

Article IX

ADMINISTRATION

9-5.

BOARD OF ADJUSTMENT

9-5.1. Authority.

A Board of Adjustment is hereby established pursuant to NCGS 160A-338 or 153 A-345.1.

9-5.2. Membership.

(A) *Number of Members:* The Board of Adjustment shall consist of at least five (5) members and may have alternates as appointed by the Governing Body.

(B) *Governing Body Serving as Board of Adjustment:* If the Governing Body chooses not to appoint members to the Board of Adjustment, it shall sit as the Board of Adjustment subject to the provisions of this Ordinance.

(C) *Powers and Duties:* The Board of Adjustment shall have the following powers and duties:

- 1) To hear and decide appeals from and review any order, requirement, decision, determination, or interpretation made by an administrative official charged with enforcing this Ordinance;
- 2) To review appeals from the proceedings of the Historic Preservation Commission concerning the issuance of a Certificate of Appropriateness, limited to certiorari;
- 3) To hear and decide any exceptions which are specifically delegated to it by this Ordinance;
- 4) To determine and vary application of zoning regulations in harmony with their general purpose and intent and in accordance with general and specific rules contained therein;
- 5) To hear and decide appeals for variances from the zoning provisions of this Ordinance in cases where special conditions would make strict and literal interpretation and enforcement of the zoning provisions of this Ordinance result in a loss of privileges shared by other properties within the same zoning district;
- 6) To interpret zoning maps and pass upon disputed questions of district boundary lines and similar questions that may occur in the administration of the Ordinance;
- 7) To hear and decide all matters referred to it or upon which it is required to pass under this Ordinance; and
- 8) To determine upon application of an owner or upon referral from the Enforcement Officer whether a proposed nonconforming use is equal or less intensive than an existing, legal nonconforming use, in accordance with Section 3-14.2 (Nonconforming Use of Land).
- 9) To hear and decide upon appeals concerning violations of the Guilford County Solid Waste Ordinance.

9-5.3. Voting.

(A) *Required Vote for Approval:* A four-fifths (4/5) vote of its members shall be required for a Board of five (5) members to **grant a variance from the provisions of the Ordinance.**

(B) A simple majority of its members shall be required to:

- 1) Affirm or reverse any order, wholly or partly; modify a requirement, decision, determination or interpretation; of an administrative officer charged with enforcing this Ordinance;
- 2) Decide in favor of the applicant on a matter upon which the Board is required to pass under this Ordinance;
- 3) ~~Grant a variance from the provisions of the Ordinance; or~~
- 4) Grant special exceptions for Historic Districts and other purposes as assigned.

(C) ~~(B)~~ *Vote of the Chairman:* The Board chairman shall vote as any other Board member.

(D) ~~(C)~~ *Delay of Decision:* The Board may, in its discretion, direct that its decision be delayed to a date or time subsequent to the Board's vote on an appeal.

9-5.4. Court Review.

(A) *Appeal to Superior Court:* Each decision of the Board shall be subject to Superior Court review by proceedings in the nature of certiorari.

(B) *Timing of Appeal:*

- 1) Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board is filed in the Planning or Building Inspections Department; or
- 2) After a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman of the Board at the time of its hearing of the case, whichever is later.

9-5.5. Notice of Decision.

The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail return receipt requested.

9-5.6. Oaths.

The Chairman of the Board or any member temporarily acting as Chairman, shall administer oaths to witnesses in any matter coming before the Board.

9-5.7. Appeals To The Board.

(A) *Appeal Eligibility:* Any person aggrieved or any officer, department, board, or bureau of the Jurisdiction may make an appeal.

- 1) Appeals shall be made within the time prescribed by the Board by general rule, by filing with the

officer from whom the appeal is taken and with the Board a notice of appeal, specifying the grounds thereof.

- 2) The officer from whom the appeal is taken shall forthwith transmit to the Board all **documents and exhibits** papers constituting the record from which such action was taken.

