

# Chapter 12: Board of Adjustment

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## **Section 12.1 Purpose**

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This Chapter addresses the establishment of the Board of Adjustment and those rules governing said Board. The purpose of this Board is to assist in the implementation of this Ordinance with regards to appeals, change in kind of non-conforming uses, variances, and special use permits.

### **Section 12.1.1 General Rules**

The Zoning Board of Adjustment shall be governed by the terms of Chapter 153A, Article 18, Part 3 of the North Carolina General Statutes and by the Iredell County Zoning Ordinance. All members of the Board shall thoroughly familiarize themselves with these laws.

### **Section 12.1.2 Establishment of Board of Adjustment**

The Board of Adjustment shall consist of seven (7) members who shall be appointed by the Board of Commissioners and who shall be residents of the County. Members shall serve overlapping terms of three (3) years. Initial appointment of the members shall be as follows: three (3) members for a term of three (3) years, two (2) members for a term of two (2) years, and two (2) members for a term of one (1) year. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment.

In addition to the regular members, the Board of Commissioners may appoint two (2) alternate members, who shall be residents of the County, each for three (3) year terms. The Chairman of the Board of Adjustment, or in his absence the acting chairman, may appoint the alternates to sit for any regular members in case of the absence or disqualification of any regular members. In such case the alternate members shall have the same powers and duties of the regular members they are replacing during such time. In no case, however, shall more than seven (7) regular members or combination of regular members and the alternate members be empowered to vote on any matter that comes before the Board.

### **Section 12.1.3 Officers and Duties**

#### **A. Chairman**

A chairman shall be a regular member of the Board of Adjustment and elected by the majority vote of the full membership of the Board. His/Her term of office shall be one year in which he/she is eligible for re-election or his/her successor is elected, beginning July 1. The chairman shall decide upon all aspects of order and procedure, subject to these rules, unless otherwise directed by the majority of the Board in session at the time. The chairman shall appoint committees found necessary to investigate any matters before the Board.

#### **B. Vice Chairman**

A vice chairman shall be a regular member and elected in the same manner as the chairman and serve the same term. He/She shall serve as acting chairman in the

absence of the chairman, and at such times he/she shall have the same powers as the chairman.

C. Clerk

The clerk, subject to the direction of the chairman of the Board, shall keep all records, conduct all correspondence of the Board, arrange for all required public notices, notify members of the agenda and pending meetings, notify parties of cases prior to the Board making a decision on such cases, shall generally supervise the clerical work of the Board. The clerk shall keep in a permanent volume the minutes of every Board meeting. These shall indicate the names of members that were present or absent, show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, all votes of the Board members upon any resolution, deposition, or final determination of any question, indicating the names of the members voting against or failed to vote.

D. Alternate Members

Alternate members of the Board shall be called upon to attend only those meetings and hearings at which one or more regular members are absent or unable to participate in that meeting and/or hearing. Regular members, on receiving notice of a special meeting or are unable to participate in a scheduled hearing, shall promptly give notice to the secretary. The secretary shall, by most expeditious means, notify the alternate member to attend. Any meeting, which they are called upon to attend, alternate members shall have the same powers and duties as regular members.

Except at the election of officers, at no time shall more than seven members participate officially in any meeting or hearing.

**Section 12.1.4 Rules of Conduct for Members**

- A. Members of the Board may be removed for cause, including violation of the rules stated below.
- B. Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members. This is a pre-requisite to continue membership of the Board.
- C. No Board member shall take part in the hearing or determination in which he/she has a financial interest, fixed opinion, undisclosed outside contact, close family tie, or close business tie.
- D. No Board member shall vote on any matter deciding an application or appeal, unless he/she shall have attended the public hearing on that application or appeal.
- E. No member shall discuss any case with any parties (ex-parte contact) thereto prior to the public hearing of that case; however, members of the Board can receive and/or seek information pertaining to a case from other members, its secretary, or

clerk prior to the hearing. In the case of an appeal, planning and zoning staff are a party, and the Board shall NOT discuss such cases with the secretary or the clerk.

- F. Members of the Board will NOT express individual opinions on the proper judgment of any case with any party thereto prior to its final determination.
- G. It is possible for a Board member to visit a site prior to the public hearing, however, since the Board's decision must be based on evidence presented at the hearing, it is important for any Board member who visits a site to state at the hearing what he/she observed.

