

Sections 18.1 and 18.2
modified for 4/7/15
Planning Board Review

SECTION 18 BOARD OF ADJUSTMENT

18.1. Board of Adjustment Created

There is hereby created a board of adjustment to be known as the Chatham County Board of Adjustment, consisting of five (5) regular members and two (2) alternate members, and referred to herein as the board of adjustment. All members of the board of adjustment shall be residents of Chatham County and appointed by the Board of Commissioners. The Chatham County Board of Commissioners hereby finds and determines that even though the Board of Commissioners does not zone the entire territorial jurisdiction of Chatham County that due to the number of designated zoning areas it is not practicable to have one resident from each designated area as a member of the board of adjustment and that therefore the board of adjustment should consist of five (5) regular members and two (2) alternate members. There shall be five (5) board of adjustment districts which shall be identical to the Board of Commissioner districts, as the same are redrawn, modified, or changed from time to time, and one regular member shall be appointed from each board of adjustment district. If the Board of Commissioner districts (and therefore the board of adjustment districts) are redrawn, modified, or changed such that a regular member of the board of adjustment is no longer a resident of the district he or she was appointed from, such member, provided he or she continues to be a resident of Chatham County, shall nevertheless continue to serve on the board of adjustment until his or her term expires notwithstanding that such member no longer resides in the district. The alternate members shall be residents of Chatham County but shall be appointed at large and not from districts. An alternate member may sit in lieu of a regular member who is unable to sit on any matter coming before the board of adjustment, and when so seated, an alternate member shall have the same powers and duties as a regular member. The regular and alternate members shall be appointed for three (3) year staggered terms, but both regular members and alternate members shall continue to serve until their successors have been duly appointed and qualified. If a regular or alternate member ceases to be a resident of Chatham County his or her term shall expire effective as of the date a replacement member is duly appointed and qualified. The Board of Commissioners shall fill all vacancies on the board of adjustment. A Board of Adjustment is hereby established. The Chatham County Board of Commissioners shall appoint the membership and provide for its organization.

18.2. MeetingsMeetings

Meetings of the Board shall be held at the call of the Chairman or any two (2) other members of the Board, and at such other times as the Board may determine. The Board shall adopt rules governing its organization and all proceeding coming before the Board. All meetings of the Board shall be open meeting in accordance with the North Carolina Open Meeting law, and its records shall show the vote of each member upon every question or his or her absence or failure to vote. The Board shall also keep records of its hearings and any other official action. Proceedings of the Board of Adjustment shall be in accordance with G.S. 160A-388 and G.S. 153A-345.1. Meetings of the Board shall be held at the call of the Chairman, and at such other times as the Board may determine. The Chairman or in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open

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proceedings, showing the vote of each member upon every question or his absence or his failure to vote, indicating such fact. The Board shall also keep records of its hearings and any other official action. Proceedings of the Board of Adjustment shall be in accordance with G.S. 160A-388 and G.S. 153A-345.1.

A. Oath

The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

B. Hearing Notice

Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning ordinance. In the absence of evidence to the contrary, the county may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the county shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

C. Subpoenas

The board of adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

18.3. Powers and Duties of the Board of Adjustment

The Board of Adjustment hears and decides requests for variances and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The board of adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

18.3.

A. Administrative Review

To hear and decide appeals where it is alleged there is error in any ~~order, requirement, decision, or determination~~ made by any administrative official in the enforcement of this Ordinance.

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B. Variance

Where there are ~~practical difficulties or~~ unnecessary hardships in the way of carrying out the strict letter of this Ordinance, the Board of Adjustment is empowered in passing upon appeals in specific cases, to vary or modify any of the regulations or provisions of this Ordinance relating to the construction or alteration of buildings or structures so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. The Board of Adjustment may not, however, grant variances for the use of land or structures.

