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**3.0 APPEALS, VARIANCES, INTERPRETATIONS, AND HEARING PROCEDURES**

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## 3.1 APPEALS, VARIANCES AND INTERPRETATIONS

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### 3.1.1 APPEALS

Any person aggrieved may appeal any order or decision of the Administrator, Building Inspector or his designee to the Board of Adjustment or the Watershed Review Board, if applicable. An appeal is taken by filing with the Zoning Administrator and the Board of Adjustment a written notice of appeal specifying the reasons for the appeal. Procedures for applying to the Watershed "Review Board are set forth in Section 5.8.4.7 of this Ordinance. A notice of appeal shall be considered filed with the Administrator and the Board of Adjustment when delivered to the Planning and Community Development Department. The date and time of the filing shall be entered on the notice by the planning staff. An appeal must be taken within thirty days after the date of the decision or order appealed from.

Whenever an appeal is filed, the Administrator shall transmit forthwith to the Board of Adjustment all the papers constituting the record relating to the action appealed from.

An appeal stays all actions by the Administrator seeking enforcement of or compliance with the order or decision appealed from, unless the Administrator certifies to the Board of Adjustment that a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board of Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the Administrator.

The Board of Adjustment may reverse, affirm (wholly or partly) or may modify the order, requirement, decision or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board shall have all the powers of the officer from whom the appeal is taken.

A fee as established by resolution of the City Council shall accompany each Board of Adjustment appeal. No appeal shall be accepted and no public hearing scheduled until the necessary fees have been paid. No fee pursuant to this paragraph shall be refunded.

### 3.1.2 VARIANCES

An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator in the Planning and Community Development Department. Applications shall be handled in the same manner as applications for special use permits in conformity with the provisions in Sections 2.2.3 (Who may submit permit applications), 2.2.5 (Applications to be complete), and 2.2.10 (Recommendations on special use permit applications). Applications for variances from the Watershed Protection Permit requirements shall be filed with the Watershed Review Board in the manner set forth in Section 5.8.4.7 of this Ordinance.

A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the Ordinance would result in practical difficulties or unnecessary hardships for the applicant and that by granting the variance, the spirit of the Ordinance is observed, public safety and welfare secured and substantial justice done. It may reach these conclusions if it finds that all of the following have been met:

1. If the applicant complies strictly with the provisions of the Ordinance, he can make no reasonable use of his property;
2. The hardship relates to the applicant's land, rather than personal circumstances;
3. The hardship is peculiar to the specific property involved;
4. The hardship is not the result of the applicant's own actions; and

5. The variance will neither result in the extension of a nonconforming situation in violation of Section 5.6 (Nonconforming situations) nor authorize the initiation of a nonconforming use of the land.

In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property will be as compatible as practicable with the surrounding properties.

A variance may be issued for an indefinite duration or for a specified duration.

The nature of the variance and any conditions attached to it shall be entered on the face of the building permit, or the permit may simply note the issuance of the variance and refer to the written record for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

### **3.1.3 VARIANCES LIMITED**

A variance is authorized only for height, area and size of a structure or size of setbacks and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.

### **3.1.4 INTERPRETATIONS**

The Board of Adjustment is authorized to interpret the Zoning Map and to pass judgment upon disputed questions of district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Administrator, they shall be processed in accordance with Section 3.1.1 (Appeals).

An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application in the office of the Administrator in the Planning and Community Development Department. The application shall contain sufficient information to enable the Board to make the necessary interpretation.

Where uncertainty exists as to the boundary of districts as shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams or railroads shall be construed to follow such centerlines;
2. Boundaries indicated as approximately following lot lines, City limits or extraterritorial jurisdiction boundary lines shall be construed as following such lines, limits or boundaries;
3. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following the new shoreline;
4. Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map; and
5. Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of the vacation or abandonment.

### **3.1.5 BURDEN OF PROOF IN APPEALS AND VARIANCES**

When an appeal is taken to the Board of Adjustment in accordance with Section 3.1.1 (Appeals), the Administrator shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Section 3.1.2 (Variances), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

### **3.1.6 BOARD ACTION ON APPEALS AND VARIANCES**

With respect to appeals, a motion to reverse, affirm or modify the order, requirement, decision or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption (See Section 8.2 - Board of Adjustment), then the decision appealed from shall be upheld.

