

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 therefore.

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 one (1) year or until re-elected or until their successors are elected. The Board shall appoint a secretary, who may be a 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 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 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 a variance may be granted in individual cases of unnecessary hardship where the Board of Adjustment makes the following affirmative findings (with a minimum of four affirmative votes on all favorable motions).

1. Unnecessary hardships 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.
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 from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. 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.

No change in permitted uses may be authorized by variance.

Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

To reach these findings, the Board of Adjustment considers evidence to resolve the following conceptual statements typically discussed in quasi-judicial review of land use variance requests:

- The likelihood that if the variance is not granted the unnecessary hardship includes all economic use or benefit from the property and evidence supporting such was established by competent financial evidence.
- The likelihood the unnecessary hardship is not suffered by people because of unique personal or family hardships (which are irrelevant) rather than the subject land itself. Since the variance runs with the land unique personal or family hardships are irrelevant.
- The likelihood that if the variance is not granted, substantial uses of the subject property are not possible, resulting in unnecessary hardships not intended by an ordinance intended to create and regulate substantial uses.
- The likelihood that without the variance the hardships suffered by area neighbors and the hardships suffered by the applicant are not similar.
- The likelihood the variance will not be providing relief from self-created hardships.
- The likelihood that granting of a variance will not result in advantages or special privileges to the applicant or property owner that this ordinance denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief.
- The likelihood the variance will not substantially interfere with or injure the rights of others whose property would be affected by allowance of the variance.
- The likelihood that the variance will not result in negative public benefits such as health, safety, and welfare diminutions that are greater than the harm suffered by the applicant if the variance is not granted.
- The likelihood there will not be detraction from the character of the neighborhood or from the purpose and intent of the section of ordinance from which the deviation is sought.
- The likelihood that the variance is no more than the minimum variance needed to provide relief from unnecessary hardships.
- The likelihood the variance does not create inconsistencies with the city comprehensive land use plans and transportation plans.
- The likelihood that the existence of a non-conforming use of neighboring lands, buildings, or structures within the same districts does not constitute the reason for variance.

- The likelihood that the variance will not result in an expansion of a nonconforming situation.
- The fact that property may be used more profitably cannot be considered adequate to justify the Board in granting a variance.

In granting a variance the Board of Adjustment may impose on any variance conditions that are reasonably related to the variance.

(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 with 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 the ground of illegality, whereupon such decision of said Board shall be subject to review by certiorari as provided by law.