

Article 3. ADMINISTRATIVE MECHANISMS

PART I. BOARD OF ADJUSTMENT

Section 3-1: Board of Adjustment Created

As of the effective date of this Zoning Ordinance, the Board of Adjustment is hereby created. The Board of Adjustment shall consist of ten (10) members and two (2) alternate members. Eight (8) members and one (1) alternate member shall be citizens and residents of the town and shall be appointed by the town Board of Commissioners. Two (2) members and one (1) alternate member shall be citizens and residents of the extraterritorial jurisdiction of the town as described pursuant to G.S. § 160A-360 et. seq. and shall be appointed by the county Board of Commissioners. Alternate members shall not be entitled to vote on matters before the Board except when a regular Board member is absent from a duly called meeting. In that situation, the alternate shall have the same privileges as the regular members and may count for quorum purposes and vote if a regular member is absent. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term.

Section 3-2: Officers, Rules, and Regulations

The Board shall elect such officers and adopt such rules and regulations for its own governance as it deems necessary to carry out the provisions of this Article.

Section 3-3: Conduct of Hearings

All hearings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member on each question, and the absence or failure of any member to vote.

Section 3-4: Disposition of Appeals

The final disposition of each appeal shall be recorded by resolution indicating the reasons of the Board for the decisions, based on findings of fact and conclusions of law, all of which shall be a public record.

Section 3-5: Appeals from Decisions of the Zoning Administrator

An appeal from the decisions of the Zoning Administrator may be taken to the Board by any persons aggrieved, or by any officer, department, board, or bureau of the Town affected by such decision. Such appeal shall be taken within ten (10) days of the date of the decision by filing with the Zoning Administrator and with the Board a notice of appeal, specifying the

grounds therefore. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

Section 3-6: Appeal Stays All Proceedings

An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board after the notice of appeal shall have been filed with him, by reason of facts stated in the certificate, that a stay would, in his opinion, cause imminent peril to life or property, or because the violation charged is transitory in nature and a stay would interfere with enforcement of the Ordinance. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a Court of Record on application, on notice to the Zoning Administrator and on due cause shown.

Section 3-7: Power of the Board of Adjustment

The Board shall have the following powers:

- (A) *Appeals.* To hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination made by the Zoning Administrator. The concurring vote of four-fifths (4/5) of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, to decide in favor of the applicant any matter which it is required to pass under the Zoning Ordinance or to effect any variation of the Ordinance.

- (B) *Variance.* To authorize by a concurring vote of four-fifths (4/5) of the members of the Board upon appeal in specific cases such variances from the terms of this 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 result in undue hardship, and so that the spirit of this Ordinance shall be observed and substantial justice done.

In considering all proposed variances to this Ordinance, the Board shall, before making any finding in a specific case, first determine that the proposed variance will not allow the establishment of a use not otherwise permitted in the district by this Ordinance; extend in area or expand a non-conforming uses of land; change the district boundaries shown on the zoning map; impair any adequate supply of light and air to adjacent property; materially increase the public danger of fire; materially diminish or impair established property values within the surrounding area; or in any other respect impair the public health, safety, morals, and general welfare.

In granting a variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this Ordinance.

Before a variance is granted, it shall be shown that special circumstances attached to the property which do not generally apply to other property in the neighborhood. A variance may be granted only when the practical difficulty or undue hardship complained of is due to the particular characteristics of the property and not the general conditions of the neighborhood which may reflect an undue stringency of the Ordinance itself. A hardship peculiar to the applicant, as distinguished from others affected by the general rule, must be shown. The fact that the property may be utilized more profitably will not be considered adequate reason for the Board to grant a variance.

A variance from the terms of this Ordinance shall not be granted by the Board unless and until the following findings are made:

- (1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ayden Zoning 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 the 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 the granting of the variance, the public safety and welfare have been assured and substantial justice has been done.

PART II. ZONING ADMINISTRATOR

Section 3-8: Zoning Administrator

The Planning Director is appointed as the Zoning Administrator and has the primary responsibility for administering and enforcing this Ordinance. Other Town staff members may be appointed by the Planning Director to assist him in these duties.

PART III. BOARD OF COMMISSIONERS

Section 3-9: Powers and Duties

- (A) The Board of Commissioners, in considering conditional use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Articles 12 and 17 of this Ordinance.
- (B) In considering proposed changes in the text of this Ordinance or in the zoning map, the Board of Commissioners acts in its legislative capacity and must proceed in accordance with the requirements of Article 20.
- (C) Unless otherwise specifically provided in this Ordinance, in acting upon conditional use permit requests or in considering amendments to this Ordinance or the zoning map, the Board of Commissioners shall follow the regular voting and other requirements as set forth in other provisions of the Town code.