Before granting a variance, the Board must take a separate vote to affirm by a four-fifths majority on each of the five required findings stated in Section 3.1.2 (Variances). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in Section 3.1.2 (Variances) shall include a statement of the specific reasons or findings of fact supporting such a motion.

A motion to deny a variance may be made on the basis that any one or more of the five criteria set forth in Section 3.1.2 (Variances) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board's decision if supported by a simple majority of the Board's membership.

### **3.1.7 JUDICIAL REVIEW**

Every decision of the Board of Adjustment shall be subject to review by the Superior Court of Wayne County by proceedings in the nature of certiorari.

The petition for the writ of certiorari must be filed with the Wayne County Clerk of the Court within thirty days after the following occurs.

1. A written copy of the Board's decision has been filed in the office of the Planning and Community Development Department; and
2. A written copy of the Board's decision has been delivered by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

A copy of the writ of certiorari shall be served upon the City of Goldsboro.

### **3.1.8 SECTION RESERVED**

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## 3.2 QUASI- JUDICIAL HEARING PROCEDURES

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### 3.2.1 HEARING REQUIRED ON APPLICATIONS AND APPEALS

Before making a decision on an appeal, or an application for a variance, special use permit, conditional use permit or petition from the planning staff to revoke a special use permit or conditional use permit, the Board of Adjustment, Watershed Review Board, or City Council, as the case may be, shall hold a quasi-judicial public hearing on the application or appeal.

The hearing shall be open to the public and all persons shall be given an opportunity to present evidence, oral or written, offer sworn testimony and direct questions to the issuing authority regarding other evidence or testimony. The Board of Adjustment, Watershed Review Board, or City Council may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross examination of witnesses so that the matter at issue may be heard and decided without undue delay.

The issuing authority hearing an appeal or application may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point the final decision is made. No further notice of a continued hearing needs to be published unless a period of six weeks or more elapses between hearing dates.

### 3.2.2 NOTICE OF HEARING

The Administrator shall give notice of any hearing required by Section 3.2.1 (above) as follows:

1. Notice of the public hearing shall be published once a week for two successive weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten days or more than twenty-five days before the date of the hearing. In computing this period, the date of publication shall not be counted, but the date of the hearing shall be.
2. Notice shall be given to the appellant or applicant and any other person who makes a written request for such by mailing to such persons a written notice not less than ten days before the hearing.
3. Notice shall be given to neighboring property owners by mailing a written notice not less than ten days before the hearing to those persons who have listed for taxation real property any portion of which is located within one hundred feet of the lot that is the subject of the appeal or application.
4. The notice required by this Section shall set the date, time and place of the hearing, reasonably identify the lot that is the subject of the application or appeal and give a brief description of the action requested or proposed.

### 3.2.3 EVIDENCE

All findings and conclusions necessary to the issuance or denial of the requested permit, variance or appeal shall be based upon sworn testimony and admitted evidence. Competent, substantial and material evidence (evidence admissible in a court of law) shall be required. Findings cannot be based on conjecture, assumptions or hearsay evidence alone. Opinion evidence, unless offered by a properly qualified expert, is generally not allowed and cannot be the basis for critical findings.

Members of the issuing or hearing authority are not allowed to discuss the case or gather evidence outside of the hearing. Only the facts presented to the full body at the hearing may be considered.

Exhibits including, photographs, documents, maps etc. may be presented at the hearing. Any exhibit presented becomes part of the record and must be retained by the issuing authority.

### **3.2.4 MODIFICATIONS OF APPLICATION AT HEARING**

In response to questions or comments by persons appearing at the hearing or to suggestions by the City Council, Planning Commission, Board of Adjustment or City Staff, the applicant may agree to modify his application, including the plans and specifications submitted.

