

ARTICLE V

APPEALS, VARIANCES, SPECIAL EXCEPTIONS, AND INTERPRETATIONS (AMENDED 06/21/94)

Section 15-91 Appeals.

(a) An appeal from any final order or decision of the administrator may be taken to the board of adjustment by any person aggrieved. An appeal is taken by filing with the administrator and the board of adjustment a written notice of appeal specifying the grounds therefore. A notice of appeal shall be considered filed with the administrator and the board of adjustment when delivered to the planning department, and the date and time of filing shall be entered on the notice by the planning staff.

(b) An appeal must be taken within thirty (30) days after the date of the decision or order appealed from, except that: **(AMENDED 04/23/96; 5/21/02)**

(1) If the decision or order appealed from is the issuance of a permit or some other decision relating to the development of property not owned by the appellant, then the appellant may take an appeal within the later of (i) thirty days after the date of the decision or order appealed from or (ii) ten days after the appellant knows or any reasonably observant neighbor of the property in question should know of the decision or order appealed; and
(AMENDED 5/21/02)

(2) As provided in subsection 15-114(b)(3), an appeal of a civil penalty must be taken within ten (10) days after receipt of the notice of civil penalty.
(AMENDED 04/23/96; 5/21/02)

(c) Whenever an appeal is filed, the administrator shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action is appealed from.

(d) An appeal stays all actions by the administrator seeking enforcement of or compliance with the order or decision appealed from, unless the administrator certifies to the board of adjustment that (because of facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the board of adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the administrator.

(e) The board of adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement or 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.

(f) **(REPEALED 4/27/82)**

Section 15-92 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 special use permits in conformity with the provisions of Sections 15-48, 15-49, and 15-56.

(b) A variance may be granted by the board of adjustment if it concludes that strict enforcement of the ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it finds that:

- (1) If the applicant complies strictly with the provisions of the ordinance, he can make no reasonable use of his property, except that an applicant need not meet this criteria under the following circumstances: **(AMENDED 11/10/81; 12/05/89)**
 - (a) If the applicant is requesting a variance from the provisions of Section 15-181 to allow the creation of not more than one lot that deviates from those requirements by not more than one percent, and the Board finds that (i) in the absence of the variance the applicant will suffer significant hardship, and (ii) the deviation will not adversely effect surrounding properties; or **(AMENDED 12/05/89)**
 - (b) If the applicant is requesting a minor variance from the building setback requirements of Section 15-184 and the applicant carries his burden of proving to the Board that (i) the need for the variance arises out of a good faith error, such as a mistake made by a contractor in locating a building or a mistake made by a surveyor in establishing or identifying a property line, and (ii) in the absence of the variance the applicant will suffer significant hardship, and (iii) the deviation will not have an adverse effect on the surrounding properties. **(AMENDED 12/5/89)**
- (2) The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;
- (3) The hardship relates to the applicant's land, rather than personal circumstances;
- (4) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;

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- (5) The hardship is not the result of the applicant's own actions; and
- (6) The variance will not result in the extension of a nonconforming situation in violation of Article VIII, authorize the initiation of a nonconforming use of land or change the uses permitted for the property. **(AMENDED 10/24/06)**

(c) In granting variances, the board of adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties. In addition, the board may condition the granting of a variance upon the payment by the applicant of a civil penalty if the board finds that a civil penalty could have been levied against the applicant by the administrator. **(AMENDED 04/23/96)**

(d) A variance may be issued for an indefinite duration or for a specified duration only.

(e) 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 chapter.

(f) In addition to the other requirements of this section, a variance from any of the requirements set forth in Article XVI, Part I may be granted by the board of adjustment only if it finds that: **(AMENDED 4/21/87)**

- (1) The variance is the minimum necessary to afford relief, considering the flood hazard; and
- (2) The granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense; create nuisance, cause fraud or victimization of the public, or conflict with existing local laws or ordinances.

(g) Any applicant to whom a variance from the requirements set forth in Article XVI, Part I is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions. **(AMENDED 4/21/87)**

(h) The local administrator shall, for actions and variances involving the requirements set forth in Article XVI, Part I, maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request. **(AMENDED 4/21/87)**

(i) 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

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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. **(AMENDED 10/15/96; REPEALED & AMENDED 3/24/09)**

(j) 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 activities that will impact any portion of Zone One of the riparian buffer. **(AMENDED 10/15/96; REPEALED & AMENDED 3/24/09)**

(k) 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.

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 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.

(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 zoning administrator, they shall be handled as provided in Section 15-91.

(b) An application for a map interpretation shall be submitted to the board of adjustment by filing a copy of the application with the administrator in the planning 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 centerlines;
- (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 15-94 Requests To Be Heard Expediently.

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)

(a) When an appeal is taken to the board of adjustment in accordance with Section 15-91, the administrator 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 Subsection 15-92(b), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

(c) The burden of presenting evidence sufficient to allow the board of adjustment to reach the conclusions set forth in subsection 15-92.1(b), as well as the burden of persuasion on those issues, remains with the applicant seeking the special exception permit. (AMENDED 06/21/94)

Section 15-96 Board Action on Appeals, Variances, and Special Exceptions (AMENDED 06/21/94)

(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 (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. (AMENDED 4/27/82)

(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 six 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 six 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

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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. (AMENDED 06/21/94)

Section 15-97 through 15-100 Reserved.