

**Section 124. Board of Adjustment.**  
*1/3/06)*

*(Amended 8/6/91, 2/16/99,*

The Board of Adjustment is a “quasi-judicial” administrative body whose purpose is to provide a source of appeal from any unnecessary hardships that might result from the strict enforcement of the City Zoning Ordinance. The responsibilities of the Board of Adjustment are authorized and set forth by North Carolina General Statute 160A, Article 19, Part 3. *(Amended 1/3/06)*

A. Appointment and Terms of Board Members.

1. The Board of Adjustment shall consist of five (5) regular members and two (2) alternates. Four (4) regular members and one (1) alternate, appointed by City Council, shall reside within the city. One (1) regular member and one (1) alternate, appointed by the County Board of Commissioners, shall reside within the City’s extraterritorial jurisdiction (ETJ). If, despite good faith efforts, enough residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the County Board of Commissioners may appoint other residents of the county (including residents of the city) to fill these seats. If the County Board of Commissioners fail to appoint the ETJ members within 90 days after receiving a resolution from the City Council requesting such action, then City Council may appoint ETJ members.  
*(Amended 1/3/06)*
2. Board of Adjustment regular members and alternates shall be appointed for three-year staggered terms, but both regular members and alternates may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only.
3. Members may be reappointed to successive terms without limitation.
4. Regular Board of Adjustment members may be removed by the Council at any time for failure to attend three consecutive meetings or for failure to attend 30 percent or more of the meetings within any 12-month period or for any other good cause related to performance of duties. Alternate members may be removed for repeated failure to attend or participate in meetings when requested to do so in accordance with regularly established procedures. Upon request of the member proposed for removal, the Council shall hold a hearing on the removal before it becomes effective.
5. If a regular or alternate City member moves outside the City, or if an ETJ member moves outside the planning jurisdiction, that shall constitute a resignation from the board, effective upon the date a replacement is appointed.
6. Extraterritorial jurisdiction members have equal rights, privileges, and duties as the City members and may vote on all issues presented before the Board.

7. The City alternate may sit only in lieu of a regular City member and the ETJ alternate may sit only in lieu of the regular ETJ member. When so seated, alternates shall have the same powers and duties as the regular member they replace.

**B. Meetings of the Board of Adjustment.**

1. The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it can take action on the issues for which it is appointed.
2. All meetings of the board shall be open to the public, and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.
3. A record of all meetings and hearings of the Board of Adjustment shall be maintained, and shall be a public record. This shall include all findings of fact and decisions of the Board.

**C. Due Notice of Meetings.**

1. Before the board shall conduct any hearing or review any case brought before it that involves a parcel of land, the owners of that parcel of land as shown on the Onslow County tax listing, and the owners of all parcels of land directly abutting that parcel of land as shown on the Onslow County tax listing, shall be given due notice, via first class mail. Said notice shall contain the time, date, place of the hearing, and the nature of the hearing. The notice shall be post marked no later than five (5) days prior to the date of the hearing.

**D. Quorum**

1. A quorum for the Board of Adjustment shall consist of the number equal to four-fifths of the regular board membership. A quorum is necessary for the board to take official action.
2. A member who has withdrawn from the meeting without being excused as provided in Subsection E.3 shall be counted as present for the purposes of determining whether a quorum is present.

**E. Voting**

1. The concurring vote of four-fifths of the regular board membership shall be necessary to reverse any order, requirement, decision, or determination of the administrator or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance or to grant any variance from the provisions of this ordinance. For the purposes of this subsection, vacant positions on the board and members who are excused from voting on a quasi-judicial matter shall not be considered 'members of the

## Section 124. Board of Adjustment

board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

*(Amended 1/3/06)*

2. Once a member is physically present at a board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with Subsection E.3. or has been allowed to withdraw from the meeting in accordance with Subsection E.4.
3. A member of the Board 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 conflicts include but are not limited to the following:
  - a. A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
  - b. Undisclosed ex parte communications;
  - c. A close familial business, or other associational relationship with an affected person;
  - d. A financial interest in the outcome of the matter.
4. A majority vote of the remaining members shall be necessary to allow a member to be excused from voting in accordance with #3 above. *(Amended 1/3/06)*
5. A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.
6. A roll call vote shall be taken upon request of any member.

### F. Board of Adjustment Officers

1. At its first regular meeting held at the beginning of the calendar year, the Board of Adjustment shall, by majority vote of its membership (excluding vacant seats) elect one of its members to serve as chairperson and preside over the board's meeting and one member to serve as vice-chairperson. The persons so designated shall serve in these capacities for a term of one year. Vacancies may be filled for the unexpired terms only by majority vote of the board membership (excluding vacant seats). No chairperson may succeed himself for more than two (2) consecutive terms.

