

ARTICLE 5. APPEALS, VARIANCES, INTERPRETATIONS

Section 5.1 Appeals.

(a) *Standing.* Any person who has standing as defined in Article 2 or the Town may appeal a decision of an administrative official charged with the enforcement of this Ordinance to the Board of Adjustment. An appeal is taken by filing with the administrator and the Board of Adjustment a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the administrator and the Board of Adjustment when delivered to the administrator's office, and the date and time of filing shall be entered on the notice by the administrator. (Amended 9/14/2021)

(b) *Judicial Challenge.* A person with standing may bring a separate and original civil action to challenge the constitutionality of the Ordinance or that it is ultra vires, preempted, or otherwise in excess of statutory authority without filing an appeal under this section. (Amended 9/14/2021)

(c) *Notice of Decision.* 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. (Amended 9/14/2021)

(d) *Time to Appeal.* The owner or other party shall have thirty days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have thirty days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice pursuant to NCGS Chapter 160D-403(b) given by first class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. (Amended 9/14/2021)

(d) *Record of Decision.* The official who made the decision shall forthwith transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the decision 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. (Amended 9/14/2021)

(e) *Stays.* An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed, unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause immediate peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance. In that case, enforcement proceedings shall not be stayed except by a 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 fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting development approvals or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for development approvals to use such property; in these situations, the appellant or town may request and the Board of Adjustment may grant a stay of a final decision of development approval applications, including building permits, affected by the issue being appealed. (Amended 9/14/2021)

(f) *Alternative Dispute Resolution.* The parties of an appeal that has been made under this subsection may request mediation or other forms of alternative dispute resolution. *(Amended 9/14/2021)*

Section 5.2 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. Applications shall be handled in the same manner as applications for special use permits in conformity with the provisions of Sections 4.3, 4.4, and 4.11.

(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) Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; *(Amended 9/14/2021)*
- (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 may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability; *(Amended 9/14/2021)*
- (3) The hardship did not result from the applicant's or property owner's own actions. The act of purchasing property without 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 regulation, such that public safety is secured and substantial justice is achieved; and *(Amended 9/14/2021)*
- (5) The variance will neither result in the extension of a nonconforming situation in violation of Article 8 nor authorize the initiation of a nonconforming use of land.

(c) No change in permitted uses may be authorized by variance. 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. Any other development regulation that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this section. *(Amended 9/14/2021)*

(d) 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, and must be recorded with the

Chowan County Register of Deeds in the chain of title. All such conditions are enforceable in the same manner as any other applicable requirement of this chapter.

Section 5.3 Variances from Floodplain or Floodway Requirements.

Notwithstanding the requirements of Section 5.2, a variance from any of the requirements set forth in Article 16, Part I may be granted by the Board of Adjustment only in accordance with the provisions of Section 16.4(g).

Section 5.4 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 administrator, they shall be handled as provided in Section 5.1.

(b) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the office of the administrator. 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, town 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 measurement, using the scale of the Official Zoning Map;
- (5) Where any street or alley is hereafter officially vacated or abandoned, the regulations 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.

(d) Interpretations of the location of floodway and floodplain boundary lines may be made by the administrator as provided in Article 16, Part I.

Section 5.5 Requests to be Heard Expeditiously.

As provided in Section 4.22, the Planning Board, Town Council, and Board of Adjustment (as applicable) shall hear and decide all applications, appeals, variance requests, and requests for interpretations, including map boundaries, as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Article 6, and obtain the necessary information to make sound decisions. *(Amended 9/14/2021)*

Section 5.6 Burden of Proof in Appeals and Variances.

(a) When an appeal is taken to the Board of Adjustment in accordance with Section 5.1, 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 5.2(b), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.