1. Variances from the provisions of this Ordinance may be granted only upon appeal from a decision, action, determination, or order of the Zoning Enforcement Officer and shall demonstrate substantially 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. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which do not exist or prevail generally among the lands, structures or buildings in the same district. In addition, a variance may also be granted where a permit has been issued and through an unintentional error of the Enforcement Officer or Inspector in determining the location of the structure on the property, there is a minimum violation of the dimensional requirements; provided such relief may be granted without substantially impairing the intent and purpose of this Ordinance.~~
 - 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. Literal enforcement of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other property owners in the same district under the terms of this Ordinance.~~
 - 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. The hardship is not the result of the applicant's own actions taken subsequent to the effective date of this Ordinance.~~
 - d. ~~Granting the variance requested will not confer on the applicant any specific privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district. 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. ~~Relief, if approved, will not cause substantial detriment to the public welfare or impair the purposes and intent of this Ordinance.~~

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2. Furthermore, the Board of Adjustment must make such findings of fact to substantiate all of these requirements. In considering applications for variances from the provisions of this Ordinance, demonstration of financial disadvantage alone shall not constitute conclusive evidence of unnecessary hardship.

~~3. 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.~~

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~~3. In granting a variance, the Board may attach thereto any conditions and safeguards it deems necessary or desirable in furthering the purposes of this Ordinance.~~

4. Departure from or violation of any of those conditions or safeguards shall be deemed a violation of this Ordinance, and shall be subject to the penalties, as provided in Section 21.

5. A variance, once granted, shall continue for an indefinite period of time unless otherwise specified at the time granted.

6. No change in permitted uses may be authorized by a variance.

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C. Quasi-Judicial Decisions

~~The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.~~

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18.4. Appeal Procedure

~~The board of adjustment shall hear and decide appeals from decisions of administrative officials charged with enforcement of the Zoning Ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following: All appeals from the enforcement and interpretation of this Ordinance, including appeals for variance from the terms of the requirements set forth shall be submitted to the Chatham County Zoning Administrator or other designee within 30 days of enforcement or interpretation, and shall be addressed to the Chatham County Board of Adjustment. Appeals may be initiated by aggrieved parties.~~

~~1. All appeals shall be in writing, signed and filed with the Zoning Administrator or other designee. Completed appeals shall be received a minimum of 25 days prior to the public hearing at which the proposed amendment is scheduled to be heard. Any person who has standing under G.S. 160A-393(d) or the county may appeal a decision to the board of~~

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adjustment. An appeal is taken by filing a notice of appeal with the county clerk. The notice of appeal shall state the grounds for the appeal.

2. The Board of Adjustment shall conduct public hearings on all appeals and fix a time and place for hearing an appeal. The time set for hearing of an appeal shall not exceed 45 days from the date on which such appeal was filed with the Zoning Administrator or other designee. 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.
3. The Board of Adjustment shall publish notice of the hearing of each appeal in a newspaper published in the County as required by law. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
4. The Board of Adjustment shall submit to the applicant, in written form, the decision of the Board. Such notice shall describe the reason or reasons for the Board's actions. A copy of the decision shall be filed in the office of the Zoning Administrator or other designee. 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 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. Absent an ordinance provision to the contrary, posting of signs shall not be required.
5. An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Administrator or other designee certifies to the Board of Adjustment that, based on the records of the case in question, a stay would cause imminent danger to life or property, in which circumstances proceedings shall not be stayed by an appeal. The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action 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.
6. The Board of Adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this section, the Board of Adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the Board of Adjustment pursuant to a subpoena issued in exercise of the power conferred by this section may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person, who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely,

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~~is guilty of a Class 1 misdemeanor. 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 official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 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.~~

7. ~~Subject to the provisions of subdivision (6) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.~~

8. ~~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 county 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.~~

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18.5. Vote Required - Judicial Appeal

The Board of Adjustment, by a vote of 4/5 of its members shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari, ~~may reverse any order, requirement, decision, or determination of an administrative officer charged with enforcing this Ordinance, or may decide in favor of the applicant a matter upon which the Board is required to pass under this Ordinance, or may grant a variance from the provisions of this Ordinance.~~ 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.

~~Each decision of the Board is subject to review by the Superior Court by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after the decision of the Board is filed in such office as this Ordinance specifies, or 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.~~

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Every quasi-judicial decision shall be subject to review by the 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 30 days after the decision is effective or after a written copy thereof is given in accordance with Section 18.3(c) of this Ordinance. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

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

A member of the Board of Adjustment 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, 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.