

ARTICLE 900
BOARD OF ADJUSTMENT &
WATERSHED REVIEW BOARD

901: Establishment of Board of Adjustment & Watershed Review Board

901.1: The Asheboro Planning Board shall serve as the Board of Adjustment and/or the Watershed Review Board for this Ordinance.

901.2: Reserved for future amendments.

901.3: Members length of term and filling of vacancies shall be as provided for in the Asheboro City Code for members of the Asheboro Planning Board.

901A. Powers of the Watershed Review Board

The powers and duties of the Watershed Review Board are established in Article 300B, Section 325B of the Asheboro Zoning Ordinance.

902: Powers of Board of Adjustment

The Board of Adjustment shall have the following powers:

902.1: Hear and decide appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator or his authorized designee.

902.2: Hear and grant a properly filed request for a variance from the terms of this ordinance where unnecessary hardships would result from carrying out the strict letter of this ordinance and where the requested variance serves to observe the spirit of the ordinance, secure public safety and welfare, and do substantial justice. (02/01) Nothing in this Section shall be construed to authorize the Board of Adjustment to permit a use in a district where that use is neither a permitted use nor a permissible Special Use.

902.3: Pass upon, decide or determine such other matters as may be required by this Ordinance.

902.4: To make interpretations of the meaning and intent of this Ordinance in accord with Section 906.

903: Board of Adjustment Administration.

903.1: The Board shall adopt rules of procedures and regulations for the conduct of its affairs.

- 903.2: All meetings of the Board shall be open to the public.
- 903.3: The Board shall keep a record of its meetings, including the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it and all official actions.
- 903.4: The Board shall give notice of matters coming before it by causing a public notice to be placed in a newspaper of general circulation in the City of Asheboro. The notice shall appear once a week for two consecutive weeks, the first insertion to be not less than 15 days prior to the meeting date. Notice also shall be given in accordance with N.C.G.S. 160A-388(a2).
- 903.5: The person acting as Chairman of the Board or the clerk to the Board is authorized to administer oaths to any witnesses in any matter coming before the Board.
- 903.6: Applications for variances shall be filed with the Zoning Administrator, or his authorized designee, as agent for the Board, on forms prescribed by the Zoning Administrator at least 30 days prior to the Board of Adjustment meeting at which the request will be considered. A fully dimensional plat of the property with sufficient information to illustrate the necessity for the variance shall be submitted along with the application. Appeals of decisions of administrative officials charged with enforcement of the Zoning Ordinance shall be filed with the City Clerk no more than 30 days after written or constructive notice of the decision being appealed.
- 903.7: It shall be the responsibility of the Zoning Administrator, or his authorized designee to notify by certified mail the applicant or appellant of the disposition which the Board made of the matter.
- 903.8: It shall be the responsibility of the Zoning Administrator, or his authorized designee to issue permits in accord with the Board's action on an appeal or application, if a permit is authorized by the Board action.
- 903.9: The Zoning Administrator, or his authorized designee shall see to the faithful execution of all portions of the Board's actions, including the enforcement of all conditions which may have been attached to the granting of a variance.

904: Quorum and Vote Required

Regular members, on receiving notice of a special meeting which they cannot attend or upon learning that they will be unable to participate in a meeting, shall promptly give notice to the secretary of the Board that they are unable to attend or to participate.

- 904.1: A quorum of the Board, necessary to conduct any business of the Board, shall consist of a majority of the Board membership. For purposes of this Article, 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.

- 904.2: The concurring vote of four-fifths of the Board shall be necessary to grant a variance.
- 904.3: The concurring vote of a majority of the Board shall be necessary to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.
- 904.4 A simple majority vote of the quorum shall be necessary to conduct any other business of the Board.

905: Application of the Variance Power

When unnecessary hardships would result from carrying out the strict letter of the zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- 905.1: 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.
- 905.2: 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.
- 905.3: The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self created hardship.
- 905.4: 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.

All of these findings of fact shall be made in the indicated order by the Board of Adjustment, which is not empowered to grant a variance without an affirmative finding of fact on all four categories above. Each finding of fact shall be supported by substantial evidence in the record of proceedings before the Board.

The Board may impose appropriate conditions upon the granting of any variance provided that the conditions are reasonably related to the variance. Violation of such conditions shall be a violation of this Ordinance.

906: Application of Interpretation Power.

An appeal from an order, requirement, decision or determination of the Zoning Administrator, or his authorized designee shall be decided by the Board, based upon its findings of fact and to achieve the intent of the Ordinance. In exercising this power, the Board shall act in a prudent manner so that the purposes of the Ordinance shall be served. The effect of the decision shall not be to vary the terms of the Ordinance nor add to the list of permitted or permissible uses in the districts.

907: Appeal Stays Further Proceedings.

An appeal to the Board of Adjustment from a decision or determination of the Zoning Administrator, or his authorized designee stays all proceedings in furtherance of the decision or determination appealed from, except as provided in Section 908.

908: Exceptions to Stay of Action.

An appeal to the Board of Adjustment of a determination or decision of the Zoning Administrator, or his authorized designee, shall not stay further proceedings in furtherance of the decision or determination appealed from, if the Zoning Administrator, or his authorized designee certifies to the Board after notice of appeal has been filed either:

- 908.1: That a stay would cause imminent peril to life and/or property.
- 908.2: That the situation appealed from is transitory in nature and, therefore, an appeal would seriously interfere with enforcement of this Ordinance.
- 908.3: In each instance, the Zoning Administrator, or his authorized designee, shall place in the certificate facts to support the conclusion.

909: Appeals of Board of Adjustment Actions.

Every quasi-judicial decision of the Board shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within the timeframe prescribed in N.C.G.S. 160A-388.

910: Re-hearings

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

911: Coordination with Flood Damage Prevention Ordinance

When the Board of Adjustment is requested to consider and decide upon any issue within their power which falls within an area of a Flood Damage Prevention Zone, the foregoing regulations and those regulations in Article 700 Flood Damage Prevention Ordinance, Section 704, shall apply except in the case where Article 700 requirements conflict with the requirements of this section. In such situation, Article 700 requirements shall govern.