

ARTICLE XIII

BOARD OF ADJUSTMENT

Section 130. Establishment of Board of Adjustment.

A Board of Adjustment is hereby created as provided in Section 160A-388 of the General Statutes of North Carolina. Said Board shall consist of seven (7) members; five (5) members shall be residents of the Town of Hudson, and the other two (2) members shall be appointed to represent the Town's Extraterritorial Jurisdiction, as provided in Section 160A-362 of the General Statutes of North Carolina. The term of office of the members of the Board shall be for three years, excepting that the seven members first appointed shall serve respectively for terms of one year; two years; and three years; and thereafter members shall be appointed for terms of three years each. Vacancies shall be filled for the unexpired term only. All members shall have equal rights and privileges in all matters. The Board of Adjustment shall also serve as the Planning Board.

The Board of Commissioners of the Town of Hudson may, in its discretion, appoint not more than two alternate members to serve on the Board of Adjustment in the absence, for any cause, of any regular member. Such alternate member or members shall be appointed on the same member as regular members and at the regular times for appointment. Such alternate member, while attending any regular or special meeting of the Board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent.

Section 131. Jurisdiction and Decision of the Board of Adjustment.

Two members appointed to the Board by the Caldwell County Board of Commissioners as representatives of the area of extra-territorial jurisdiction shall be residents of such area and citizens of Caldwell County. Such members shall have equal voting rights, privileges, and duties with other members of the Board in all matters pertaining to the regulation of the incorporated area of Hudson and its extra-territorial jurisdiction. The concurring vote of four-fifths of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Enforcement Officer pertaining to the incorporated area of Hudson and to the area of extraterritorial jurisdiction or to decide in favor of the applicant any matter upon which it is required to pass under the Zoning Ordinance or the effect any variation of such Ordinance in the area, of the incorporated area and its extraterritorial jurisdiction.

For the purposes of this subsection, 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 or supermajority if there are no qualified alternates available to take the place of such members.

On all appeals, applications and other matters brought before the Board of Adjustment, said Board shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and shall decide the same within a reasonable time. The Board shall inform all parties involved of its decision in writing, stating the reasons therefore.

Section 132. Proceedings of the Board of Adjustment.

The Board of Adjustment shall elect a chairman and a vice-chairman from its members, each of whom shall serve for one year or until re-elected or until their successors are elected and qualify. The Board shall appoint a secretary who may be a municipal officer, an employee of the Town, or a

member of the Board of Adjustment. The Board shall adopt rules and bylaws in accordance with the provisions of this Ordinance and or Article 19, Chapter 160A of the General Statutes of North Carolina. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the vice-chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the Board shall be open to the public. The secretary shall not have a vote unless he is also a regular or alternate member of the Board.

Section 133. Hearings

All hearings of the board shall be open to the public. A notice of the hearing shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine the owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, an indication of such fact. The final disposition of appeals shall be made by recorded resolution indicating the reason of the board therefor, all which shall be a public record. No final action shall be taken on any matter unless a quorum is present. A quorum shall consist of a majority of the total members of the board.

Section 134. Appeals

The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.

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.

The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing 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.

It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action 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.

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from 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 imminent 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 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 the 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.

The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or

partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

Section 135.Powers and duties of board.

The board shall have the powers enumerated below.

135.01 Oaths. – The chair of the board or any member acting as chair and the city clerk are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

135.02 Subpoenas. – The board of adjustment through the chair, or in the chair’s absence anyone acting as chair, may subpoena witnesses and compels the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

135.03 Decisions. - 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. Each quasi-judicial decision shall be reduced to writing and reflect the board’s determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal deliver, 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, prior of the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

135.2 Variances.-

Any application for a variance shall be filed with the Town Clerk or Town Planner at least thirty (30) days prior to the date on which it is to be introduced to the Board of Adjustment. The Town Clerk or designated staff member shall be responsible for presenting the application to the Board of Adjustment. Each variance application shall be accompanied by a fee set annually by the Town Council to help defray the costs of advertising the public hearing required by Article 19, Chapter 160A-364 of the North Carolina General Statutes.

To vary any of the provisions of this ordinance. The concurring vote of four-fifths of the members of the board shall be necessary to grant a variance.

- a. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all the following:
- b. 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.
- c. 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.
- d. The hardship did not result from the actions taken by the applicant or the property owner. The act of purchasing the property with knowledge that the circumstances exist that may justify the granting of a variance shall not be regarded as self-created hardship.
- e. 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
No change in permitted uses may be authorized by variance.
- f. Appropriate conditions may be imposed on any variance provided that the conditions are reasonable related to the variance.
- g. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

- h. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district. Said variance would constitute a use variance. Applications for use variances will not be accepted by the Town nor reviewed by the Board of Adjustment.

