
REQUEST	Text amendment to Sections 3.301, 3.303, 5.101, 5.107, 5.108, 5.110, and 5.113 of the Zoning Ordinance
SUMMARY OF PETITION	The petition proposes to update the regulations for the Board of Adjustment to clarify and modernize the language in accordance with new state legislation.
STAFF RECOMMENDATION	Staff recommends approval of this petition. This petition is consistent with the North Carolina General Statutes.
PETITIONER AGENT/REPRESENTATIVE	Charlotte-Mecklenburg Planning Department Charlotte-Mecklenburg Planning Department
COMMUNITY MEETING	Meeting is not required.

PLANNING STAFF REVIEW

- **Background**

- New North Carolina General Statute legislation was approved on June 19, 2013 that clarified and modernized the statutes regarding Zoning Boards of Adjustment. The old statutes were first adopted in 1923, and underwent a number of legislative changes over the past decades.
- The practices of the Zoning Board of Adjustment were changed immediately after the new state legislation was adopted last year.
- The new legislation focuses on providing greater clarity, creating standardized procedures for key actions, and generally providing more certainty and predictability about the processes used by boards of adjustment.
- This text amendment aligns the Charlotte Zoning Ordinance with the new legislation.

- **Proposed Request Details**

The text amendment contains the following provisions:

- Modifies the voting requirements to grant a variance from a majority of members of the Board of Adjustment to a concurring vote of four-fifths of the Board.
- Modernizes the language allowing the Board of Adjustment to have authority to hear and decide variances from the requirements of the Zoning Ordinance by:
 - 1) adding that the "purpose and intent of the Zoning Ordinance" shall be met, "such that public safety is secured and substantial justice is achieved", and
 - 2) removing references requiring that public welfare be secured in the granting of a variance.
- Adds new language detailing the mailing notices for hearings for variance and appeal petitions including:
 - Notices shall be mailed to the person who is the subject of the hearing, the owner of the property, and owners of abutting properties.
 - County tax listings shall be used to determine owners of property, unless there is evidence to the contrary.
 - Notices shall be mailed at least 10 days but not more than 25 days prior to the date of the hearing.
 - Notices shall be posted on the property that is the subject of the hearing, or on an adjacent street right-of-way.
- Replaces the existing findings of fact and conditions that constitute a practical difficulty or unnecessary hardship with new language to align with new state legislation. The new language states that when unnecessary hardships would result from carrying out the strict letter of the Zoning Ordinance, the Board of Adjustment can vary any of the provisions of the Zoning Ordinance, upon a showing of all of the following findings of fact:
 - 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;
 - 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;

- 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; and
 - 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.
 - Adds new language that appropriate conditions may be imposed on any variance, provided they are reasonably related to the variance.
 - Adds more detail about the Board of Adjustment decisions and evidence:
 - The Board must determine contested facts and make its decision within a reasonable time.
 - Every quasi-judicial decision shall be based on 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.
 - Adds details to who is notified of the decision of the Board of Adjustment, and how notice is delivered. Delivery methods include personal delivery, electronic mail, or first-class mail. The decision is to be delivered to the applicant, property owner, and to any person who has submitted a written request for a copy of the decision prior to the date the decision becomes effective.
 - Modifies when an appeal of the Board's decision to the Superior Court must be filed with the Clerk of the Superior Court. Currently, an aggrieved party has 30 days from the date the decision is filed in the Charlotte-Mecklenburg Planning Department, or 30 days from receipt of the decision to file an appeal. This text amendment modifies the language, aligning with new state legislation, to allow an appeal to be filed by the later of 30 days after the decision is effective, or 30 days after a written copy of the decision is given by personal delivery, electronic mail or first-class mail. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.
 - Updates General Statute section references.
 - **Public Plans and Policies**
 - This petition is consistent with the North Carolina General Statutes.
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DEPARTMENT COMMENTS (see full department reports online)

- **Charlotte Area Transit System:** No comments received.
 - **Charlotte Department of Neighborhood & Business Services:** No comments received.
 - **Transportation:** No issues.
 - **Vehicle Trip Generation:** Not applicable.
 - **Connectivity:** Not applicable.
 - **Charlotte Fire Department:** No issues.
 - **Charlotte-Mecklenburg Schools:** Not applicable.
 - **Charlotte-Mecklenburg Storm Water Services:** No issues.
 - **Charlotte-Mecklenburg Utilities:** No issues.
 - **Engineering and Property Management:** No issues.
 - **Mecklenburg County Land Use and Environmental Services Agency:** No issues.
 - **Mecklenburg County Parks and Recreation Department:** No issues.
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ENVIRONMENTALLY SENSITIVE SITE DESIGN (see full department reports online)

- **Site Design:**
 - There is no site plan associated with this text amendment.

OUTSTANDING ISSUES

- No issues.

Attachments Online at www.rezoning.org

- Application
- Transportation Review
- Charlotte Fire Department Review
- Charlotte-Mecklenburg Storm Water Services Review
- Charlotte-Mecklenburg Utilities Review
- Engineering and Property Management Review
- Mecklenburg County Land Use and Environmental Services Agency Review
- Mecklenburg County Parks and Recreation Review

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