

## **ARTICLE XIV**

### **BOARD OF ADJUSTMENT**

#### **SECTION 1            APPOINTMENT, TERM OF OFFICE AND REMOVAL.**

**Paragraph 1**            A board of adjustment is hereby established which shall consist of five (5) residents of the Town, appointed by the Council, who shall serve without pay.

**Paragraph 2**            The term of each appointment shall be for five (5) years. Each member may be appointed for as many terms as determined by the Town Council.

**Paragraph 3**            No new member shall hold any other Town or County Office.

**Paragraph 4**            Vacancies occurring other than through expiration of the term shall be filled by the Town Council for the remaining portion of the term.

#### **SECTION 2            THE TERM OF ALL MEMBERS.**

**Paragraph 1**            Shall extend until their successors are qualified, provided, however, three (3) successive unexcused or unexplained absences from any regular or special meeting shall be grounds for termination at the will and pleasure of the appointing authority without the necessity of a hearing or notice, and such action shall be final. Members of the Board may, after a public hearing, be removed by the Council for inefficiency, neglect of duty or malfeasance in office.

**Paragraph 2**            The Council shall file a written statement of the reasons for the removal.

#### **SECTION 3            COMPENSATION.**

**Paragraph 1**            All members shall serve without pay. However, members may be reimbursed for actual expenses incurred in connection with their duties upon authorization or ratification by the Board and approval of such expenditures by the Council.

#### **SECTION 4            ORGANIZATION, MEETINGS, RULES AND REGULATIONS.**

**Paragraph 1**            The Board shall elect a Chairman and Vice Chairman from among its own members, who shall serve in this capacity for one (1) year and until their successors are elected and qualified.

**Paragraph 2**            The Vice Chairman shall perform the duties of the Chairman in the Chairman's absence or disability.

**Paragraph 3** Vacancies created by any cause shall be filled for the remaining term by a new election.

**Paragraph 4** The Board shall adopt rules and regulations for the conduct of its own business, hearings and procedure.

**Paragraph 5** The Board shall meet regularly at such times and at such place as shall be prescribed by its rules, but not less frequently than three (3) times per year.

**Paragraph 6** All meetings of the Board shall be open to the public.

**Paragraph 7** No change shall be made in regular meeting times or place without a published seven (7) day notice.

**Paragraph 8** In addition, any three (3) members of the Board may make written request to the Chairman for a special meeting and if such meeting is not called, such members may call a special meeting in such manner as may be provided in the Board rules.

**Paragraph 9** The Council shall appoint a secretary who shall keep minutes of the Board's proceedings, showing the action of the Board and the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its official actions, all of which shall be immediately filed in the office of the Town Clerk and shall then be a public record.

**Paragraph 10** The presence of three (3) members shall constitute a quorum.

**Paragraph 11** The Board shall act by motion.

**Paragraph 12** The affirmative vote of the majority of members voting shall be required for passage of any matter before the Board.

**Paragraph 13** A member may abstain from voting only upon a declaration that he has a conflict of interest, in which case such member shall not take part in the deliberations on the matter in question.

## **SECTION 5 ASSISTANCE FROM TOWN DEPARTMENTS.**

**Paragraph 1** The Board may call on the Town departments for assistance in the performance of its duties, and it shall be the duty of such departments to render assistance to the Board as may be reasonably required.

## **SECTION 6 APPEALS, NOTICES AND HEARINGS.**

**Paragraph 1** Appeals to the Board concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by an officer or department of the Town affected by any decision of the Zoning Administrator.

**Paragraph 2** An aggrieved person shall be construed to be one having a direct interest in the property affected, such as the owner, mortgagee or lessee.

**Paragraph 3** Applications for any matter to be considered by the Board shall be filed with the Zoning Administrator on forms furnished for the purpose within thirty (30) days after the action appealed from, and shall specify the grounds thereof.

**Paragraph 4** The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from is taken.

**Paragraph 5** The appeal stays all proceedings in the matter appealed from, unless the Zoning Administrator certifies to the Board that, by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property.

A. In such case, proceedings shall not be stayed, except by a restraining order granted by the Board, or by a court of record on application and notice to the Zoning Administrator.

**Paragraph 6** The Board shall fix a reasonable time for hearing the appeal, and shall give notice of hearing by both publication in a newspaper of general circulation in accordance with and posting the notice in conspicuous placed on the property affected.

A. It shall not be the responsibility of the Town to maintain the posting once erected.

B. The appellant, the Zoning Administrator and the parties in the interest shall receive notice of hearing.

**Paragraph 7** Any party may appear at the hearing in person or by an agent or by an attorney.

**Paragraph 8** Parties in interest shall have the right to present their case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination of witnesses as may be required for a full and true disclosure of the facts; provided that:

A. The submission of documentary evidence shall not, by reason of its written form, prejudice the interest of any party.

**Paragraph 9** The Board shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence, and in furtherance of this policy, may limit cross-examination.

