

CHAPTER 16: BOARD OF ADJUSTMENT

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Section 16.1 Authority and Duties

The Board of Adjustment shall have the following duties and responsibilities:

- To hear and decide appeals from any order, decision, determination, or interpretation made by the Zoning Administrator pursuant to or regarding these regulations.
- To hear and decide petitions for variances from the requirements of the regulations of this Ordinance.
- To hear and decide requests for Special Use Permits for those uses indicated in Section 3.13.
- To make an interpretation of any portion of this Ordinance.
- To rule on the classifications of uses not permitted by right or permitted with conditions.
- To change the use of, or expand certain nonconformities.
- To rule on all petitions for watershed variances pursuant to or regarding Section 3.5 and related sections of this Ordinance.

Section 16.2 Membership

A. The Board of Adjustment shall consist of five (5) members, three (3) members who are citizens and residents of the Town who shall be appointed by the Town Board, and two (2) members who are citizens of Iredell County and reside outside the town, with a preference for those living within the extraterritorial jurisdiction of the Town, and who shall be appointed by the Board of Commissioners of Iredell County.

B. The Town Board may appoint two (2) alternate members to serve on the Board in the absence of any regular members. Each alternate member, while attending any meeting of the Board and serving in the absence of any regular members, shall have and may exercise all the powers and duties of a regular member.

C. Members of the Board of Adjustment shall serve for terms of three (3) years, such terms to be staggered as follows: One (1) member shall be appointed for a one-year term; two (2) for two-year terms; and two (2) for three-year terms. Thereafter, members shall be appointed for three (3) years each. Said alternate members shall serve for a term of two (2) years each.

D. The two (2) members appointed by the Board of County Commissioners as representatives of those residing outside the town shall have equal rights, privileges and duties with the other members of the Board in all matters pertaining to the regulation of both the extraterritorial area and the area within the corporate limits. These members shall serve staggered terms as follows: One (1) member shall be appointed for a one-year term and one (1) for a two-year term. Thereafter, members shall be appointed for three (3) years each.

E. Vacancies occurring for reasons other than expiration of term shall be filled as they occur for the unexpired remainder of the term.

F. The Board of Adjustment shall elect one (1) of its members as chairman and shall appoint a secretary and such other subordinates as may be authorized by the Town Board. The Board of Adjustment shall draft and adopt rules governing the transaction of its business.

Section 16.3 Meetings, Hearings, and Procedures

- A. Notice of public hearing for all Board of Adjustment proceedings shall be given as follows:
 - Notice shall be sent by first class mail to all adjacent property owners describing the request at least 10 days prior to the public hearing.
 - A notice shall be published once in a newspaper having general circulation in the Town at least 10 days but not more than 25 days prior to the public hearing.
- B. All meetings and hearings shall be open to the public and shall be conducted in accordance with the procedure set forth in these regulations and rules of procedure adopted by the Board of Adjustment. Such rules of procedures may be amended by the Board of Adjustment.
- C. Any rules of procedure adopted by the Board of Adjustment shall be kept on file at the offices of the Zoning Administrator and shall be made available to the public at any meeting or hearing of the Board of Adjustment.

Section 16.4 Staff

The Zoning Administrator or his/her designee shall serve as staff to the Board of Adjustment and shall provide technical assistance to the Board of Adjustment as requested.

Section 16.5 Initiation of Board of Adjustment Cases

- A. An appeal may be initiated by any aggrieved party or by any officer, department or board of the Town of Troutman.
- B. A petition for a 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.
- C. A request for a Special Use Permit 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 16.6 Application Procedure

The following regulations apply to all applications submitted to the Board of Adjustment:

- A. Before a petition for an administrative appeal, interpretation of the Zoning Ordinance, variance, Special Use Permit, change or replacement of a nonconformity, or allowance of a temporary use shall be heard and a public hearing conducted by the Board of Adjustment, an application shall be submitted to the Zoning Administrator along with a fee in accordance with fee schedule established by the Town Board. Said fee shall be waived for any petition initiated by the Zoning Administrator or other officials of Troutman who initiate a request on behalf of Troutman. For variance requests, the application shall be accompanied by a map clearly identifying the subject property, all contiguous pieces of properties (including all properties traversed and/or separated by a road, stream, right-of-way, or any similar natural or man-made configuration). In addition, a list of names and addresses of

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the owners of said properties, from the most recent official tax records, shall be provided by the applicant. Special Use Permit requests shall be submitted with a Concept Plan.

