

## ARTICLE V

### APPEALS, VARIANCES, SPECIAL EXCEPTIONS, ~~AND~~ INTERPRETATIONS, AND DETERMINATIONS

#### Section 15-91 Appeals (AMENDED 06/21/94; 04/23/96; 5/21/02; REPEALED 4/27/82; REWRITTEN 10/21/14)

(a) The board of adjustment shall hear and decide appeals of decisions of the administrator in accordance with the provisions of G.S. sections 160D-302; 405; 406; 705-160A-388. Those provisions are summarized in the remaining subsections of this section. For purposes of this section, the term "decision" includes any final and binding order, requirement, or determination made by the administrator.

(b) The administrator shall give written notice of the decision 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.

(c) Any person who has standing under G.S. sections 160D-405(b); 1402(c) 160A-393(d), as well as the town, may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal.

(d) 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.

(e) 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 is prominently posted on the property that is the subject of the decision, provided that (i) the sign remains on the property for at least 10 days, and (ii) and the sign states that additional information about the decision can be obtained by calling the planning department at a specified telephone number. Posting of such signs shall not be required, and is not the only form of constructive notice, but such posting offers the applicant or landowner a means of ensuring that constructive notice of the decision has been provided. Verification of the posting shall be provided to the administrator.

(f) The administrator shall transmit to the board of adjustment all documents and exhibits constituting the record of the action that is the subject of the appeal. 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.

(g) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the administrator 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

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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 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.

(h) Subject to the provisions of subdivision (g) of this section, the board of adjustment shall hear and decide the appeal within a reasonable time.

(i) The administrator 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 town 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 administrator.

(j) The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution.

**Section 15-92 Variances (AMENDED 11/10/81; 4/21/87; 12/05/89; 04/23/96; 10/24/06; 6/26/12; 10/21/14; REPEALED & AMENDED 3/24/09; REWRITTEN 10/26/10)**

(a) 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. Applications shall be handled in the same manner as applications for special use permits in conformity with the provisions of Sections 15-48, 15-49, and 15-56.

(b) Subject to the remaining provisions of this section, when unnecessary hardships would result from carrying out the strict letter of this ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of this 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

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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.
- (c) No change in permitted uses may be authorized by variance.
- (d) Appropriate conditions may be imposed on any variance, provided the conditions are reasonably related to the variance.
- (e) A variance may be issued for an indefinite duration or for a specified duration only.
- (f) In determining whether a variance should be granted from any of the provisions of Article XVI, Part I, the board of adjustment shall consider the following factors, each of which shall be addressed in a written report that accompanies the application.
  - (1) The danger that materials may be swept onto other lands to the injury of others;
  - (2) The danger to life and property due to flooding or erosion damage;
  - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (4) The importance of the services provided by the proposed facility to the community;
  - (5) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (6) The compatibility of the proposed use with existing and anticipated development;
  - (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (8) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (9) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site; and
  - (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

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(g) Any applicant to whom a variance is granted from the provisions of Article XVI, Part I, shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(h) With respect to the provisions of Article XVI, Part I, the administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

(i) With respect to the provisions of Article XVI

Part I:

- (1) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances
- (2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief
- (4) Variances shall only be issued prior to development permit approval
- (5) The Town shall notify the Secretary of the North Carolina Department of Crime Control and Public Safety that a variance has been requested at least 30 days prior to consideration of the application by the board of adjustment

(j) If the board votes to grant a major variance from any of the provisions of Section 15-266, dealing with requirements peculiar to areas within the University Lake Watershed or Jordan Lake Watershed Protection District, the administrator shall forthwith prepare and send to the Environmental Management Commission a record of the proceedings before the board. The variance shall not be issued until it is approved by the EMC. For purposes of this subsection, a major variance is one that authorizes a relaxation of greater than 10% of any requirement set forth in Section 15-266.

(k) If the board votes to grant a major variance from any of the provisions of Part III (Water Quality Buffers) of Article XVI, the administrator shall forthwith prepare and send to the Environmental Management Commission a record of the proceedings before the board. The variance shall not be issued until it is approved by the EMC. For purposes of this subsection, a major variance is one that pertains to prohibited activities that will impact that portion of Zone One of the riparian buffers that lies within 30 feet of the surface waters subject to buffer requirements of the Jordan Reservoir.

