

ARTICLE 5. APPEALS, VARIANCES, INTERPRETATIONS

(Revised 1-9-14)

Section 5-1: Appeals

- (A) An appeal from any final order or decision of the official may be taken to the Board of Adjustment by any party who has standing under G.S. 160A-393(d). The official who made the decision shall give written notice to the owner of the property and the party who sought the decision, if different. A notice of appeal, specifying the grounds therefor, shall be considered filed with the official and the Board of Adjustment when delivered to the city clerk, and the date and time of filing shall be entered on the notice by the clerk.
- (B) The owner or other party shall have 30 days from the date of the receipt of a written final, binding determination by the official to file an appeal. The written notice shall be delivered by personal delivery, electronic mail, or by first class mail. Any other person with standing to appeal shall have 30 days from the receipt of any source of actual or constructive notice of the decision to file an appeal.
- (C) Whenever an appeal is filed, the official shall forthwith transmit to the Board of Adjustment all the papers, documents and exhibits constituting the record relating to the action appealed from, with a copy provided to the appellant and land owner, if the landowner is not the appellant.
- (D) An appeal stays all actions by the official seeking enforcement of or compliance with the order or decision appealed from, unless the official certifies by affidavit to the Board of Adjustment that a stay would, in his opinion, 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 issued by a court. In that case, 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.

- (E) The official who rendered the determination that has been appealed shall appear at the hearing as a witness. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end the board shall have all the powers of the officer from whom the appeal is taken. The board shall continue the hearing if new issues are presented at the hearing that were not in the notice of appeal and immediate consideration might unduly prejudice a party of interest or the city.
- (F) When hearing an appeal pursuant to G.S. 160A-400.9 (e) or other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of the review shall be as provided in G.S. 160A-393(k).

Section 5-2: Variances

- (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 permits in conformity with the provisions of Sections 12-3 and 12-4.
- (B) When unnecessary hardships would result from carrying out the strict letter of the UDO, a variance shall be granted by the Board of Adjustment upon a showing of the following:
 - (1) Unnecessary hardship would result from a 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;
 - (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 from granting a variance;
 - (3) The hardship did not result from actions taken by the applicant or property owner. The act of purchasing property with knowledge that circumstances exist that might justify a variance shall not be considered 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 achieved.
- (C) The concurring vote of four-fifths of the Board of Adjustment shall be necessary to grant a variance. The majority of the members shall be necessary to decide any other quasi-judicial matter or to determine an appeal in the nature of certiorari. For these purposes, 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.
- (D) Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any variance issued by the Board of Adjustment.
- (E) No change in permitted uses may be authorized by variance.
- (F) A variance may be issued for an indefinite duration or for a specified duration only.
- (G) 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 Ordinance.

Section 5-3: Interpretations

- (A) 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 official, they shall be handled as provided in Section 5-1 and Section 6-2.
- (B) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the planning and inspections department. The application shall contain sufficient information to enable the board to make the necessary interpretation.

- (C) 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 centerline;
 - (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 measurement, using the scale of the Official Zoning Map;
 - (5) 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 street or alley added thereto by virtue of such vacation or abandonment.
- (D) Interpretations of the location of floodway and floodplain boundary lines may be made by the Floodplain Administrator as provided in Section 21-13(K).

Section 5-4: Requests to be Heard Expeditiously

The Board of Adjustment shall hear and decide all appeals, variance requests, and requests for interpretations within a reasonable time, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Article 6, and obtain the necessary information to make sound decisions.

Section 5-5: Burden of Proof in Appeals and Variances

- (A) When an appeal is taken to the Board of Adjustment in accordance with Section 5-1, the official who rendered the binding decision shall have the initial burden of presenting to the board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

- (B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Section 5-2(B), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

Section 5-6: Schedule of Fees

A schedule of fees to help defray the administrative expenses, notice requirements and other related costs shall be maintained by the City of Southport related to any application filed requiring Board of Adjustment action. The schedule of fees may be modified from time to time by the City and a current schedule shall be maintained on file with the City Clerk and the Planning and Inspections Department.