- B. The filing of any application stays all proceedings unless the Zoning Administrator certifies that a stay in his opinion will 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 the Ordinance. In that event, proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment, Town Board or by a court of record.
- C. Within five (5) working days after having received an application for an appeal, interpretation, variance, change or expansion of a nonconformity, or allowance of a temporary use, the Zoning Administrator shall determine whether the application is complete. If he determines that the application is not complete, he shall serve a written notice on the appellant or petitioner specifying the application's deficiencies. The Zoning Administrator shall take no further action on the application until the deficiencies are remedied. If the Zoning Administrator fails to so notify the appellant or petitioner, the application shall be deemed complete.

Section 16.7 Administrative Review, Appeals, and Interpretation

The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision, interpretation or citation made by the Zoning Administrator and apply such interpretation to particular fact situations. In addition, the Zoning Administrator may ask the Board of Adjustment to interpret any portion of the Unified Development Ordinance.

- A. The Board of Adjustment may, after having held a public hearing on the matter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed or make an interpretation of the Unified Development Ordinance.
- B. The Board of Adjustment shall have all the powers of the Zoning Administrator in making any order, requirement, decision, interpretation or determination with reference to an appeal or petition.
- C. An appeal may be made by any person who has received a written ruling from the Zoning Administrator. An appeal to the Board of Adjustment shall be made within 30 days after the receipt of the decision, order, determination, or interpretation made by the Zoning Administrator.

Section 16.8 Decisions

- A. The Board of Adjustment shall hold a public hearing on an application no later than forty-five (45) days after a complete application has been filed with the Zoning Administrator. The application shall be received by the Board of Adjustment at least fifteen (15) days prior to the next regularly scheduled meeting of the Board to be considered at that meeting. The Board of Adjustment shall decide on the matter which was presented at the public hearing within thirty-one (31) days of the close of the public hearing.
- B. The concurrent vote of four-fifths (4/5) of the voting members of the Board of Adjustment shall be necessary to make an interpretation of the Zoning Ordinance, reverse any order, requirement, decision or determination of the Zoning Administrator, approve a variance, approve a Special Use Permit, allow for a change or expansion of a nonconformity, approve a temporary use extension, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance.

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In all matters coming before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.

- C. All decisions, by the Board of Adjustment shall be in writing and filed with the Zoning Administrator. A written copy of decisions shall be sent by first class mail to the applicant within five (5) working days of the date of decision of the Board of Adjustment.

Section 16.9 Appeals from the Board of Adjustment

- A. An application for a rehearing shall be made in the same manner as provided for an original hearing within a period of fifteen (15) days after the date of the Board of Adjustment's decision. In addition, specific information to enable the Board of Adjustment to determine whether or not there has been a substantial change in facts, evidence, or conditions in the case, shall be presented in writing or graphically. A rehearing shall be denied by the Board of Adjustment, if, in its judgment, such change in facts, evidence or conditions has not been proven. A public hearing shall not be required to be held by the Board of Adjustment to consider holding such a rehearing. Approval of said consideration shall, however, require an affirmative vote of at least four (4) voting members. In the event that the Board of Adjustment finds that a rehearing is warranted, it shall thereupon proceed as in the original hearing except that the application fee shall be waived.
- B. Upon the denial of an original application, or upon the denial of an application from which a rehearing has been conducted, a similar application may not be filed for a period of one year after the date of denial of the original application.
- C. Every decision of the Board of Adjustment shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board is filed in the office of the Zoning Administrator, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Zoning Administrator or the Chairman of the Board of Adjustment at the time of the Board's hearing of the case, whichever is later.

Section 16.10 Variances

16.10.1 Variance Procedures

When practical difficulties, special conditions, or unnecessary hardships would result from carrying out the strict letter of this Ordinance, the Board of Adjustment shall have the power to vary or modify any of the regulations or provisions of this Ordinance relating to the construction or alteration of buildings or structures or the use of land.

- A. The Board of Adjustment, in considering an application for a variance, shall give due consideration to the following:
- The citing of other nonconforming or conforming uses of land or structures in the same or other districts, shall not be considered grounds for the granting of a variance.
 - The request for a variance for a particular use expressly, or by inference, prohibited in the district involved, shall not be granted.

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- B. The Board of Adjustment, may only grant a Variance, having first held a public hearing on the matter and having made the following determinations:
- There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance; and
 - That the Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
 - That in the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done; and
 - That the reasons set forth in the application justify the granting of a Variance, and that the Variance is a minimum one that will make possible the reasonable use of land or structures.
- C. The Board of Adjustment, in approving all Variances, may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which a Variance is approved, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Chapter 14 of this Ordinance.
- D. Unless otherwise authorized by the Board of Adjustment and included in its decision to approve a Variance, any order of the Board of Adjustment in approving a variance shall expire, if a building permit, or certificate of occupancy (for a use for which a building permit is not required), has not been obtained within one (1) year from the date of its decision.

