

Article XIII ZONING BOARD OF ADJUSTMENT

Section 13.1 Establishment of Zoning Board of Adjustment

A Zoning Board of Adjustment is hereby established. Said Board shall consist of five (5) members; three (3) members of the Board shall be appointed by the City Council and shall be residents of the City of Kings Mountain, one (1) member shall be appointed by the Board of County Commissioners of Cleveland County and one (1) member shall be appointed by the Board of County Commissioners of Gaston County, all for overlapping terms of three (3) years. Initial appointment of the City members shall be as follows: one (1) member for a term of three (3) years, one (1) member for a term of two (2) years, and one (1) member for a term of one (1) year. Initial appointment of the County members shall be as follows: one (1) member for a term of two (2) years, and one (1) member for a term of one (1) year. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board.

Section 13.2 Jurisdiction and Decision of the Zoning Board of Adjustment

The two (2) members appointed to the Board by the Board of County Commissioners as representatives of the extraterritorial area outside the City of Kings Mountain shall be residents of such area and citizens of Cleveland County or Gaston County. Such members shall have equal rights, privileges, and duties with other members of the Board in all matters. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official charges with enforcement of this Ordinance or to decide in favor of the applicant any matter upon which it is required to pass under the zoning ordinance or to affect any variation of such ordinance.

On all appeals, applications and other matters brought before the Board of Adjustment, said Board shall inform in writing all the parties involved of its decisions and the reasons therefor.

Section 13.3 Proceedings of the Zoning Board of Adjustment

The Board of Adjustment shall elect a chairman and a vice-chairman from its members who shall serve for one (1) year or until re-elected or until their successors are elected. The Board shall appoint a secretary, who may be municipal officer, an employee of the City, a member of the Planning and Zoning Board or a member of the Board of Adjustment. The Board shall adopt rules and by-laws in accordance with the provisions of this Ordinance and of 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.

Section 13.4 Appeals, Hearings and Notice

An appeal from the decision of the Zoning Enforcement Officer may be taken by the aggrieved party to the Board of Adjustment. Such appeal shall be taken within forty-five (45) days by filing with the Zoning Enforcement Officer a notice of appeal specifying the grounds thereof. The Zoning Enforcement Officer shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. The Board of Adjustment shall fix a reasonable time for hearing the appeal, give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

Section 13.5 Stay of Proceedings

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Zoning Enforcement Officer, on due cause shown.

Section 13.6 Powers and Duties of the Board of Adjustment

The Zoning Board of Adjustment shall have the following powers and duties:

- (1) 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.
- (2) Zoning Permits with Vested Rights To hear and decide Zoning Permits With Vested Rights in accordance with Section XV of this Ordinance.
- (3) Variances. To authorize upon appeal in specific cases such variances from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

The existence of a non-conforming use of neighboring land, buildings, or structure in the same district or of permitted or non-conforming uses in other districts shall not constitute a reason for variance. The fact that property may be utilized more profitably will not be considered adequate to justify the Board in granting a variance. Such variance may be granted in such individual case of unnecessary hardship where the Board of Adjustment makes the following affirmative findings:

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance.
 - a. If he complies with the provisions of the Ordinance, the property owner can secure no reasonable return from or make no reasonable use of, his property.
 - b. The hardship results from the application of the Ordinance.
 - c. The hardship is suffered by the applicant's property.
 - d. The hardship is not a result of the applicant's own actions.
 - e. The hardship is peculiar to the applicant's property.
2. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.
3. In granting the variance the public safety and welfare have been assured and substantial justice has been done.
4. The variance is not a request for a use not permitted in the district.

(4) Conditional Use Permits

To hear and decide, in particular cases, and subject to appropriate conditions and safeguards, permits for conditional uses as authorized by Article VII. In granting a conditional use permit the Board shall make the following affirmative findings:

- a. The Use requested is among those listed as an eligible Conditional Use in the District in which the subject property is located.
- b. That the Conditional Use will not materially endanger the public health or safety if located where proposed and developed according to the plan as proposed;
- c. That the Conditional Use meets all required conditions and specifications;
- d. That the Conditional Use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and,
- e. That the location and character of the Conditional Use if developed according to the plan as proposed will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the City and its environs.

In granting a Conditional Use Permit, the Board may impose such additional restrictions and requirements upon such Permit as it may deem necessary in order that the purpose and intent of this Ordinance are served, public welfare secured and substantial justice done. If all requirements and conditions are accepted by the applicant, the Board shall authorize the issuance of the Conditional Use Permit, otherwise the Permit shall be denied.

Any Conditional Use Permit so authorized shall be perpetually binding upon the property included in such Permit unless subsequently changed or amended by the Board, as provided for in this Article.

The Board may change or amend any Conditional Use Permit, after a public hearing and subject to the same consideration as provided for in the Article for the original issuance of Conditional Use Permit.

No proposal to amend or change any Conditional Use Permit shall be considered within twelve (12) months of the date of the original authorization of such Permit or within twelve (12) months of hearing of any previous proposal to amend or change any such Permit.

Section 13.7 Appeals from the Board of Adjustment.

Any person or persons, jointly or severally, aggrieved by any decision of the Board, any taxpayer, or any officer, department, board or bureau of the City of Kings Mountain and extraterritorial area may, within thirty (30) days after the filing of the decision in the office of the Board, but not thereafter, present to a court of competent jurisdiction a petition duly verified setting forth that such decision is illegal, in whole or in part, specifying the ground of illegality, whereupon such decision of said Board shall be subject to review by certiorari as provided by law.

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