

# CHARLOTTE CODE

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## CHAPTER 5:

### APPEALS AND VARIANCES

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

- (1) The Board of Adjustment shall have the authority 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. *(Petition No. 2006-116 §5.101(1), 01/16/07)*
- (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 of the ordinance is observed, public safety and welfare secured, and substantial justice done. *(Petition No. 2006-16 §5.101(2), 03/20/06)*
- (3) The Board of Adjustment shall have the authority to impose reasonable and appropriate conditions and safeguards that the Board judges to be reasonably related to the condition or circumstance that gives rise to the need for a variance. *(Petition No. 2006-16 §5.101(3), 03/20/06)*
- (4) The Board of Adjustment shall not have jurisdiction with respect to Section 6.201 Conditional Zoning Districts except as provided in this section. The Board of Adjustment shall have jurisdiction with respect to conditional zoning districts if the request pertains to a variance from specified minimum requirements of the zoning ordinance and is filed with the Board prior to the approval of a conditional zoning district. In addition the Board of Adjustment may also hear and decide on various petitions for approved conditional zoning district plans on matters related to ordinance provisions which are not associated with specifically approved conditions of the plan that are more restrictive than minimum ordinance requirements. At no time shall the Board of Adjustment have authority to consider a variance relating to the number of or size of permissible signs in a conditional zoning district.
- (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.

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### **Section 5.102. Initiation of an appeal or variance.**

- (1) An appeal must be initiated by any person aggrieved or by any officer, department, board, or bureau of the City of Charlotte or Mecklenburg County.
- (2) A petition for variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.

### **Section 5.103. Filing of notice of appeal.**

- (1) A notice of appeal, in the form prescribed by the Board of Adjustment, shall be properly filed by a person aggrieved with the decision of the Zoning Administrator, or of his or her authorized designee, within thirty (30) days of the decision. Pursuant to N.C.G.S. §160A-388(d), when passing upon appeals, the Board shall have jurisdiction to grant variances for any violations but shall have that jurisdiction for variances only at that time. If an applicant fails to request variances at that time, then the applicant shall forfeit the right to seek variances for the stated violations. The Board shall not have jurisdiction to grant variances. The notice filed with the Zoning Administrator shall be accompanied by a nonrefundable filing fee as established by City Council. Failure to timely and properly file such notice and the fee shall constitute a waiver of any rights to appeal under this chapter and the Board of Adjustment shall have no jurisdiction to hear the appeal. (*Petition No. 2006-116 §5.103(1), 01/16/07*)
- (2) Upon the filing of such notice, the Zoning Administrator shall forthwith transmit to the Board of Adjustment all administrative papers, records, and other information regarding the subject matter of the appeal.
- (3) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after notice of appeal has been filed, that because of facts stated in the certificate a stay would cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of these regulations. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from which the appeal is taken and on due cause shown.

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### **Section 5.104. Filing of variance petition.**

A petition for variance, in the form prescribed by the Board of Adjustment, shall be filed with the Zoning Administrator, accompanied by a nonrefundable filing fee as established by the Charlotte City Council.

*(Petition No. 2005-78 §5.104, 06/20/05)*

### **Section 5.105. Determination of completeness.**

A notice of appeal or a variance petition will not be deemed properly filed unless it is complete. Upon proper filing, the Board of Adjustment shall schedule the appeal or variance for a hearing.

### **Section 5.106. Staff review.**

Within three days after the proper filing of a completed variance petition or notice of appeal application, the Zoning Administrator shall transmit the variance petition and notice of appeal application to the Planning staff. As soon as reasonably practical upon receiving the variance petition and appeal application, the Planning staff shall make comments, if any, to the Zoning Administrator about the filed applications. The Zoning Administrator shall take into consideration any such comments from the Planning staff whether a variance appears to be necessary or whether an appeal application appears to be necessary.

### **Section 5.107. Notice and hearing.**

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

### **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

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

### **Section 5.109. Standards for granting an appeal.**

- (1) The Board of Adjustment shall reverse or modify the specific order, requirement, decision, or determination under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, requirement, decision, or determination.
- (2) In affirming, reversing, or modifying the order, requirement, decision, or determination, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

**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) If any aggrieved party wishes to receive a written copy of the decision of the Zoning Board of Adjustment, then the aggrieved party, as stated in G.S. Sec. 160A-388(e), must 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.

**Section 5.111. Effect of grant of variance or reversal or modification of administrative decision.**

After the Board of Adjustment approves a variance, or reverses or modifies an order, requirement, decision, or determination, of the Zoning Administrator, the appellant or petitioner shall be required to follow the applicable procedures of Chapter 4 for the approval of a building permit and certificate of occupancy in order to proceed with development of the subject property. Unless otherwise specified by the Board, a decision of the Board granting a variance shall automatically expire if a building permit is required, pertaining to the need for the variance, and is not obtained within two years from the date of the meeting of the Board at which the Board rendered its decision. In addition, if two years have expired, the Zoning Administrator shall have the authority to issue the permit if the Zoning Administrator determines that, based upon the Board's decision, the circumstances for the granting of the variance have not changed and would allow the issuance of the permit. In exercising that authority, the Zoning Administrator shall comply with the procedures of §4.107(4), 'Procedure'.

All orders, requirements, decisions, and determinations made by the Zoning Administrator under those procedures shall be consistent with the variance, reversal, or modification granted to the appellant or petitioner by the Board of Adjustment.

**Section 5.112. Rehearing.**

The Board of Adjustment may rehear an appeal or variance petition that has been denied at any time after two years from the date of the denial. Prior to that two-year period, the Board of Adjustment shall refuse to rehear an appeal or variance petition unless it finds that there have been substantial changes in the conditions or circumstances relating to the subject property beyond the control of the appellant or petitioner or in the surrounding area or other extraordinary change.

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

*(Petition No. 2005-78 §5.104(1)(3)(4), 06/20/05)*

- (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.  
*(Petition No. 2012-020, § 5.113, (1) 05/14/2012)*
- (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.  
*(Petition No. 2012-020, § 5.113, (3) 05/14/2012)*
- (4) If a petition for review pursuant to G.S. §160A-388(e) 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.