

ARTICLE 11

BOARD OF ADJUSTMENT

Section 11.1 Board of Adjustment Powers, Duties and Procedure

A Board of Adjustment is hereby established, which Board shall have all the powers and duties as authorized by Section 160A-388 of the General Statutes of North Carolina, and as otherwise provided for in this Ordinance. Generally, such powers and duties shall include, but not be restricted to, the following:

- a) Hearing and deciding all appeals from decisions made by the Zoning Administrator.
- b) Hearing and deciding appeals that require interpretation of this Ordinance.
- c) Hearing and granting variances from the provisions of this Ordinance.

11.1.2 Establishment of Zoning Board of Adjustment

The Board of Adjustment shall consist of five (5) regular members who are residents of the Town of Mineral Springs and shall be appointed by the Town Council. In addition, two (2) alternate members who are residents of the Town of Mineral Springs, and appointed by the Town Council shall serve on the Board of Adjustment in the absence of any regular member.

The terms of office of the members of the Board of Adjustment shall be for overlapping terms of three (3) years. Initial appointment of the members shall be as follows:

One (1) regular member shall be appointed by the Town Council for a one-year term; two (2) for two-year terms; and two (2) for three-year terms. Thereafter, members shall be appointed for three (3) years each. Alternate members shall be appointed for a term of three (3) years each. Nothing herein contained shall be so interpreted as to forbid any member from being appointed to succeed himself.

Vacancies occurring for any reason other than expiration of term shall be filled as soon as is reasonably possible after such vacancy occurs by the Town Council making the appointment, and such appointment shall only be for the period of the unexpired term. Members may be removed for cause by the Town Council upon written charges and after public hearing.

Alternate member(s), while attending any regular or special meeting of the Board of Adjustment and serving in the absence of any regular member shall have and may exercise all the powers and duties of such regular members.

11.1.3 Jurisdiction

Each member of the Board of Adjustment shall have equal rights, privileges, and duties in all matters coming under the Board's purview.

Section 11.2 Administrative Review

The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official charged with the enforcement of this Ordinance, and apply such interpretation to particular fact situations.

- 11.2.1** A written appeal may be taken by any person who has first requested and received a ruling from the Zoning Administrator. An appeal to the Board of Adjustment shall be made as set forth hereinafter within ten (10) days of receipt by the applicant of the written decision made by the Zoning Administrator.
- 11.2.2** A written appeal may be taken by any person aggrieved or by an officer, department or board of the Town, within ten (10) days of a written decision made by the Zoning Administrator. 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 of Adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his 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 the Ordinance. In such cases, proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- 11.2.3** A duplicate written application for an appeal, in the form specified in Section 11.4.1, detailing in full the grounds thereof, shall be filed with the Zoning Administrator on behalf of the Board of Adjustment. The Zoning Administrator shall submit his/her interpretation and the reasons therefore in writing to the Board of Adjustment, and shall immediately transmit all paper constituting the record to the Board of Adjustment. Said record shall also include the application, the Zoning Administrator's ruling, any related correspondence and the written application for appeal.
- 11.2.4** The Board of Adjustment must review any such appeal of a Zoning Administrator decision within forty (40) calendar days of receipt of the notice of appeal.
- 11.2.5** Notice of a proposed hearing of the subject appeal shall be given to the applicant and the Zoning Administrator by first class mail, which mailing must

be made at least seven (7) calendar days prior to the date of the hearing.

11.2.6 The Board of Adjustment must decide the matter which is the subject of the appeal within thirty (30) calendar days following the hearing conclusion or at the next regularly scheduled meeting of the Board of Adjustment following the hearing conclusion, whichever occurs later. The decision of the Board of Adjustment shall be in writing and shall be mailed by first class mail to the applicant.

11.2.7 The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination with reference to the appeal.

Section 11.3 Variances

11.3.1 A petition for a variance may only be initiated by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or an individual having a written contractual interest in the affected property. Under no circumstances shall the Board of Adjustment grant a variance to allow a use of land or structures not permitted under the terms of this Ordinance in the district involved or for a use expressly, or by inference, prohibited in said district. No variances shall be granted by the Board of Adjustment for the following:

- a) Setbacks for signs, or the square foot area limitation(s) for such signs.
- b) Setbacks for Essential Services - Class III.
- c) Use Variance.

