as following shorelines shall be construed to follow such shorelines and in the event of change in the shoreline shall be construed as following such shorelines;
- d) Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map;
- e) Where any street or alley is hereafter officially vacated or abandoned, the regulation applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

16-5.3.3. Interpretations of the location of floodway and floodplain boundary lines may be made by the Administrator as provided in Section 16-16.15.

Section 16-5.4. Requests to be Heard Expeditiously. As provided in Section 16-4.19 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, provide notice in accordance with Article VI, and obtain the necessary information to make sound decisions.

Section 16-5.5. Burden of Proof. The burden of proof shall lie upon the applicant or appellant, as the case may be, for any and all proceedings before the Board of Adjustment.