Unless such modifications are so substantial or extensive that the issuing authority cannot reasonably be expected to perceive the nature and impact of the changes without revised plan review, the issuing authority may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to and accepted by the planning staff.

### **3.2.5 RECORD**

A record shall be made of all hearings required by Section 3.2.1 (Hearing required on applications and appeals) and such recordings shall be kept as provided by state law. Minutes, identifying witnesses and summarizing their testimony, shall also be kept of all such proceedings, but a transcript need not be made. All documentary evidence and exhibits presented at a hearing shall be made a part of the record of the proceedings.

### **3.2.6 WRITTEN DECISION**

Any decision made by the Board of Adjustment, Watershed Review Board, or City Council regarding an appeal, variance or issuance or revocation of a conditional use permit or special use permit shall be made in writing and served upon the applicant, appellate or other persons who make a written request for a copy. In addition to a statement of the issuing authority's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the issuing authority's findings and conclusions, as well as supporting facts or reasons, whenever this Ordinance requires the same as a prerequisite to taking action.

### **3.2.7 JUDICIAL REVIEW**

Every decision of the City Council granting, denying or revoking a conditional use permit and every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Wayne County by proceedings in the nature of certiorari.

The petition for the writ of certiorari must be filed with the Wayne County Clerk of the Court within thirty days after the following occurs:

1. A written copy of the issuing authority's decision has been filed in the office of the Planning and Community Development Department; and
2. A written copy of the issuing authority's decision has been delivered by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

A copy of the writ of certiorari shall be served upon the City of Goldsboro.

### **3.2.8 SECTION RESERVED**

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### 3.3 LEGISLATIVE HEARING PROCEDURES

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#### 3.3.1 HEARING REQUIRED ON APPLICATIONS AND APPEALS

Before making a decision on a rezoning application, conditional district application or the amendment to or adoption/peal of any part of this Ordinance, the City Council and/or Planning Commission shall hold a public hearing on the issue.

The hearing shall be open to the public and all persons shall be given an opportunity to speak. Broad public comment is encouraged. The Council may place reasonable and equitable limitations on speakers so that the matter at issue may be heard and decided without undue delay.

The Council may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point the final decision is made. No further notice of a continued hearing need be published as long as the date, time and location of the continued hearing is announced prior to the close of the initial hearing.

#### 3.3.2 NOTICE OF HEARING

The Administrator shall give notice of any hearing required by Section 3.3.1 (above) as follows:

1. Notice of the public hearing shall be published once a week for two successive weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten days or more than twenty-five days before the date of the hearing. In computing this period, the date of publication shall not be counted, but the date of the hearing shall be.
2. Notice of a rezoning or conditional district rezoning public hearing shall be given to neighboring property owners by mailing a written notice not less than ten days but no more than twenty-five days before the hearing to those persons who have listed for taxation real property any portion of which is within 100 feet of the lot that is the subject of the petition.
3. If a rezoning or conditional district rezoning directly affects more than fifty properties owned by at least fifty different property owners, notice shall be given through the requirements of GS 160A-384(b).
4. The notice required by this Section shall set the date, time and place of the hearing, reasonably identify the lot that is the subject of the petition and give a brief description of the action requested or proposed.