No variance for setbacks shall be granted which allows the applicant to reduce the applicable setback by more than fifty (50) percent.

11.3.2 The Board of Adjustment, before granting a variance, shall make the following findings:

- a) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.

This shall be construed to mean:

- 1) If the property owner strictly complies with the provisions of the Ordinance, he can secure no reasonable return from, or make any reasonable use of his property and
- 2) The hardship results from the application of the Ordinance, and
- 3) The hardship is suffered by the applicant's property, and
- 4) The hardship is not the result of the applicant's own actions, and

- 5) The hardship is peculiar to the applicant's property.
- b) That the variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit.
- c) That in the granting of the variance, public health safety and welfare have been assured and substantial justice has been done.
- d) That the reasons set forth in the application and the hearing justify the granting of a variance, and that the variance is a minimum one that will make possible reasonable uses of land or structures.

11.3.4 Any order of the Board of Adjustment in granting a variance shall expire, if a Zoning Permit, or Certificate of Compliance for such use (if a zoning permit is not required) has not been obtained within one (1) year from the date of the decision.

Section 11.4 Application Procedure

The following regulations apply to all applications submitted to the Board of Adjustment:

11.4.1 Before a petition for an interpretation, appeal, or variance shall be considered, a completed application of a form provided by the Town of Mineral Springs accompanied by a fee (as established by the Town Council) shall be submitted to the Zoning Administrator as set forth in Section 11.2.3. The fee shall be waived for any petition initiated by the Zoning Administrator, the Town Clerk or the Town Council on behalf of the Town. The application shall contain the name, address, and telephone number of the applicant(s), and property owners if different from applicant(s), a description of the subject property with reference to deed book and page. The application shall also contain a list of names and addresses of adjoining and contiguous property owners on all sides and across any street and public right-of-way from the subject property. This information shall be based upon the current year Union County tax records. The application shall be accompanied by a map clearly showing the subject property and all contiguous property on either side and all property across any street or public right-of-way from the subject property.

11.4.2 The filing of any application stays all proceedings unless the Zoning Administrator certifies to the Board of Adjustment that a stay in his/her opinion will 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 the Ordinance. In that event, proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment, or by a court of record, on application, on notice to the Zoning Administrator, and on due cause shown.

11.4.3 The Board of Adjustment shall hold a public hearing to review any such application no later than forty (40) calendar days after the application has

been received.

- 11.4.4** The Board of Adjustment shall give notice of the public hearing by sending notices by first class mail to the parties to the hearing and to all property owners contiguous or adjacent to the property (as defined in Section 12.1.2). Said notices shall be mailed at least seven (7) calendar days prior to the public hearing. In addition, a conspicuous sign shall be placed in a conspicuous location on subject property(ies) indicating the nature of the public hearing and date, time and place at which it is to occur. Said sign shall be placed on the property(ies) at least seven (7) calendar days prior to the public hearing and shall remain standing until the Board of Adjustment has reached its final decision. Failure to mail notices or to post notices shall not invalidate any action taken with regard to the petition.
- 11.4.5** A written application for a variance must also demonstrate in detail, the following:
- 1) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.
 - 2) How a literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
 - 3) How said circumstances do not result from the intentional actions of the applicant.
 - 4) How granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district.
 - 5) That no nonconforming use of neighboring land, structures, or buildings in the same district and no permitted use of land, structures or buildings in other districts will be considered grounds for the issuance of a variance.
- 11.4.5** In all matters before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application. Hearings may be continued, at the sole discretion of the Board Chairman, to permit the applicant to provide additional, missing or incomplete information, when requested, to aid the Board of Adjustment in reaching a proper determination and/or to permit the Board to independently obtain such information. All reasonable expenses incurred by the Town for investigating and processing the matters before the Board of Adjustment are the responsibility of the applicant. These expenses may include, but are not limited to, the solicitation of Professional Engineers' Services, legal advice, expenses of public hearing(s) and the like; and shall be paid in full prior to delivery of the final notification of Board action for the subject matter.

- 11.4.6** The Board of Adjustment shall have no authority to issue a variance for a waiver of a setback or bulk requirement for a building or structure if the applicant had not first submitted a foundation survey (in accordance with Section 10.3.8) subsequent to the construction of the foundation and prior to the application for a Certificate of Compliance.

