

CHAPTER 13

APPEALS & VARIANCES

13.1 Administrative Appeals

- A. Applicability. An appeal from any decision that can be appealed must be a final and binding order, requirement, or determination of the Administrator and may be taken to the Board of Adjustment by any person with standing, in accordance with NCGS 153A-345.1, 160A-388, and 160A-393.
- B. Submittal. A notice of appeal of an administrative decision shall be considered filed when a complete application is delivered to the clerk to the Board of Commissioners within 30 days of receipt of the decision or order. Any other person with standing as detailed within NCGS 153A-349 and 160A-393 to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. The date and time of filing shall be entered on the notice.
- C. Administrator. The Administrator shall transmit to the Board of Adjustment all the papers constituting the record upon which the appealed action was taken and provide a copy of the record to the appellant and to the owner of the property that is subject of the appeal if the appellant is not the owner. The Administrator who made a decision shall be present at the hearing as a witness.
- D. Board of Adjustment. The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. The Board of Adjustment shall hold a quasi-judicial public hearing and may reverse or affirm (wholly or partly) or may modify the appealed approval, requirement, decision, or determination and shall make any requirement, decision or determination that is deemed necessary. To this end, the Board of Adjustments shall have all the powers of the officer from whom the appeal is taken.
- E. Stay Causing Peril to Life or Property. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from, unless the administrative official from who the appeal is taken certifies to the Board of Adjustment that, because of facts stated in the affidavit, a stay would cause imminent peril to life or property or that because the violation is transitory in nature a stay would seriously interfere with the effective enforcement of this UDO. In that case, enforcement proceedings shall not be stayed except by 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 this 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.

- F. Standing: The following criteria are used to determine whether an individual has standing to bring civil actions for declaratory relief, injunctive relief or other remedies and joinder of complaint and petition for writ of certiorari in certain cases against administrative decisions in lieu of bringing an appeal to the board of adjustment under NCGS 160A-188(b1):
1. The person has ownership, leasehold, or easement interest in, or possesses an option or contract to; purchase the property that is the subject matter of a final and binding decision made by an administrative official charged with applying or enforcing a land development regulation.
 2. The person was a development-permit applicant before the decision-making board whose decision is being challenged.
 3. The person was a development-permit applicant who is aggrieved by a final and binding decision of an administrative official charged with applying or enforcing a land development regulation.

Subject to the limitations in the State and federal constitutions and State and federal case law, an action filed is not rendered moot if the party loses the relevant property interest as a result of the administrative action being appealed, and exhaustion of an appeal is required to preserve a claim for damages under NCGS 160A-393.1.

13.2 Variances

- A. Applicability. The variance procedures authorize the Board of Adjustment to modify or vary regulations of the UDO when strict compliance with the regulation or standard would result in unnecessary hardships upon the subject property.
- B. Submittal. The completed application shall be submitted to the Administrator and the Board of Adjustment shall fix a date for hearing the variance request, to be held within 45 days of the date a complete application was submitted, giving notice to the applicant by certified mail, and shall include a detailed site plan prepared by a licensed professional land surveyor, drawn to a scale in accordance with Section 4.2(C).
- C. Board of Adjustment. Pursuant to NCGS 160A-388(d), The Board of Adjustment shall hold a quasi-judicial public hearing. No variance shall be approved by the Board unless all of the following findings are made:

1. That unnecessary hardship would result from the strict application of the UDO. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 2. That the hardship is due to the physical nature that is peculiar to the property, such as location, size, shape, 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.
 3. That 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.
 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.
- D. Additional Conditions. No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties. 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.
- E. Expiration. All variances that are granted shall run with the property or building for which the variance is being sought and not with the owner of the property or building.
- F. Violation or Invalidity of the Terms and Conditions of a CZ District. A violation of a variance or additional conditions of a variance is considered a violation of this Ordinance and subject to the same enforcement and penalties.

13.3 Reasonable Accommodation

- A. Applicability. This section shall apply to those persons who are defined as disabled or handicapped under federal law. The federal laws include The Fair Housing Amendment Act, 42 U.S.C. § 3601, ("Fair Housing Act") which makes it unlawful to discriminate, make unavailable, or otherwise deny a dwelling to any person because of a handicap, and The Americans with Disabilities Act, 42 U.S.C. § 12102(1) ("ADA") which prohibits discrimination against persons with disabilities. Pursuant to the Fair Housing Amendment Act and the ADA individuals with handicaps or disabilities are defined as:
1. An individual with a physical or mental impairment that substantially limits one or more major life activities;
 2. An individual with a record of having such an impairment; or
 3. An individual regarded as having such an impairment.
- B. Submittal. An application for a reasonable accommodation shall be submitted to the Administrator. The applicant shall have the burden of presenting evidence sufficient to

allow the Board of Adjustment to make the findings set forth below. The following information shall be provided by the applicant:

1. The current actual use of the property;
 2. The basis for the claim that the applicant is considered disabled or handicapped;
 3. The UDO provision(s) or regulation(s) from which reasonable accommodation is being requested; and
 4. An explanation of why the reasonable accommodation is necessary to make the specific property available for the individual.
- C. Board of Adjustment. The Board of Adjustment shall hold a quasi-judicial public hearing. The Board may approve, deny, or continue the request. In approving the request, the Board may prescribe reasonable and appropriate conditions provided that the conditions are reasonably related to the request. In granting a reasonable accommodation request, the Board of Adjustment shall find based on competent, material, and substantial evidence, that the proposed accommodation:
1. Will be used by an individual or individuals with a disability or handicap protected under federal law;
 2. Is "reasonable." An accommodation is reasonable if it will not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the county and/or constitute a substantial or fundamental alteration of the ordinance provisions; and
 3. Is "necessary." An accommodation is necessary if it will provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and it will afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts in the county.
- C. Expiration. Reasonable accommodations such as an accessory manufactured home due to a medical hardship, are approved for a specified time on a case by case basis to be renewed for successive periods so long as the hardship continues to exist, as reviewed and approved by the Administrator.
- D. Exemption. A zoning permit shall be issued by the Administrator for a Temporary Health Care Structure in compliance with the regulations and definitions pursuant to NCGS 160A-383.5. The applicant shall provide annual renewal of the doctor's certification and the structure shall be removed within 60 days in which the mentally or physically impaired person is no longer receiving assistance.

13.4 Notice of Public Hearings

- A. Mailed Notice. The Administrator shall notify by certified mail return receipt of the public hearings to the applicant(s), the owner(s) of the parcel(s) owned per the most recent deed recorded in the Register of Deeds Office, and all property owners of abutting properties (as the last addresses listed in the County tax records) at least 10 but not more than 25 days prior to the date of each public hearing.

- B. Published Notice. Notice of the public hearings shall be published in the newspaper of general circulation once a week for 2 consecutive weeks prior to each public hearing.
- C. Posted Notice. A sign shall be posted on the subject property, abutting to the road(s) or easement(s), not less than 10 days prior to each public hearing.

13.5 Notification of Decision

Pursuant to NCGS 160A-388(e2), a quasi-judicial decision is effective upon filing the Board Order with the Clerk to the Board and shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, within 5 working days of the signed and filed Board Order.

13.6 Appeals to Court

- A. Quasi-Judicial Decisions. Quasi-judicial decisions shall be appealed to Superior Court pursuant to Section 2.1(B).
- B. Circumventing the Board of Adjustments. Except as otherwise provided in this ordinance or other applicable law, a person with standing may bring an original civil action seeking declaratory relief, injunctive relief, damages, or any other remedies provided by law or equity in superior court or federal court to challenge the enforceability, validity, or effect of a local land development regulation for any of the following claims: the ordinance is unconstitutional; the ordinance is ultra vires, preempted or otherwise beyond statutory authority; or the ordinance constitutes a taking of property. When these issues are raised, appeals of administrative permit decisions, issuance of notices of violation, determinations of vested rights, and other administrative decisions may go straight to court. Appeals of ordinance interpretation must still go to the Board of Adjustment before being appealed to court. If an applicant is appealing a notice of violation and disputes the fact of the violation (a question of fact, not a constitutional challenge or a question of statutory authority), that appeal still goes to the Board of Adjustment.
- C. Administrative Decisions. If the decision being challenged is an ordinance interpretation from the Administrator, the party with standing must first bring the appeal to the Board of Adjustment pursuant to NCGS 160A-388(b1) before being appealed to court. An adverse ruling from the Board of Adjustment may then be challenged in a court action brought pursuant to NCGS 160A-393.1(b) with the court hearing the matter de novo together with any other claims listed in NCGS 160A-393.1(b).
- D. Time for Commencement of Action. Any action brought pursuant to NCGS 160A-393.1 shall be commenced within 1 year after the date on which written notice of the final decision is delivered to the aggrieved party by personal delivery, electronic mail, or by first-class mail.

E. Fines Stayed During Appeal. The accumulations of fines are stayed when a notice of violation or other enforcement order is appealed to the Board of Adjustment or Court. The enforcement of other actions appealed from is also stayed unless otherwise provided by statute.