### **Section 12.1.5 Meetings**

#### A. Regular Meetings

Regular meetings of the Board shall be held on the third Thursday of each month at 7:00 p.m. in the Commissioners Meeting Room in the Iredell County Government Center (Old Courthouse), 200 S. Center Street, Statesville, North Carolina. Provided that the meeting be held at any other convenient time and/or place in the county, when business needs to be acted upon; if directed by the chairman in advance of the meeting.

#### B. Special Meetings

Special meetings of the Board may be called at any time by the chairman. A written notice of the time and place of the special meeting shall be delivered by the clerk to each Board member at least forty-eight (48) hours prior to the scheduled meeting.

#### C. Cancellation of Meetings

Whenever there are no appeals, applications for special use permits or variances, or other business for the Board or whenever so many regular and alternate members notify the secretary of inability to attend, that a quorum will NOT be available, the chairman may dispense with a regular meeting by giving written or oral notice to all Board members NOT less than twenty-four (24) hours prior to the time set for the meeting.

#### D. Quorum

A quorum shall consist of four-fifth's (4/5) members of the Board, but the Board shall NOT pass upon any questions relating to an appeal from the decision, order, requirement, or determination of the zoning enforcement officer, or an application for a variance or special use permit when there are less than six (6) members present.

#### E. Voting

All regular members shall vote on each issue made in the form of a motion, unless they have disqualified themselves for one or more of the following reasons listed in Section 12.1.4. All abstaining from voting will be counted as a "YES". All silent votes will be counted as a "YES". All "NO" votes shall be vocal.

#### F. Conduct of Meetings

All meetings shall be open to the public, subject to the following rules:

1. Persons wishing to speak at the public hearing on a variance, special use permit, or an appeal, shall register with the clerk to the Board; listing the party or parties they represent, indicate whether they support or oppose the application, be sworn in, and be limited to a maximum of five (5) minutes each.
2. Persons wishing to speak at a public hearing on a variance, special use permit, or appeal, for more than five minutes, shall give written notice to the clerk to the Board of Adjustment prior to the meeting, stating the reason for support of or opposition to the proposed application.
3. Oral testimony presented at the public hearing shall be limited to fifteen (15) minutes total for the proponents and fifteen minutes total for the opponents, except, where a written notice to speak as referenced in Section 12.1.5 F (2). To request additional time, the request may be allowed in whole or in part at the public hearing at the discretion of a person presiding at said meeting.

#### G. Order of Business

- Call to order;
- Approval of minutes from the previous meeting;
- Hearing of cases;
- Reports of committees;
- Unfinished business;
- New business; and
- Consideration and determination of cases heard.

(amended 9/2/14, TA-2014-01)

#### **Section 12.1.6 Appeals, Hearings and Notice**

An appeal from the decision of the Administrator may be taken by the aggrieved party to the Board of Adjustment. Such appeal shall be taken within thirty (30) days by filing with the Administrator a notice of appeal specifying the grounds thereof. The Administrator shall forward to the Board all papers constituting the record upon which the action appealed from was taken. The Board of Adjustment shall fix a reasonable time for hearing the appeal, give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

The Board shall inform in writing all the parties involved of its decisions and the reasons therefore.

#### **Section 12.1.7 Hearings**

An evidentiary hearing is required for each decision. The purpose of the hearing is to gather facts, NOT to gather opinions about the desirability or popularity of the project.

A. Time

After receipt of a notice of appeal, the Board chairman shall schedule the time for a hearing, which shall be at a regular or special meeting within thirty-six (36) days from the filing of such notice of appeal.

B. Notice

The Board shall give public notice of the hearing by posting notice on the property which is subject to action. Adjoining property owners shall be notified by letter ten (10) to twenty-five (25) days prior to the hearing stating the facts concerning the public hearing. Such notice shall state the location, general nature involved in the request, and the time and location of the hearing.