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(l) The administrator shall keep a record of all variances granted during any calendar year from the provisions of Sections 15-266 or Part III of Article XVI and shall submit the record of such variances on or before January 1 of the following year to the Division of Water Quality. The record shall contain a description of each project receiving a variance and the reason for granting the variance.

(m) If the board votes to grant a major variance from the provisions of Section 15-263, the board shall then prepare a preliminary record of the hearing and submit it to the Environmental Management Commission for review and approval. If the Commission approves the major variance or approves with conditions or stipulations added, then the Commission shall prepare a Commission decision which authorizes the board to issue a final decision which would include any conditions or stipulations added by the Commission. If the Commission denies the major variance, then the Commission shall prepare a Commission decision to be sent to the board. The board shall prepare a final decision denying the major variance. For all proposed major and minor variances from the other local governments having jurisdiction within the Jordan Lake Watershed Area and any local governments using Jordan Lake as a water supply for consumption. Appeals from a board decision on a major or minor variance request are made on certiorari to the local Superior Court. Appeals from the Commission decision on a major variance request are made on judicial review to Superior Court. For purposes of this subsection, a major variance is one that authorizes a relaxation by more than five percent of any requirement set forth in Section 15-263.

**Section 15-92.1 Special Exception Permits (AMENDED 06/21/94).**

**[PLEASE REFERENCE "APPENDIX H"]**

(a) An application for a special exception permit shall be submitted to the board of adjustment by filing a copy of the application with the administrator in the planning department.

(b) All of the provisions of this article applicable to the processing of variance applications shall also apply to special exception permit requests, except the provisions of Subsections 15-92(b) and 15-96(b) and (c).

(c) The board of adjustment may issue a special exception permit for the purposes and under the circumstances set forth in the remaining subsections of this section if it concludes, in addition to any other findings required below, that:

- (1) Issuance of the permit will not create a threat to the public health or safety; and
- (2) Issuance of the permit will not adversely affect the value of adjoining or neighboring properties. If the applicant presents a petition, signed by the owners of all properties entitled to receive notice of the hearing on the application pursuant to Section 15-102(2), and stating that such property owners believe their property values will not be adversely affected by the proposed use, this shall be sufficient evidence from which the board may (but

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shall not be required to) make the required finding. The board may also make the required finding based on other competent evidence.

(d) The board of adjustment may issue a special exception permit under this section to allow a reduction of up to 50% in the required distances that buildings must be set back from lot boundary lines under Subsection 15-184(a)(4), provided that:

- (1) The reduction may be permitted only for buildings on lots used for conforming residential purposes in residential districts, where (i) the building in question has existed for at least three years prior to the application for the special exception permit, or (ii) the lot is to be developed or redeveloped using the residential density bonus for affordable housing provided for elsewhere in this chapter at Section 15-184. **(Amended 5/14/02)**
- (2) In no case may the reduction allow a building to be located closer to a lot boundary line than a distance equal to one-half of the minimum building separation requirement established by the North Carolina State Building Code or allow the location of a building in such proximity to a pre-existing building as to violate the minimum building separation requirement of the North Carolina State Building Code;
- (3) Reductions may be allowed under this section only for setbacks from lot boundary lines, not setbacks from street right-of-way lines.

(e) The board of adjustment may issue a special exception permit to authorize a structure to encroach upon a setback required under Section 15-184 if it finds that:

- (1) The proposed encroachment results from an addition to or an extension of an existing structure that already is nonconforming with respect to the requirements of section 15-184; and
- (2) The proposed addition or extension will not encroach upon any required front, rear, or side yard to a greater extent than the existing structure on that lot.

