

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. There shall be two alternate members of the Board of Adjustment. The members appointed as alternate members (one from the extraterritorial jurisdiction and one from inside the City limits) shall be the Planning Board member from each type of representation which has the least time of service. The alternate member shall be appointed as a regular member upon appointment of a new Planning Board member from his designated area.

The alternate members of the Board of Adjustment shall be called upon to attend only those meetings and hearings at which one or more members are absent or unable to participate in the hearing of a case because of financial or other interest.

901.2: Members of the Planning Board, when acting as the Board of Adjustment and/or Watershed Review Board, shall serve without compensation, but may be reimbursed for direct expenses incurred in connection with the discharge of their duties.

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 practical difficulties or 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.

903.5: The person acting as Chairman of the Board is authorized to administer oaths to any witnesses in any matter coming before the Board.

903.6: Applications for variances, requests for interpretations and appeals for review of decisions of the Zoning Administrator, or his authorized designee, 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.

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 or approval of a Special Use.

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. On receiving such notice, the secretary, shall, by the most expeditious means, notify an alternate member to attend. At 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 8 members participate officially in any meeting or hearing.

904.1: A quorum of the Board, necessary to conduct any other business of the Board, shall consist of six members.

904.2: The concurring vote of seven members of the Board present for the hearing shall be necessary in order:

- (1) to reverse any order, requirement, decision or determination of the Zoning Administrator, or his authorized designee;
- (2) to decide in favor of the applicant any matter upon which it is required to pass by this Ordinance;
- (3) to approve any application for a variance.

904.3: A simple majority vote of the quorum shall be necessary to conduct any other business of the Board.

905: Application of the Variance Power

A variance may be allowed by the Board of Adjustment only in cases involving practical difficulties or unnecessary hardships when substantial evidence in the official record of the application supports all the following findings:

- 905.1: That the alleged hardships or practical difficulties are unique and singular as regards the property of the person requesting the variance and are not those suffered in common with other property similarly located;
- 905.2: That the alleged hardships and practical difficulties, which will result from failure to grant the variance, extend to the inability to use the land in question for any use in conformity with the provision of this Ordinance and include substantially more than mere inconvenience and inability to attain a higher financial return.
- 905.3: That the variance, if allowed, will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance.
- 905.4: That the variance is in harmony with and serves the general intent and purpose of this Ordinance and the adopted Land Development Plan.
- 905.5: That allowing the variance will result in substantial justice being done, considering both the public benefits intended to be secured by this Ordinance and the individual hardships that will be suffered by a failure of the Board to grant a variance.

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 five categories above. Each finding of fact shall be supported by substantial evidence in the record of proceedings before the Board.

The Board may impose reasonable conditions upon the granting of any variance to insure that the public health, safety, and general welfare shall be protected and substantial justice done. 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 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 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 certioraris. The appeal to Superior Court must be filed within 30 days of the filing by the Secretary of the Board of the decision in the office of the Zoning Administrator or the delivery by the Zoning Administrator, or his authorized designee, of the notice required in 903.7, whichever is later.

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.