## Section 124. Board of Adjustment

2. The chairperson or any member temporarily acting as chairperson may administer oaths to witnesses coming before the board.
3. The chairperson and vice-chairperson may take part in all deliberations and vote on all issues.

### G. Powers and Duties of Board of Adjustment

1. The Board of Adjustment shall hear and decide:
  - a. Appeals from and review any order, decision, requirement, or determination made by the administrative official charged with the enforcement of that ordinance , as provided in Subsection H. (*Amended 1/3/06*)
  - b. Applications for variances, as provided in Subsection I.
  - c. Questions involving interpretations of the location boundary lines on the official zoning map, or zoning ordinance text requirements.
  - d. Any other matter the board is required to act upon by any other City ordinance.
2. The board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this chapter.

### H. Appeals

1. An appeal from any final order, decision, requirement, or determination of the administrative official charged with the enforcement of a City Ordinance may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the administrator and the Board of Adjustment a written notice of appeal specifying the grounds therefore. A notice of appeal shall be considered filed with the administrator and the Board of Adjustment when delivered to the Planning Department, and the date and time of filing shall be entered on the notice by the planning staff.  
*(Amended 1/3/06)*
2. An appeal must be taken within 30 days after the date of the decision or order appealed from.
3. Whenever an appeal is filed, the administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record relating to the action appealed from.

## Section 124. Board of Adjustment

4. An appeal stays all actions by the administrator seeking enforcement of or compliance with the order or decision appealed from, unless the administrator certifies to the Board of Adjustment that (because of the facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board of Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the administrator.
5. 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 should be made in the case before it. To this end, the board shall have all the powers of the officer from whom the appeal was taken.

### I. Variances.

The power of variances is to be sparingly exercised and only in rare instances and under exceptional circumstances peculiar in their nature and with due regard to the main purpose of this ordinance to preserve the property rights of others. No change in permitted uses may be authorized by variance.

*(Amended 1/3/06)*

1. An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the administrator in the planning department.
2. A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if all of the following findings are satisfied.
  - a. The applicant could not reasonably comply with the literal terms of the ordinance and secure a reasonable return from, or make reasonable use of his or her property.
  - b. The hardship of which the applicant complains results from unique circumstances related to the applicants' land.
  - c. The hardship complained of is not a result of the applicants' own actions.
  - d. If granted, the variance would be in harmony with the general purpose and intent of the zoning ordinance and would preserve its spirit.

## Section 124. Board of Adjustment

- e. The variance would neither result in the extension of a nonconforming situation in violation of Section 96 of the City Zoning Ordinance nor authorize the initiation of a nonconforming use of land. (*Amended 1/3/06*)
  - f. If granted, the variance would assure the public safety and welfare, and would do substantial justice.
- 3. 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.
  - 4. A variance may be issued for an indefinite duration or for a specified duration.
  - 5. 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.

### J. Interpretations.

- 1. 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 zoning administrator, they shall be handled as provided in subsection H.
- 2. 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 Planning Department. The application shall contain sufficient information to enable the board to make the necessary interpretation.
- 3. 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 centerlines,
  - b. Boundaries indicated as approximately following lot lines, city limits or extraterritorial boundary lines, shall be construed as following such lines, limits or boundaries,

## Section 124. Board of Adjustment

- 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 regulations applicable to each parcel of abutting property shall apply to that portion of such streets or alley added thereto by virtue of such vacation or abandonment.

### K. **Burden of Proof in Appeals and Variances-**

- 1. When an appeal is taken to the Board of Adjustment in accordance with Subsection H, the administrator shall have the initial burden of presenting to the board sufficient evidence and argument to justify the order or decision appealed from.
- 2. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion. The burden of presenting evidence sufficient to allow the Board of Adjustment to reach its conclusions set forth in Subsection 1.2, as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

### L. **Board Action on Appeals and Variances.**

- 1. With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption (see Subsection E), then a motion to uphold the decision appealed from shall be in order. This motion is adopted as the board's decision if supported by more than one-fifth of the board's membership (excluding vacant seats).
- 2. Before granting a variance, the board must take a separate vote and vote affirmatively (by a four-fifths majority - see Subsection E) on each of the six required findings stated in Subsection I.2. Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in Subsection I.2 shall include a statement of the specific reasons or findings of fact supporting such motion.

## Section 124. Board of Adjustment

3. A motion to deny a variance shall be made on the basis that any one or more of the six criteria set forth in Subsection I.2 are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the board's decision if supported by more than one-fifth of the board's membership.

### M. **Review of Board's Decisions.**

Any person jointly or severely aggrieved by a decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the City 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 in part, specifying the grounds of illegality, whereupon such decision of the Board shall be subject to review as provided by law.

**Sections 125-126. Reserved**