(B) *Effect of Appeal:* An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of this Ordinance.

(C) *Effect of Certification:* If certification occurs in accordance with Section 9-5.7(B) (Effect of Appeal), proceedings may not be stayed except by a restraining order, which may be granted by a court of competent jurisdiction. Notice of the restraining order shall be given in writing to the officer from whom the appeal is taken.

(D) *Notice of Hearing:* The Board shall fix a reasonable time for hearing the appeal, give due notice of the appeal to the parties, and decide the appeal within a reasonable time.

(E) *Action of Board:* The Board may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination or interpretation appealed from, and shall make any order, requirement, decision, determination or interpretation that in the Board's opinion ought to be made under in the circumstances.

(F) *Conditions of Rehearing:* The Board shall not be required to hear an appeal or application previously denied if it finds that there has been no substantial change in conditions or circumstances bearing on the appeal or application.

9-5.8. Variances.

(A) *Application:* An application for a variance shall be submitted in writing to the Board by filling a copy of the application with the Enforcement Officer.

(B) *Procedure:* The Board shall:

- 1) Fix a reasonable time for holding a public hearing on the variance request;
- 2) Give notice of the variance request as prescribed in Section 9-1.2 (Notice); and
- 3) Decide the variance request within a reasonable time.

(C) *Grounds for Variance:*

- 1) The Board shall make findings of fact that the requirements of Section 9-5.8 (D) (Granting of Variance) have been met by the applicant.
- 2) The variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure. The fact that property may be utilized for greater profit, however, will not be considered adequate to justify the granting of a variance.
- 3) The Board shall not, under any circumstances, grant a variance to permit a use or density not otherwise permitted by this Ordinance in the zoning district involved.

- 4) Neither the nonconforming use of lands, buildings or structures in the same zoning district, nor the permitted use of lands, buildings or structures in other zoning districts shall be considered as grounds for the issuance of a variance. Furthermore, mere financial hardship does not constitute grounds for the granting of a variance.
- 5) A variance may be granted where a building permit has been issued and, due to unintentional error of the Enforcement Officer in determining the location of the structure on the property, there is a minimal violation of the dimensional requirements, provided that such relief may be granted without substantially impairing the purpose and intent of this Ordinance.

(D) *Granting of Variance:* A variance may be granted by the Board if evidence presented by the applicant persuades it to reach the following conclusions:

- 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 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.**

~~1) There are practical difficulties or unnecessary hardships that would result from in the way of carrying out the strict letter of this Ordinance. The Board may reach this conclusion if it finds that:~~

- ~~a) The applicant complies with the provisions of this Ordinance, he can make no reasonable use of his property;~~
- ~~b) The hardship of which the applicant complains results from unique circumstances related to the applicant's property;~~
- ~~c) The hardship relates to the applicant's property, rather than personal circumstances; and~~
- ~~d) The hardship is not the result of the applicant's own actions.~~
- ~~2) The variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit.~~
- ~~3) The granting of the variance assures the public safety and welfare and does substantial justice.~~

(E) *Conditions:* In granting a variance, the Board may prescribe such reasonable and appropriate conditions and safeguards as will assure that the use of the property to which the variance applies will be compatible with surrounding properties and will not alter the essential character of the neighborhood.

- 1) Violations of such conditions and safeguards, when a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance.
- 2) A variance granted subject to a condition shall be permitted only so long as there is compliance with the condition.
- 3) If a violation of a condition of a variance occurs, the Enforcement Officer may revoke the Certificate of Occupancy.
- 4) In the event that any such condition is held invalid, for any reason, such holding shall have the effect of invalidating the variance granted and shall render the variance null and void.

(F) *Duration:* The variance may be issued for an indefinite duration or for a specified duration only. Unless otherwise specified, construction or operation shall be commenced within twelve (12) months of the date of issuance of a variance, or the variance shall become void.

(Amd. of 8-8-03)

(Case #13-09-GCPL-04256, 12/12/2013)