

**ARTICLE XII  
BOARD OF ZONING APPEALS**

**1200.     ESTABLISHMENT**

A Board of Zoning Appeals is hereby established. Said Board shall consist of five (5) members (amended 01/06), appointed by Town Council. The members shall serve for overlapping terms of four (4) years or thereafter until their successors are appointed. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. The members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board. None of the members shall hold any other public office or position in the Town.

**1201.     PROCEEDINGS**

The Board shall adopt rules necessary to the conduct of its affairs in accordance with the provisions of this Ordinance. 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. All meetings shall be open to the public.

The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the Zoning Administrator and shall be public record.

**1202.     DECISIONS**

The concurring vote of three (3) members of the Board of Zoning Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to affect any variation of this Ordinance. On all appeals, applications and other matters brought before the Board of Zoning Appeals, the Board shall inform in writing all the parties involved of its decisions and the reasons thereof.

**1203.     POWERS AND DUTIES**

In exercising its powers, the Board of Zoning Appeals may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or in part, or may modify the order, requirements, decisions, or determinations, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The Board, in the

execution of the duties for which appointed, may subpoena witnesses and in case of contempt, may certify such fact to the Circuit Court having jurisdiction. The Board of Zoning Appeals shall have the following powers and duties.

### **1203.1**

#### **ADMINISTRATIVE REVIEW**

Appeals to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the Town affected by any decision of the Zoning Administrator. Such appeal shall be taken within thirty (30) days by filing with the Zoning Administrator from whom the appeal is taken and with the Board of Zoning Appeals a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. The Board of Zoning Appeals 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.

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

### **1203.2**

#### **VARIANCE**

#### **1203.2.1**

##### **DUTIES OF THE BOARD**

(1) The Board of Zoning Appeals shall have the power to authorize 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 would result in unnecessary hardship, so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the Board of Zoning Appeals that:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;

- (b) The application of the Ordinance on this particular piece of property would create an unnecessary hardship;
  - (c) Such conditions are peculiar to the particular piece of property involved; and
  - (d) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the Ordinance or Comprehensive Plan; provided, however, that no variance may be granted for a use of land, building, or structure that is prohibited in a given district by the Ordinance.
- (2) With respect to uses of land, buildings and other structures, this Ordinance is declared to be a definition of the public interest by Town Council, and the spirit of this Ordinance will not be observed by a variance which permits a use not generally or by special exception permitted in the district involved or any use expressly or by implication prohibited by the terms of this Ordinance in said district. Therefore, under no circumstances shall the Board of Zoning Appeals grant a variance to permit a use not generally or by special exception permitted in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.
- (3) No nonconforming use of neighboring lands, structures, or structures in the district, and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.
- (4) In granting any variance, the Board of Zoning Appeals may prescribe conditions and safeguards in conformity with this Ordinance.

## **1203.2.2**

### **PROCEDURES**

- (1) A written application for a variance shall be submitted demonstrating:
- (a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
  - (b) That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
  - (c) That the special conditions and circumstances do not result from the actions of the applicant;

- (d) That granting the variance requested would not cause substantial detriment to the public good or impair the purposes and intent of the Ordinance or the Comprehensive Plan; and
  - (e) That the variance, if granted, would not permit a use not generally or by special exception permitted in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.
2. Notice of public hearing:
- (a) shall be posted on the property for which a variance is sought, and
  - (b) shall be published at least fifteen (15) days prior to the public hearing in a newspaper of general circulation in the Town of Summerton.
- (3) The hearing shall be held. Any party may appear in person, or by agent or attorney.
  - (4) The Board of Zoning Appeals shall make findings that the requirements of Section 1103.2.2 (1) have been met by the applicant.
  - (5) The Board of Zoning Appeals shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
  - (6) The Board of Zoning Appeals shall further make a finding that the granting of the variance will be in harmony with the general purposes and intent of this Ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
  - (7) The Board of Zoning Appeals may prescribe a time limit within which the action for which the variance is requested shall be begun or completed, or both.

### **1203.2.3**

#### **EFFECT OF FAILURE TO MEET CONDITIONS**

- (1) Violation of conditions and safeguards prescribed in conformity with this Ordinance when made a part of the terms under which the variance is granted shall be deemed as violations of this Ordinance, punishable under penalties established herein.
- (2) Failure to begin or complete, or begin and complete, an action for which a variance is granted, within the time limit specified, when such time limit is made a part of the terms under which the variance is granted shall void the variance.

**1204. SPECIAL EXCEPTIONS**

**1204.1 DUTIES OF THE BOARD**

- (1) To hear and decide only such applications for special exceptions as the Zoning Board of Appeals is specifically authorized to pass upon by the terms of this Ordinance.
- (2) To decide such questions as are involved in determining whether special exceptions shall be granted.
- (3) To prescribe appropriate conditions and safeguards in conformity with the Ordinance.
- (4) To deny special exceptions when not in harmony with the intent and purpose of this Ordinance.

**1204.2 PROCEDURES**

- (1) A written application for a special exception shall be submitted indicating the section of this Ordinance under which the special exception is sought and stating the grounds on which it is requested.
- (2) Notice of public hearing shall be posted on the property for which special exception is sought and shall be published at least fifteen (15) days prior to the public hearing in a newspaper of general circulation in the Town of Summerton.
- (3) The public hearing shall be held. Any party may appear in person, or by agent or attorney.
- (4) The Zoning Board of Appeals shall make a finding that it is empowered under the section of this Ordinance described in the application to grant the special exception, and that the granting of the special exception will not adversely affect the public interest.
- (5) The Zoning Board of Appeals may prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both.

**1204.3. EFFECT OF FAILURE TO MEET CONDITIONS**

- (1) Violation of conditions or safeguards prescribed in conformity with this Ordinance, when made a part of the terms under which the special exception is granted, shall be deemed a violation of this Ordinance, punishable under penalties established herein.
- (2) Failure to begin or complete, or begin and complete, any action for which a special exception is required, within the time limit specified when such time limit is made a part of the terms under which the special exception is granted, shall void the special exception.

**1204.5. DECISION OF THE BOARD**

The concurring vote of three (3) members of the Board shall be necessary to grant a special exception. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if

absent and failing to vote, indicating such fact, and shall keep records of its examination and other official actions, all of which shall immediately be filed in the office of the Board and shall be made a public record.

1205.

**APPEALS FROM THE DECISIONS OF THE ZONING BOARD OF ADJUSTMENTS**

Any person who may have substantial interest in any decision of the Board of Zoning Appeals may appeal any decision of the Board to the Circuit Court in and for the County of Clarendon, filing with the Clerk of such Court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within thirty (30) days after the decision of the Board is rendered.