C. Conduct of Hearing

Any party may appear in person or by agent or by attorney at the hearing and subject to the rules in Section 12.1.5 F. The order of business for the hearing shall be as follows:

1. The Planning staff member shall give a preliminary statement of the case.
2. The applicant shall present facts / evidence that support his application.
3. Persons opposed shall present facts / evidence against the application.
4. Both sides will have an opportunity to present a rebuttal to opposing testimony.
5. The chairman shall summarize the evidence which has been presented, giving both parties opportunity to make objections or corrections. Witnesses may be called and evidence submitted, but the Board shall NOT be limited to consider such evidence to be admissible as in a court of law. The Board may view the premises before arriving at a decision. All witnesses shall be sworn in and are subject to cross-examination.

D. Rehearing

An application for a rehearing may be made in the same manner as provided for an original meeting. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board to determine whether there has been a substantial change in facts or evidence (change in federal, state, or local law, or a change in the zoning ordinance). The application for rehearing shall be denied by the Board if from the record it finds that there has NOT been a substantial change in fact or evidence. If the Board finds that there has been a change, then the request shall be treated in the same matter as any other application. If there is a change in conditions (different site plan or an increase or decrease in the size of the request), the case shall be considered a new and distinctive case from that of before.

(amended 9/2/14, TA-2014-01)

## Section 12.1.8 Decisions

### A. Evidence

Quality evidence must be in the hearing to support the Board's final decision from an appeal, or application for variance or special use permit.

1. Substantial, competent, and material facts / evidence is needed to support the Board's findings.
2. Hearsay – Hearsay is admissible, however, hearsay evidence cannot be the sole basis for a crucial findings of fact. Crucial findings of fact include those that are contested.
3. Opinion Testimony by Expert – The Board is interested in fact NOT opinion, however, opinions offered by experts are an exception to this rule.

### B. Time

Decisions by the Board shall be made NOT more than thirty-six (36) days from the time of hearing the case.

### C. Form

Written notice of the decision in a case shall be given to the applicant by the clerk in a reasonable amount of time following the decision. The final decision of the Board shall be shown on record of the case as entered into the minutes of the Board and signed by the chair or other duly authorized member of the Board. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact by the Board. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the Board finds to exist. The decision may reverse or affirm, wholly or partly or modify the order, requirement, decision, or determination appealed from. Where a special use permit is granted, the record shall state in detail any facts supporting the findings required to be made prior to issuance of such permit. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of the special use permit or variance.

### D. Expiration of Permits

Unless otherwise specified, any order or decision of the Board granting a special use permit or a variance shall be perpetually binding upon the property unless subsequently changed or amended by the Board.

### E. Voting on Hearings

The Board of Adjustment, by a vote of four-fifths (4/5) of its members, may grant a variance from the provisions of this Ordinance. A majority vote shall be required for all other matters before the Board.

F. Public Record of Decision

The decisions of the Board, as filed in the minutes, shall be a public record, available for inspection at all reasonable times.

(amended 9/2/14, TA-2014-01)

**Section 12.1.9 Stay of Proceedings**

An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board of Adjustment that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, 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, of notice from whom the appeal is taken and on due cause shown.

**Section 12.2 Powers and Duties of the Board of Adjustment**

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The Zoning Board of Adjustment shall have the powers and duties listed in this section.

**Section 12.2.1 Administrative Review**

The Board shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Administrator in the enforcement of this Ordinance.

- A. Any person who has standing may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the county clerk. The notice of appeal shall state the grounds for appeal.
- B. 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.
- C. The official who made the decision shall provide to the Board all documents and exhibits constituting a 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.
- D. The official who made the decision shall be present at the hearing as a witness.  
(amended 9/2/14, TA-2014-01)

**Section 12.2.2 Change In Kind of Non-Conforming Use**

The Board may permit a non-conforming use of a building to be changed to another non-conforming use upon a finding by the Board that the new use is more in character with the uses permitted in the district than the previous use (see Section 15.7).

**Section 12.2.3 Variances**

The Board may authorize variances from the terms of the Ordinance as will NOT be contrary to the public interest where, owing to special conditions, a literal enforcement

of the provisions of this ordinance will, in an individual case, result in unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done.