Section 136. Administrative Review. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the zoning enforcement officer in the enforcement of this Ordinance. . A simple majority vote of the Board of Adjustment members is required to decide any appeal.

Section 137. Conditional Uses; Conditions Governing Application. To grant in particular cases and subject to appropriate conditions and safeguards, permits for conditional uses under the various use districts. A simple majority vote of the Board of Adjustment members is required to issue a conditional use permit.

The Board shall not grant a conditional use permit unless and until:

- a. A written application for a conditional use permit is submitted indicating the section of this Ordinance under which the conditional use permit is sought.
- b. A public hearing is held. Notice of this hearing shall be advertised in all local newspapers of general circulation in the area a reasonable amount of time prior to the public hearing. This legal notice shall describe the request and appear at least once weekly for two consecutive weeks. All property owners within 100 feet of the property in question shall be notified of this hearing by first class mail.
- c. The Board of Adjustment finds that in the particular case in adjustment the use for which the conditional use permit is sought will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith as will conform to the requirements and spirit of this Ordinance.
- d. Compliance with Other Codes. Granting a conditional use permit does not exempt the applicant from complying with all of the requirements of building codes or other ordinances.

- e. Revocation. If at any time after a conditional use permit has been issued, the Board of Adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a conditional use permit, the permit shall be terminated and the operation of such use discontinued. If a conditional use permit is terminated for any reason, it may be reinstated only after a public hearing is held.
- f. Expiration. In any case where a conditional use permit has not been exercised within the time limit set by the Board of Adjustment, or within one year if no specific time limit has been set, then without further action the permit shall be null and void.

"Exercised" as set forth in this subsection shall mean that binding contracts for the construction of the main building shall have been let; or in the absence of contracts, that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewerage, drainage, etc.). When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions set forth in the permit.

- g. Careful record. A careful record of such application and plat, together with a record of the action taken thereon, shall be kept in the office of the zoning enforcement officer.

Section 138. Decision of the Board of Adjustment

Exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or in part, or may modify any order, decision or determination and to that end shall have the power of the official from whom the appeal is taken.

All decisions of the board are subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court no later than 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

Section 139. Duties of the Zoning Enforcement Officer. Board of Adjustment. Courts and Town Council on Matters of Appeal.

It is the intention of this Ordinance that all questions arising in connection with the enforcement of this Ordinance shall be presented to the Zoning Enforcement Officer and that such question shall be presented to the Board of Adjustment only on appeal from the Zoning Enforcement Officer and that

from the decision of the Board of Adjustment recourse shall be had to courts as prescribed by law. It is further the intention of this Ordinance that the duties of the Hudson Board of Commissioners in connection with the Ordinance shall not include the hearing and passing upon disputed question that may arise in connection with the enforcement thereof. The duties of the Town Council in connection with this Ordinance shall be only the duty of considering and passing upon any proposed amendments or repeal of this Ordinance.

ARTICLE XIV

AMENDMENTS AND CHANGES

Section 140. Procedure for Amendments. A petition for an amendment to this Ordinance and to the Official Zoning Map may be initiated by the Town of Hudson, the Planning Board, any department or agency of the Town of Hudson, the owner of any property within the Town, or any interested citizen who can show just cause for an amendment. Applications submitted by individual property owners or interested citizens who are not acting in an official capacity for the Town of Hudson shall comply with the following procedural requirements.

140.1 Application Submission. Any application for an amendment to the Zoning Ordinance shall be filed with the Town Manager at least twenty (20) days prior to the date on which it is to be introduced to the Planning Board. Each petition for an amendment shall be accompanied by a fee of sixty dollars (\$100.00) to help defray the costs of advertising the public hearing required by Article 19 Chapter 160A-364 of the North Carolina General Statutes. If a public hearing is not held, said fee shall be refunded to the petitioner if advertisement has not been published and adjacent property owners have not yet been notified. Notice of the public hearing shall be made in accordance with Section 133 of this Ordinance.

Each application involving a change to the Official Zoning Map shall be signed, be in duplicate, and shall contain at least the following information;

- The applicant's name in full, applicant's address, address or description of the property to be rezoned.
- The applicant's interest in the property and the type of rezoning requested.
- If the proposed change would require a change in the Zoning Map, an accurate diagram of the of the property proposed for rezoning, showing:
 - (a) All property lines with dimensions, including north arrow;
 - (b) Adjoining streets with right-of-ways and paving widths;