

# CHAPTER 12: VARIANCES AND APPEALS

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**Section 12.1 Variances**

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**12.1.1 Purpose and Scope**

The variance process administered by the Board of Adjustment is intended to provide relief from the zoning requirements of this Ordinance in those cases where strict application of a particular zoning requirement will create a unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this Ordinance. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the zoning requirements of this Ordinance may impose on property owners in general. Rather, it is intended to provide relief where the zoning requirements of this Ordinance render the land impractically difficult or impossible to use because of some unique physical attribute of the property itself, or some other factor unique to the property for which the variance is requested.

**12.1.2 Provisions which may not be varied by the Board of Adjustment**

In no event shall the Board of Adjustment grant a variance:

- A. That would allow the establishment of a use which is not otherwise allowed in a zoning district or which would change the zoning district classification of any or all of the affected property;
- B. From any written conditions attached by the Village Council to its approval of a special use permit, subdivision plat, site plan, conditional district or from the stated terms of an approved master land use plan for a special planned development.

**12.1.3 Application Requirements and Determination of Completeness**

- A. An application for a variance may be filed only by the owner of the land affected by the variance; an agent, lessee, or contract purchaser specifically authorized by the owner to file such application; or any unit of government which is not the owner of the Lot but proposes to acquire the Lot by purchase, gift, or condemnation. Where an agent, lessee, or contract purchaser files the application, the agent, lessee, or contract purchaser shall provide the Village with written documentation indicating that the owner of the property has authorized the filing of the application;
- B. An application for a variance shall be filed with the Administrator on a form prescribed by the Administrator, along with the fee prescribed by the Village Council;
- C. The application shall contain, or be accompanied by, such information and plans as required on the application form;
- D. The Administrator shall determine whether the application for a variance is complete. If the Administrator determines that the application is not complete, the applicant shall be notified of any deficiencies. The Administrator shall take no further steps to process the application until the deficiencies are remedied. Once the application is complete, the Administrator shall transmit the application to the Board of Adjustment and schedule the application for consideration at a quasi-judicial public hearing before the Board of Adjustment;

**12.1.4 Action by the Board of Adjustment**

- A. Upon receiving the application materials from the Administrator, the Board of Adjustment shall hold a quasi-judicial public hearing on the proposed variance. Notice of the public hearing shall be provided and the public hearing shall be conducted in accordance with Chapter 3 of this Ordinance;
- B. In considering the application, the Board of Adjustment shall review the application materials, the general purpose and standards set forth in this Section for the granting of variances, and all testimony and evidence received by the Board of Adjustment at the public hearing;
- C. After conducting the quasi-judicial public hearing, the Board of Adjustment may:
  - (1) Deny the application;
  - (2) Conduct an additional public hearing on the application;
  - (3) Grant the requested variance;
  - (4) Grant the requested variance with conditions as provided for in (F) below.
- D. The decision of the Board may be rendered at the meeting at which the case is heard or at a subsequent meeting.
- E. Any approval or denial of the request shall be by resolution, accompanied by written findings of fact that the variance meets or does not meet each of the standards set forth in Section 12.1.5 below, stating the reasons for such findings;
- F. The Board of Adjustment shall not grant any variance unless there is a concurring vote of at least four-fifths (4/5) of its members present at the meeting, who are not excused from voting, as long as a quorum is present;
- G. In granting any variance, the Board of Adjustment may attach such conditions to the approval, as it deems necessary and appropriate to satisfy the standards set forth in Section 12.1.5, to reduce or minimize any injurious effect of such variance upon other property in the neighborhood, and to ensure compliance with other terms of this Ordinance.

**12.1.5 Standards of Review** (3/14/18)

When unnecessary hardships 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:

- A. 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;

- 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; and
- D. 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.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

**12.1.6 Effect of Approval or Denial**

- A. After the Board of Adjustment approves a variance, the applicant shall follow the procedures set forth in Chapter 3 for the approval of all permits, certificates, and other approvals required in order to proceed with development of the property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the variance granted to the applicant by the Board of Adjustment;
- B. The Board of Adjustment shall refuse to hear a variance request that has previously been denied, unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

**Section 12.2 Appeals of Administrative Decisions**

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**12.2.1 Purpose and Scope**