Section 11.5 Board of Adjustment Action

- 11.5.1** The concurrent vote of four-fifths (4/5) of the five (5) sitting members of the Board of Adjustments shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to grant any variance from the provisions of this Ordinance. At least one of the sitting members shall be the Chairman or the Vice-Chairman. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.
- 11.5.2** Any member(s) of the Board who declares that a potential conflict of interest may exist with respect to any petition or application before the Board may be excused and replaced by an alternate. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. In the event fewer than three (3) members remain, no reversal of any prior decision may be made.
- 11.5.3** All decisions of the Board of Adjustment shall be made within thirty (30) days following conclusion of the hearing or at the next regularly scheduled meeting of the Board of Adjustment following the hearing conclusion, whichever occurs later.
- 11.5.4** All decisions of the Board of Adjustment shall be filed with the Zoning Administrator and a written copy thereof shall be sent to the applicant by first class mail within fourteen (14) calendar days following the decision, or after receipt of payment for processing per Section 11.4.6, whichever occurs later.

Section 11.6 Appeals from the Board of Adjustment

- 11.6.1** A written application for a rehearing shall be made in the same manner as provided for an original hearing within a period of fifteen (15) days after the

date of denial of the original application. In addition, specific information to enable the Board of Adjustment to determine whether or not there has been a substantial change in fact, evidence, or conditions in the case, shall be presented in writing, and/or graphically. A rehearing shall be denied by the Board, if, in its sole judgment, such change in facts, evidence of conditions has not been proven. In the event that the Board finds that a rehearing is warranted, it shall thereupon proceed in the same manner as prescribed for in the original hearing.

Each such application for rehearing shall be signed by the applicant, shall be submitted in duplicate, and shall contain the following information:

- 1) Applicant's full name, address and telephone number; the property owner's full name, address and telephone number if different from applicant.
- 2) Applicant's interest in the property.
- 3) The current zoning of the property, and the variance requested.

Any such rehearing application shall be accompanied by two (2) copies of a map, drawn to an appropriate scale. Said map shall be prepared by an engineer or surveyor registered with the State of North Carolina, and shall be signed and certified to be correct by the preparer. The map shall contain the following:

- 1) If not in a subdivision of record, the subject property plus such additional property as to show the location of the subject property with reference to the nearest street intersection, railroad, stream or other feature easily identifiable on the ground. In addition, all property lines which abut the property shall be shown as well as the names and addresses of all abutting property owners.
- 2) If the property is in a subdivision of record, a map of such portion of the subdivision drawn to scale, that would relate the subject property to the closest street intersection, and in addition, the name of the subdivision and the plat book and page number on which the plat is recorded. In addition the names of all abutting property owners shall be indicated.
- 3) All property lines with dimensions, distances of lot from the nearest street intersection and north arrow.
- 4) Adjoining streets with rights-of-way and paving widths.
- 5) Existing location of buildings on lot and a listing of uses of all structures.
- 6) Zoning classification of all abutting lots.

11.6.2 Upon the denial of the most recent application, or upon the denial of an application for which a rehearing has been conducted, a similar application

may not be filed for a period of one (1) year after the date of denial of the original application.

- 11.6.3** Every decision of the Board of Adjustment shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board is filed with the Zoning Administrator, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the staff of the Board of Adjustment at the time of its hearing of the case, whichever is later. The decision of the Board of Adjustment shall be delivered to the aggrieved party either by personal service or by first class mail.

Section 11.7 Administration of Oaths to Witnesses

The Chairman of the Board of Adjustment or the Vice-Chairman, when temporarily acting as Chairman, shall be authorized in his/her official capacity to administer oaths to witnesses in any manner coming before the Board.

Section 11.8 Rules of Procedure

All meetings and hearings shall be open to the public and shall be conducted in accordance with the procedure set forth in these regulations and supplemental rules of procedure adopted by the Board of Adjustment. Such rules of procedures may be amended by the Board of Adjustment membership at any time.

The rules of procedure adopted by the Board of Adjustment to govern its actions shall be kept on file at the offices of the Zoning Administrator and the Town Clerk, and shall be made available to the public at any meeting or hearing of the Board of Adjustment.

Section 11.9 Staff

The Zoning Administrator shall serve as staff to the Board of Adjustment and shall provide technical assistance to the Board of Adjustment as requested.