

Petition No. 2014-87  
Petitioner: Charlotte-Mecklenburg Planning Department

OCT 20 2014

**AN ORDINANCE AMENDING APPENDIX A  
OF THE CITY CODE –ZONING ORDINANCE**

**ORDINANCE NO. 5494**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE:**

Section 1. Appendix A, "Zoning" of the Code of the City of Charlotte is hereby amended as follows:

A. CHAPTER 3: BOARD OF ADJUSTMENT

1. Amend Section 3.301, "Powers and duties", subsection (1) by adding "or by his or her authorized designee" to the sentence to clarify that appeals can be made to any specific order, requirement, decision, or determination made by the Zoning Administrator, or designee. This also matches the language used in Section 5.101, subsection (1). All remaining subsections shall remain unchanged. The revised subsection shall read as follows:

**Section 3.301. Powers and duties.**

The Zoning Board of Adjustment shall have the following powers and duties to be carried out in accordance with these regulations which include, but are not limited to, the following:

- (1) To hear and decide appeals from and to review any specific order, requirement, decision, or determination made under these regulations by the Zoning Administrator, or by his or her authorized designee.
2. Amend Section 3.303, "Meetings, hearings and procedures", subsection (5) by updating the language to match that of the modernized language adopted by the State. The revised subsection shall read as follows:
  - (5) ~~The concurring vote of majority of the members of the Board of Adjustment is required to reverse or modify any other, requirement, decision or determination made by the Zoning Administrator or to grant a variance from the requirements of these regulations. The concurring vote of four-fifths of the Board of Adjustment shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to~~

determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

B. CHAPTER 5: APPEALS AND VARIANCES

1. Amend Section 5.101, "Authority of City of Charlotte", subsection (2), by updating the language to match that of the modernized language adopted by the State. Also modify the reference to the N.C. General Statutes in subsection (5). All other subsections remain unchanged. The two revised subsections shall read as follows:

**Section 5.101. Authority of City of Charlotte.**

- (2) The Board of Adjustment shall have the authority to hear and decide petitions for variances from the requirements of these regulations so that the spirit, purpose, and intent of the Zoning Ordinance is met, of the ordinance is observed, such that public safety and welfare is secured, and substantial justice done is achieved.
  - (5) Pursuant to G.S. §160A-388**(b) and (d)**, the Board of Adjustment only has the statutory authority to grant or to deny variances and to determine if the zoning administrator correctly or incorrectly interpreted and applied the zoning ordinance in rendering a decision. The Board of Adjustment does not have jurisdiction to address or rule upon constitutional and federal and state statutory issues or any other legal issues beyond its statutory authority.
2. Amend Section 5.107, "Notice and hearing" by adding language that clarifies that the Board of Adjustment holds quasi-judicial hearings on variances and appeals. In addition, add new language that describes the mailing of notices of hearings, as per the new legislation. The revised section shall read as follows:

**Section 5.107. Notice and hearing.**

The Board of Adjustment shall, in accordance with rules adopted by it for such purpose, hold public quasi-judicial hearings on any appeal or variance petition, which comes before it.

As per G.S. § 160A-388(a2), notices of hearings shall be mailed to (1) the person or entity whose appeal, application or request is the subject of the hearing; (2) to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and (3) to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing.

In the absence of evidence to the contrary, the county tax listing shall be used to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

3. Amend Section 5.108, "Standards for granting a variance", subsection (1) by deleting the current language and replacing it with the modernized language in Session Law 2013-126 approved by the state in June of 2013. Also remove the last sentence in subsection (2), and delete subsection (3) and replace it with new text allowing the Board of Adjustment to add appropriate conditions to a variance. The entire revised section shall read as follows:

**Section 5.108. Standards for granting a variance.**

- ~~(1) — Before granting a variance, the Board of Adjustment shall find:~~
- ~~(a) — That practical difficulties or unnecessary hardship would result from the strict application of these regulations; and~~
- ~~(b) — That the spirit of these regulations should be observed by taking into consideration the general intent of these regulations. The Zoning Board of Adjustment may also consider any adopted district plan or area plan covering the property, any other~~

~~adopted written policies governing land development and the construction and improvement of public facilities; and~~

~~(c) That the public safety and welfare have been protected and substantial justice done.~~

(1) When unnecessary hardships would result from carrying out the strict letter of the Zoning Ordinance, the Board of Adjustment shall vary any of the provisions of the Zoning Ordinance upon a showing of all of the following:

(a) Unnecessary hardship 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.

(b) 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 resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(c) 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.

(d) The requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinance, such that public safety is secured, and substantial justice is achieved.