It is the intention of this Section that the Administrator has the sole authority to make initial interpretations of any portion of this Ordinance except to the extent that questions concerning the interpretation of the Ordinance arise in the context of the consideration of an application for a permit not issued by the Administrator. In that case the interpretation shall be made by the issuing Authority when the permit is considered. Requests for interpretations shall be in writing and filed with the Village Clerk. The Clerk shall forward such request to the Administrator. All determinations by the Administrator shall be in writing and shall be rendered not later than 30 days after the date on which the request was filed with the Village Clerk. The Administrator may consult with any other person having technical expertise or other knowledge of the matter at hand, but the final decision is the Administrator's. The written determination by the Administrator shall include a description of all parties' right to appeal the Administrator's determination, including the time in which such appeal must be filed, and the manner of filing.

Appeals to the Board of Adjustment from decisions of the Administrator are allowed under this Ordinance in order to ensure that administrative decisions and enforcement actions taken by the Administrator are consistent with the terms and purposes of this Ordinance and related policies adopted by the Village. Questions of the interpretation of the Ordinance shall be presented to the Board of Adjustment only on appeal from the decisions of the Administrator.

**12.2.2 Notice of Decision: Decisions which may be Appealed** (3/14/18)

- A. 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.
  
- B. The Board of Adjustment shall hear and decide appeals from decisions of Administrator charged with enforcement and interpretation of the Land Development Ordinance.

**12.2.3 Persons who may File an Appeal**

Any person who has standing under G.S. § 160A-393(d) or the Village may appeal a decision to the Board of Adjustment.

**12.2.4 Filing of Appeal**

A. An application for an appeal shall be filed with the Village Clerk on a form prescribed by the Village Clerk, along with the filing fee set forth in the Fee Schedule. The application shall be filed no later than thirty (30) days after receipt of the written notice, except that, if the contested action is one about which the appellant has not received actual oral or written notice, then the application must be filed within thirty (30) days after the appellant has received constructive notice of the contested action. 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 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. Absent an ordinance provision to the contrary, posting of signs shall not be required.

B. The Administrator shall determine whether the appeal application is complete. If the Administrator determines that the appeal application is not complete, then the applicant shall be notified of any deficiencies and the Administrator shall take no further steps to process the application until the deficiencies are remedied. Once the appeal application is complete, the Administrator shall transmit the appeal application and other records pertaining to such appeal to the Board of Adjustment and schedule the appeal for consideration at a quasi-judicial public hearing before the Board of Adjustment;

C. An appeal of a notice of violation or other enforcement order 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 Administrator a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within fifteen 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. (3/14/18)

**12.2.5 Action by the Board of Adjustment**

- A. Upon receipt of the appeal, the Administrator shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The Administrator 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.
- B. The board of adjustment shall hear and decide the appeal within a reasonable time.
- C. The Administrator or other Village official who made the decision shall be present at the hearing as a witness.
- D. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Village would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.
- E. Upon receiving the application materials from the Administrator, the Board of Adjustment shall hold a quasi-judicial public hearing on the appeal. Notice of the quasi-judicial public hearing shall be provided and the public hearing shall be conducted in accordance with Chapter 3 of this Ordinance;
- F. Either at the public hearing or at a subsequent meeting, the Board of Adjustment shall adopt a resolution reversing, affirming, or modifying the contested action and include an effective date;
- G. In reversing, affirming, or modifying the contested action, the Board of Adjustment shall have all relevant powers of the Administrator from whom the appeal was taken;
- H. The Board of Adjustment shall not reverse or modify the contested action unless it finds that the Administrator erred in the application or interpretation of the terms of this Ordinance or related policies adopted by the Village;
- I. The Board of Adjustment shall not reverse or modify the contested action unless there is a concurring vote of a majority of its members present. 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 majority if there are no qualified alternates available to take the place of such members.

**12.2.6 Effect of Reversal or Modification**

In the event that the Board of Adjustment reverses or modifies the contested action, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance with the reversal or modification granted by the Board of Adjustment.

**12.3 Appeals from the Zoning Board of Adjustment** (3/14/18)

Every quasi-judicial decision of the Board of Adjustment shall be subject to review by the Moore County Superior Court by proceedings in the nature of certiorari pursuant to G.S. § 160A-393. A petition for review shall be filed with the clerk of superior court by the later of thirty days after the decision is effective or after a written copy thereof is given in accordance with G.S. § 160A-388(e2)(1). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.