**Section 15-93 Interpretations (REWRITTEN 10/21/14)**

- (a) The administrator is authorized to interpret the official zoning map and to pass upon disputed questions of district boundary lines and similar questions.
- (b) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:
  - (1) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerlines;

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- (2) Boundaries indicated as approximately following lot lines, city limits, or extraterritorial boundary lines shall be construed as following such lines, limits or boundaries;
- (3) 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;
- (4) 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 measurements, using the scale of the Official Zoning Map;
- (5) Where any street or alley is hereafter officially vacated or abandoned, the regulation applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

**Section 15-93.1 Determinations.**

A determination is a written, final, and binding order, requirement, or determination regarding an administrative decision. This includes any interpretation of this chapter, affirmation of nonconforming status, notice of violation or other binding order concerning a development regulation. When making a determination, the administrator shall follow the process provided for appeals in sections 15-91 of this chapter. Determinations may be appealed to the board of adjustment.

**Section 15-94 Requests To Be Heard Expeditiously.**

As provided in Section 15-66, the board of adjustment shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Article VI, and obtain the necessary information to make sound decisions.

**Section 15-95 Burden of Proof in Appeals, Variances, and Special Exceptions (AMENDED 06/21/94; REPEALED 10/21/14)****Section 15-96 Board Action on Appeals, Variances, and Special Exceptions (AMENDED 4/27/82; 06/21/94; 10/21/14)**

(a) 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 that support that motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption [of a variance](#) (see Section 15-32), then a motion to uphold the decision appealed from shall be in order. Insofar as practicable, this motion shall include a statement of the findings, or reasons that support it. This motion is adopted as the board's decision if supported by at least two members.

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(b) Before granting a variance, the board must take a separate vote and vote affirmatively (by a 4/5 majority--see Section 15-32) on each of the four required findings stated in Subsection 15-92(b). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in Subsection 15-92(b) shall include a statement of the specific reasons for findings of fact supporting such motion.

(c) A motion to deny a variance may be made on the basis that any one or more of the four criteria set forth in Subsection 15-92(b) 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 at least two members.

(d) Before granting a special exception permit, the board shall vote affirmatively on each of the findings required under section 15-92.1. A motion to deny a special exception may be made on the basis that any one or more of the findings required by section 15-92.1 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.

**Section 15-97 Reasonable Accommodations (Amended 06/26/19)**

(a) The ~~Town Council~~~~Board of Aldermen~~ is authorized to grant reasonable accommodations under the Federal Fair Housing Act and Americans with Disabilities Act under the circumstances set forth in this section.

(b) An application for a reasonable accommodation may be filed only by the owner of the land affected by the reasonable accommodation; an agent, lessee, or contract purchaser specifically authorized by the owner to file such application; or any unit of government that is not the owner of the lot but proposes to acquire the lot by purchase, gift or condemnation.

(c) An application for a reasonable accommodation shall be filed with the Administrator and contain: (1) the applicant's contact information (name, mailing address, telephone number, fax number, and email address); (2) the contact information for the owner(s) of the property (if different from the applicant); (3) the address of the property at which the reasonable accommodation is requested; (4) a description of the reasonable accommodation requested; (5) a statement explaining how and why the request meets the standards for a reasonable accommodation (see subsection (f) below); and (6) the notarized signature of the applicant and property owner(s) (if different from the applicant). No filing fee shall be required for the application.

(d) The ~~Council~~~~Board~~ shall hold a quasi-judicial hearing on the proposed reasonable accommodation and shall decide the request upon a majority vote of the members.

(e) The quasi-judicial hearing shall be noticed in accordance with Section 15-102(1) and conducted in accordance with Sections 15-103 through 15-106 to the extent not inconsistent with this Section.



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(f) The ~~Council~~Board shall grant a reasonable accommodation to any provision of the Land Use Ordinance if the ~~Council~~Board finds by the greater weight of the evidence that the proposed reasonable accommodation is both reasonable and necessary, in accordance with the following:

- (1) Reasonable: An accommodation will be determined to be reasonable if it would not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the Town and/or constitute a substantial or fundamental alteration of the Town's Land Use Ordinance provisions; and
- (2) Necessary: An accommodation will be determined to be necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and would afford persons with disabilities equal opportunity to enjoy and use housing in residential districts in the Town.

(g) After the ~~Council~~Board approves a reasonable accommodation, the applicant shall follow all applicable Land Use Ordinance procedures for the approval of any permits, certificates, or other approvals required in order to proceed with development or use of the property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the reasonable accommodation granted by the ~~Council~~Board.

**Section 15-98 through 15-100 Reserved.**