#### 3.3.3 EVIDENCE

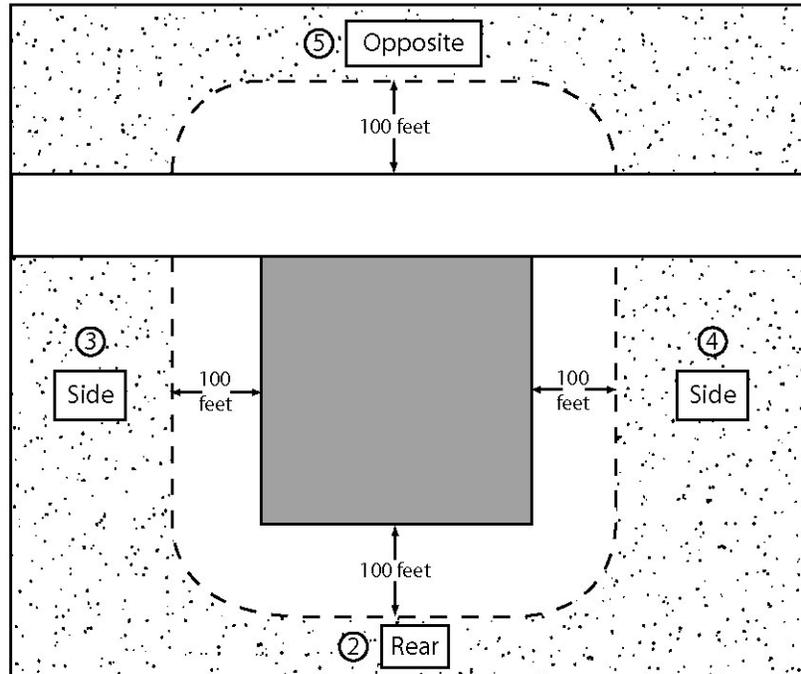
No rules of evidence are required for a legislative hearing. Members of the Council are permitted to discuss the case and gather information outside of the hearing. Exhibits including, photographs, documents, maps etc. may be presented at the hearing. Any exhibit presented becomes part of the record and must be retained by the issuing authority.

#### 3.3.4 PROTEST PETITIONS

A rezoning or other Ordinance amendment may be contested by the filing of a valid protest petition. For a protest petition to be valid, it must:

1. Be signed by the owners of either twenty percent (20%) or more of the area included in the proposed change or five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel.

Note: The twenty percent or five percent requirement refers to the land area, not the number of owners. For example if a single person owns twenty percent of the land in one of the qualifying areas, that individual can file a valid protest petition.



2. Be in the form of a written petition actually bearing the signatures of the required property owners and stating that the signers do protest the proposed rezoning or Ordinance amendment;
3. Be received by the City Clerk at least two full working days before the date established for the public hearing on the proposed rezoning; and
4. Be on a form provided by the City Clerk and contain all the information requested on this form.

If a petition opposing a rezoning or other Ordinance amendment is filed in accordance with the above requirements, then the proposed change may only be adopted by a favorable vote of three-fourths of the City Council membership.

In accordance with GS 160A-385(a), protest petitions shall not apply to:

1. Any amendment, which initially zones property added to the territorial coverage of the Ordinance because of annexation or otherwise.
2. Any amendment to an adopted conditional district (CD), if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of a nonresidential development, or reduce the size of any buffers or screening approved for the conditional district.

### 3.3.5 MODIFICATION OF APPLICATION AT HEARING

In response to questions or comments by persons appearing at the hearing or to suggestions by the City Council, Planning Commission or City Staff, the applicant may agree to modify his application, including the plans and specifications submitted.

Unless such modifications are so substantial or extensive that the Council cannot reasonably be expected to perceive the nature and impact of the changes without revised plan review, the issuing authority may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to and accepted by the planning staff.

The City Council shall not permit an amendment to an application that would delete a portion of land sufficient to change the voting requirements for approval of an application when a valid protest petition has been filed.

### **3.3.6 RECORD**

A record shall be made of all hearings, such recordings shall be kept as provided by state law. Minutes, identifying speakers and summarizing their testimony, shall also be kept of all such proceedings, but a transcript need not be made. Documentary evidence and exhibits presented at a hearing may be made a part of the record of the proceedings.

### **3.3.7 WRITTEN DECISION**

Any decision made by the City Council regarding a rezoning or Ordinance amendment shall become part of the public record.

### **3.3.8 JUDICIAL REVIEW**

Every decision of the City Council granting, denying or revoking a legislative rezoning or text amendment shall be subject to review by the Superior Court of Wayne County by proceedings in the nature of certiorari.

The petition for the writ of certiorari must be filed with the Wayne County Clerk of the Court within thirty days after the following occurs.

1. A written copy of the Council's decision has been filed in the office of the Planning and Community Development Department; and
2. A written copy of the Council's decision has been delivered by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

A copy of the writ of certiorari shall be served upon the City of Goldsboro.

### **3.3.9 SECTION RESERVED**