**Paragraph 10** A petition to the Board signed by persons not parties in interest to an appeal, as defined herein, shall not be considered documentary evidence and shall have no bearing on the Board's decision, nor shall any person presenting such petition be considered the agent of its signers.

## **SECTION 7 POWERS, DUTIES AND LIMITATIONS OF THE BOARD.**

**Paragraph 1** Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the Zoning Administrator in the enforcement of this Ordinance.

**Paragraph 2** Hear and decide appeals for variances from the terms of the zoning Ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location or surroundings the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of same classification in the same zoning district.

**Paragraph 3** Any variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

**Paragraph 4** Reverse or affirm, wholly or partly, or modify the order, requirement or decision of the Zoning Administrator appealed from and make such order, requirement, decision or determination as necessary.

## **SECTION 8 THE BOARD SHALL NOT:**

**Paragraph 1** Make any changes in the uses permitted in any zoning district, or make any changes in the terms of this zoning ordinance provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.

**Paragraph 2** Grant variance if the special circumstances applicable to the property are self-imposed by the property owner.

**Paragraph 3** A variance shall not be granted by the Board unless and until:

A. A written application for variance has been submitted demonstrating: 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 zoning district.

B. That literal interpretation of the provisions of this Ordinance would deprive the appellant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Ordinance.

C. That the alleged hardship caused by literal interpretation of the provisions of this Ordinance includes more than personal inconvenience and financial hardship, and is not the result of action by the appellant.

D. That granting the variance will not confer upon the appellant any special privilege that is denied by this ordinance to other land, structures or buildings in the same zoning district.

E. That Granting the variance will not interfere with or substantially or permanently injure the appropriate use of adjacent conforming properties in the same zoning district.

F. A hearing has been held in accordance with requirements of this section.

G. The Board finds that the reasons set forth in the appeal 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.

H. The Board finds that granting of the variance will be in harmony with the general purpose of intent of this ordinance, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

## **SECTION 9 CONDITIONS OF APPROVAL.**

**Paragraph 1** In granting a variance the Board may impose such conditions and safeguards as are appropriate to insure that the purpose of intent of this ordinance will be fulfilled.

**Paragraph 2** Failure to comply with such conditions and safeguards, when made a part of the terms under which a variance is granted shall be deemed a violation of this ordinance.

**Paragraph 3** No violations of this ordinance by neighboring lands, structures or buildings, in the same zoning district, and no permitted use of lands, structures or buildings in other zoning districts, shall be considered grounds for granting a variance.

**Paragraph 4** Every variance granted shall be personal to the appellant therefore and shall be transferable and shall run with the land only after completion of any authorized structure or structures.

**Paragraph 5** Nothing herein contained shall be construed to empower the Board to change the terms of this ordinance, to authorize uses which violate any other Town ordinance, to affect changes in the Zoning Map, or to add to the uses permitted in any zoning district.

**Paragraph 6** Every decision of the Board shall be based upon finding of fact, and every finding of fact shall be supported in the record of its proceedings.

**Paragraph 7** The conditions required by this ordinance to exist on any matter upon which the Board is authorized to pass under this ordinance shall be construed as limitations on the power of the Board to act.

**Paragraph 8** A mere finding or recitation of the enumerated conditions, unaccompanied by the findings of specific fact, shall not be deemed finds of fact, and shall not be deemed in compliance with this ordinance.

## **SECTION 10 APPEALS FROM THE BOARDS.**

**Paragraph 1** The decision of the Board shall be final; provided, however, that any person aggrieved by a decision of the Board, or a taxpayer or a municipal officer may, at any time within thirty (30) days after the filing of the decision in the office of the Board, petition the court for a writ of certiorari for review of the Board's decision.

**Paragraph 2** Allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board, and for good cause shown, grant a restraining order, and on final hearing may reverse or affirm, wholly or partly, or may modify the decision reviewed.

## **SECTION 11 FEES.**

**Paragraph 1** Upon filing an application for appeal, the appellant shall pay filing fee to the general fund of the Town in accordance with a schedule established by resolution of the Council, and posted in the office of the Zoning Administrator.

**Paragraph 2** No part of any such fee shall be returnable after an application is filed and the fee is paid.

**Paragraph 3** In the case of an appeal for a variance to more than one provision of this ordinance, the filing fee shall equal the total amount chargeable for all provisions as prescribed by the fee schedule.

**Paragraph 4** Payment of the filing fee shall be waived when the appellant is the Zoning Administrator or any other officer or agency of the Town acting in an official capacity.