(2) The Board of Adjustment shall not grant a variance which would allow the establishment of a use which is not otherwise permitted in the district, would result in the extension or expansion of a nonconforming use, or would change the district boundary, or zoning classification of any or all of

the subject property. ~~Except under circumstances described in subsection (3) below, the Board of Adjustment shall not grant a variance.~~

- ~~(3) Only the following three conditions shall constitute a practical difficulty or unnecessary hardship and all must be met:
  - ~~(a) The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property; and~~
  - ~~(b) The difficulty or hardship is peculiar to the property in question and is not generally shared by other properties in the same neighborhood and/or used for the same purposes; and~~
  - ~~(c) The difficulty or hardship resulting from the application of these regulations would prevent the owner from securing a reasonable return or making a reasonable use of the property. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.~~~~

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

- 4. Amend Section 5.110, "Action by the Board of Adjustment", subsection (1) by deleting the last sentence and (2) by updating references to the General Statutes and replacing the word, "must" to "should". Subsection (1) remains unchanged. The new section shall read as follows:

**Section 5.110. Action by the Board of Adjustment.**

- (1) The Board of Adjustment shall grant or deny the variance or shall reverse, affirm, or modify the order, decision, requirement, or determination under appeal. ~~The Board of Adjustment shall make findings of fact and conclusions of law to support its decision.~~

- (2) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board.
- (23) If any aggrieved party wishes to receive a written copy of the decision of the Zoning Board of Adjustment pursuant to Section 5.113(1), then the aggrieved party, as stated in G.S. Sec. 160A-388(e2)(1), ~~must~~ should file a written request for a copy of the Board's decision with the Secretary or Chairperson of the Zoning Board of Adjustment ~~at the time of the hearing of the case prior to the date the decision becomes effective.~~
5. Amend Section 5.113, "Appeal from the Board of Adjustment", by deleting subsections (1), (2), and (3) and replacing them with updated modernized language, new regulations for delivery of decisions and time-frames to file a petition for review, and updated N.C. General Statutes references.

**Section 5.113. Appeal from Board of Adjustment.**

- ~~(1) — If no aggrieved party files a written request for a copy of the decision at the time of the hearing of the case, then any petition for a review of the Board's decision in the nature of certiorari by Superior Court must be filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board of Adjustment is filed in the Charlotte-Mecklenburg Planning Department. Upon the filing of the decision in the Planning Department, the Zoning Administrator, or his designee will make a notation on the filed decision stating the date upon which the decision has been filed.~~

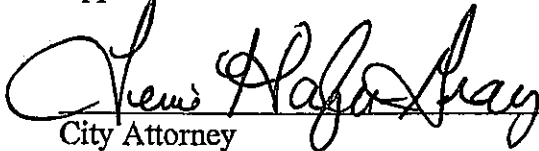
- ~~(2) — If any aggrieved party has filed a written request for a copy of the decision at the time of the hearing of the case, as stated in G.S. Sec. §160A-388(e), then a decision of the Board may be delivered to that aggrieved party either by personal service or by registered or certified mail with return written receipt requested.~~
- ~~(3) — Any aggrieved party, who has filed a written request for a copy of the decision at the time of the hearing of the case, will have thirty (30) days from receipt of the decision of the Board of Adjustment to file the petition for review in the nature of certiorari in Superior Court with the Clerk of Superior Court, or will have thirty (30) days from the date of the filing of the decision in the Charlotte-Mecklenburg Planning Department, by the Zoning Administrator, as stated above in Subsection (1), whichever is later.~~
- (1) The decision of the Board of Adjustment shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.
- (2) Every quasi-judicial decision of the Board shall be subject to judicial review by the superior court by proceedings in the nature of certiorari pursuant to G.S. § 160A-393. Any petition for a review of the Board's decision in the nature of certiorari by the superior court must be filed with the clerk of superior court by the later of (1) 30 days after the decision is effective, or (2) 30 days after a written copy of the decision is given in accordance with subsection (1) of this section. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

October 20, 2014  
Ordinance Book 59, Page 61

- (4-3) If a petition for review pursuant to G.S. §160A-388(e2) is filed, then the petitioner must order from the court reporter and pay for the original transcript of the hearing for delivery to the secretary of the Zoning Board of Adjustment for preparation of the filing of the record in superior court. If a court ultimately renders a decision in favor of the petitioner, then the City shall reimburse the petitioner for the cost of the transcript. In the event that the petitioner does not order the transcript and does not prevail on appeal, then the City shall request the Court to make the costs of the original transcript part of the costs of the action or recover the costs in the nature of debt owed.

Section 2. That this ordinance shall become effective upon its adoption.

Approved as to form:

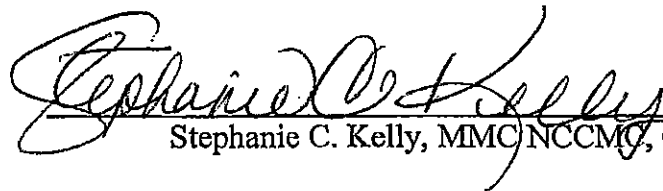
  
City Attorney

**CERTIFICATION**

I, Stephanie C. Kelly, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 20th day of October, 2014, the reference having been made in Minute Book 137, and recorded in full in Ordinance Book 59, Page(s) 54-61.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this 20th day of October, 2014.



  
Stephanie C. Kelly, MMC NCCMC, City Clerk