

**ARTICLE V - Appeals, Variances, Special Exceptions and Interpretations** *(Amended 9/28/2015)*

**§ 152-91. Fees for Appeals and Variance Requests.**

A fee shall be paid to the town for each application for an appeal or variance. The fee shall be adopted and periodically amended by the Board of Commissioners as needed to cover the administrative costs and advertising associated with the appeal or variance. A copy of the fee schedule shall be available for review in the office of the Town Clerk.

**§ 152-92. Appeals.**

(A) As used in this section, the term “decision” includes any final and binding order, requirement, or determination.

(B) **Who May Appeal.** Any person who has standing under G.S. 160A-393(d) or the town may appeal a decision of the Land Use Administrator or his or her designee to the board of adjustment. 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. Persons having standing pursuant to G.S. 160A-393(d) include the following:

(1) Has an ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

(2) Has an option or contract to purchase the property that is the subject of the decision being appealed.

(3) Was an applicant before the decision-making board whose decision is being appealed.

(4) Any other person who will suffer special damages as a result of the decision being appealed; or

(5) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

(C) **Notice of Land Use Administrator’s or Designee’s Decision.** The official who made the decision shall give written notice of the decision 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 deliver, electronic mail, or by first-class mail.

(D) **Time to File Appeal.** The owner or other party shall have thirty (30) days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(E) **Notice of Appeal Period.** 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 (6) inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten (10) days. Posting of signs is not the only form of constructive notice. 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. Additional Public Notice requirements for all quasi-judicial hearings are found in section 152-102 "Notice of Hearing".

(F) **Record on Appeal.** The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision 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.

(G) **Stay of Enforcement.** An appeal of a notice of violation or other enforcement decision stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment 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 ordinance. In that case, enforcement proceedings shall not be 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 of adjustment shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the 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.

(H) **Hearings Within a Reasonable Time.** Subject to the provisions of subsection (G) above, the board of adjustment shall hear and decide the appeal within a reasonable time.

(I) **Hearing.** 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 or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment 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 the powers of the official who made the decision.

(J) When hearing an appeal pursuant to G.S. 160A-400.9(e) (i.e. from a decision of the Historic Preservation Commission granting or denying a certificate of appropriateness) 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 G.S. 160A-393(k).

(K) The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The board of adjustment may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

**§ 152-93. Variances.** *(Amended 9/28/2015)*

(A) An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator. Applications shall conform to section 152-48, "Who May Submit Permit Applications," and section 152-49, "Applications to Be Complete." See also section 152-31(C), "Powers and Duties of the Board of Adjustment."

(B) When presented to the Board of Adjustment at the hearing, the application for a variance shall be accompanied by a report setting forth the planning staff's proposed findings concerning the application's compliance with section 152-49 and the other requirements of this chapter, as well as any staff recommendations for additional requirements to be imposed by the Board of Adjustment. If the staff proposes a finding or conclusion that the application fails to comply with section 152-49 or any other requirement of this ordinance, the report shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

(C) The applicant may submit reports, arguments, proposed findings or other documents to the Administrator (on a schedule to be established by the Administrator) to be forwarded to the Board with the Administrator's report required in subsection 152-93 (b).

(D) When unnecessary hardship would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be 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 to the general public, may not be the basis for granting a variance.

(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 shall not be regarded as a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

(E) An applicant need not meet the criteria of subsection (D) if he or she can prove to the satisfaction of the Board that (i) the need for the variance arises out of an error by the town staff (i.e. the applicant relied in good faith upon an error made by the town staff), (ii) in the absence of the variance the applicant will suffer significant hardship, and (iii) the variance will not have an adverse effect on the surrounding properties.

(F) 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.

(G) A variance may be issued for an indefinite duration or for a specified duration only.

(H) The nature of the variance and any conditions attached to it shall be entered on the face of the certificate of zoning compliance, or the certificate of zoning compliance 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 ordinance.

**§ 152-94. Special Exceptions.**

See also Appendix H.

(A) An application for a special exception permit shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator in the Planning Department.

(B) All of the provisions of this article applicable to the processing of variance applications shall also apply to special exception permit requests, except the provisions of subsections 152-93(C) and 152-96.

(C) The Board of Adjustment may issue a special exception permit for the purposes and under the circumstances set forth in the remaining subsections of this section if it concludes, in addition to any other findings required below, that:

- (1) Issuance of the permit will not create a threat to the public health or safety; and
- (2) Issuance of the permit will not adversely affect the value of adjoining or neighboring properties. If the applicant presents a petition, signed by the owners of all properties entitled to receive notice of the hearing on the application pursuant to section 152-102(A)(2), and stating that such property owners believe their property values will not be adversely affected by the proposed use, this shall be sufficient evidence from which the board may (but shall not be required to) make the required finding. The board may also make the required finding based on other competent evidence.

(D) The Board of Adjustment may issue a special exception permit under this section to allow a reduction of up to fifty percent (50%) in the required distances that buildings must be set back from lot boundary lines under section 152-186, "Building Setback Requirements," provided that:

- (1) The reduction may be permitted only for buildings on lots used for conforming residential purposes in residential districts and where the building in question has existed for at least three (3) years prior to the application for the special exception permit;
- (2) In no case may the reduction allow a building to be located closer to a lot boundary line than a distance equal to one-half of the minimum building separation requirement established by the North Carolina State Building Code or allow the location of a building in such proximity to a pre-existing building as to violate the minimum building separation requirement of the North Carolina State Building Code; and
- (3) Reductions may be allowed under this section only for setbacks from lot boundary lines, not setbacks from street right-of-way lines.

(E) The Board of Adjustment may issue a special exception permit to authorize a structure to encroach upon a setback required under section 152-186, "Building Setback Requirements," if it finds that:

- (1) The proposed encroachment results from an addition to or an extension of an existing structure that already is nonconforming with respect to the requirements of section 152-186, "Building Setback Requirements"; and
- (2) The proposed addition or extension will not encroach upon any required front, rear, or side yard to a greater extent than the existing structure on that lot.

**§ 152-95. Interpretations.**

(A) 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 152-92, "Appeals."

(B) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator. The application shall contain sufficient information to enable the Board to make the necessary interpretation.

(C) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

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- (1) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerlines;
- (2) Boundaries indicated as approximately following lot lines, Town limits or extraterritorial boundary lines shall be construed as following such lines, limits or boundaries;
- (3) 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;
- (4) Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Maps, the boundary shall be determined by measurement, using the scale of the Official Zoning Map; and
- (5) Where any street or alley is hereafter officially closed or withdrawn, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added to the parcel by virtue of such closure or withdrawal.

(D) Interpretations of the location of floodway and floodplain boundary lines may be made by the Administrator as provided in article XVI, "Floodways, Floodplains, Drainage and Erosion," part 1.

**§ 152-96. Requests to be Heard Expeditiously.**

As provided section 152-67, "Applications to Be Processed Expeditiously," 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 section 152-92, above, and article VI of this chapter, and obtain the necessary information to make sound decisions.

**§ 152-97 through § 152-100. Reserved.**