In granting a variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this ordinance. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

The Board of Adjustment shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

A. Zoning and Subdivision Requirements

These requirements shall apply to all regulations in the following areas:

- Zoning
- Subdivision
- Watershed
- Airport

The Board of Adjustment shall make the findings required below, taking into account the nature of the proposed request, the existing use of land in the vicinity and the probable effect of the proposed request upon traffic conditions in the vicinity, if applicable. No variance shall be granted unless the Board of Adjustment finds all of the following in the affirmative:

1. That there are special circumstances or conditions affecting said property such that the strict application of the provisions of this Ordinance would cause an unnecessary hardship;
2. That the circumstances giving rise to the need for the variance are peculiar to the parcel and are not generally characteristic of other parcels in the jurisdiction of this Ordinance;
3. That the hardship suffered is NOT a result of the applicant's or property owner's own actions; and
4. That the granting of the variance will be consistent with the spirit, purpose, and intent of the Ordinance, such that the public safety is secured and substantial justice is achieved.

## B. Additional Watershed Requirements

1. Iredell County shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Watershed Administrator prior to a decision by the Board of Adjustment. Such comments shall become a part of the record of proceedings of the Board of Adjustment.

2. Variance issued in accordance with this Section shall be considered a Watershed Protection Permit and shall expire if a Building Permit or Watershed Occupancy Permit for such use is NOT obtained by the applicant within six (6) months from the date of the decision.
3. If the application calls for the granting of a major variance, and if the Board of Adjustment decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:
  - a. The variance application;
  - b. The hearing notices;
  - c. The evidence presented;
  - d. Motions, offers of proof, objections to evidence, and rulings on them;
  - e. Proposed findings and exceptions;
  - f. The proposed decision, including all conditions proposed to be added to the permit.
4. The preliminary record shall be sent to the Environmental Management Commission for its review as follows:
  - a. If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will NOT result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Board of Adjustment. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.
  - b. If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a

reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Board of Adjustment. The Board shall prepare a final decision denying the variance as proposed.

C. Floodplain Requirements

See Appendix G. Article 4. Section E. Variance Procedures  
(amended 9/18/18, TA-2018-01)

**Section 12.2.4 Special Use Permits**

The Board shall hear special use permit request to determine whether appropriate conditions and safeguards, as authorized in Chapter 2, are met. In granting a Special Use Permit the Board shall make the following affirmative findings:

- A. That the Special Use will NOT materially endanger the public health or safety, if located where proposed and developed according to the plan as proposed;
- B. That the Special Use meets all required conditions and specifications;
- C. That the Special Use will NOT substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
- D. The Special Use will be in harmony with the area in which it is to be located and will be in general conformity with the plan of development of the county

In granting a Special Use Permit, the Board may impose such additional restrictions and requirements upon such Permit as it may deem necessary in order that the purpose and intent of this Ordinance are served, public welfare secured and substantial justice done. If all requirements and conditions are accepted by the applicant, the Board shall authorize the issuance of the Special Use Permit, otherwise the Permit shall be denied. Any Special Use Permit so authorized shall be perpetually binding upon the property included in such Permit unless subsequently changed or amended by the Board, as provided for in this Chapter.

The Board may change or amend any Special Use Permit, after a public hearing and subject to the same consideration as provided for in this Chapter for the original issuance of Special Use Permit.

No proposal to amend or change any Special Use Permit shall be considered within twelve (12) months of the date of the original authorization of such Permit or within twelve (12) months of hearing of any previous proposal to amend or change any such Permit.

(amended 9/2/14, TA-2014-01)

### **Section 12.2.5 Erosion Control Plan Appeals**

Erosion Control Plan Appeals can be found within Appendix H: Iredell County Soil Erosion and Sedimentation Control Ordinance.  
(amended 11/19/19, TA-2019-02)

### **Section 12.2.6 Appeals from the Board of Adjustment**

Any person or persons, jointly or severally, aggrieved by any decision of the Board, any taxpayer, or any officer, department, board or bureau of the jurisdiction of this Ordinance may present to Superior Court Division of the General Courts of Justice of the State of North Carolina a petition duly verified setting forth that such decision is illegal, in whole or in part, specifying the ground of illegality, whereupon such decision of said Board shall be subject to review by certiorari as provided by law within thirty (30) days after the decision is filed in the office of the Board.

### **Section 12.2.7 Liability**

The Board of Adjustment members are generally immune from any liability for the decisions the Board makes.