16.10.2 Watershed Variances

A. Minor Variances

Minor variances (see definition) to the regulations contained herein (unless specifically prohibited) under guidelines provided in Chapter 16 of this Ordinance may be approved by the Board of Adjustment except that a copy of the public hearing notice plus a description of the variance being requested shall be sent by first class mail to the Clerk of all municipal and county government having jurisdiction within the same watershed and to any major consumer of water whose point of intake lies within the same watershed. Said notice and description shall be mailed at least ten (10) days prior to the public hearing. Any comments received from notified local governments regarding a minor variance request shall become part of the record of proceedings.

B. Major Variances

Applications for major variances (see definition) shall be handled in the following manner:

1. Application Form and Fee. An application for a major variance shall be on a form prescribed by the Town and shall be accompanied by a fee, the amount of which is in accordance with a fee schedule established by the Town. An application will not be considered complete unless it contains all information required and is accompanied by said fee. The application shall be accompanied by a map clearly identifying the subject property, all contiguous pieces of properties (including all properties traversed and/or separated by a road, stream, right-of-way, or any similar natural or man-made configuration). In addition, a list of names and addresses of the owners of said properties, from the most recent official tax records, shall be provided by the applicant. All applications shall be submitted to the Zoning Administrator. Once having received an application, the Zoning Administrator shall have five (5) working days to determine its completeness. If he determines that the application is not complete, he shall serve a written notice on the petitioner specifying the application's deficiencies. The Zoning Enforcement

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Officer shall take no further action on the application until the deficiencies are remedied. If the Zoning Administrator fails to notify the petitioner, the application shall be deemed complete.

2. Scheduling Board of Adjustment Meeting. The Zoning Administrator, having determined that an application is complete, shall place the application on the agenda of a Board of Adjustment regular or special meeting occurring at least fifteen (15) days thereafter.
3. Public Hearing Notification. The Board of Adjustment shall hold a public hearing on the application at said meeting. Notification of said Board of Adjustment public hearing shall be as follows:
 - a. The applicant and all abutting property owners shall be sent, by first class mail, a notice of the Board of Adjustment public hearing at least ten (10) days prior. Said mail notice plus a description of the variance being requested shall also be sent by first class mail to the Clerk of all municipal and county governments having jurisdiction within the same watershed and to any major water consumers at least ten (10) days prior to the public hearing. Any comments received from notified local governments regarding a major variance request shall become part of the record of proceedings. The notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur.
 - b. At least one (1) sign shall also be conspicuously placed by the Town on the subject property(ies) indicating the nature of the public hearing and the date, time and place at which it is to occur. Said sign shall be placed on the property(ies) in question at least ten (10) days prior to the public hearing.
 - c. Notice shall also be posted by the Zoning Enforcement Officer in a conspicuous location in the Town Hall at least ten (10) days prior to the public hearing. Said notice shall indicate the nature of the public hearing and the date, time and place at which it will occur.
4. Public Hearing. The Board of Adjustment shall conduct the public hearing in a quasi-judicial manner. All persons giving evidence shall be sworn in by the Chairman. In all matters coming before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application. The Board of Adjustment shall base their recommendation on the testimony given at the public hearing, and on any comments received from notified local governments or major water consumers regarding the variance request. The testimony, comments and evidence shall become part of the record of proceedings.
5. Board of Adjustment Recommendation. The Board of Adjustment shall make a recommendation on a major variance involving property located within a Watershed Overlay District no later than thirty-one (31) days from the close of the public hearing. Said recommendation shall be in one of the following forms:
 - a. Recommend approval of the variance if the findings of fact in Chapter 16 are found in the affirmative; or
 - b. Recommend approval of the variance with fair and reasonable conditions attached if the findings of fact in Chapter 16 are found in the affirmative; or

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- c. Recommend denial of the variance if at least one (1) finding of fact in Chapter 16 is found in the negative.

The concurrent vote of four-fifths (4/5) of the voting members of the Board of Adjustment shall be necessary to make recommendation for approval of on a major variance application involving property located within a Watershed Overlay District.

6. Preliminary Record. If the Board of Adjustment makes a favorable recommendation on the major variance application, (with or without additional conditions or safeguards), or fails to make any recommendation on the major variance application within the specified time period, the Zoning Enforcement Officer shall prepare a preliminary record of the public hearing which shall include:
 - a. The variance application;
 - b. Evidence that proper notification of the Board of Adjustment public hearing has been made;
 - c. A summary of evidence presented including comments submitted from other local governments or major water consumers within the same watershed jurisdiction;
 - d. Proposed findings and exceptions;
 - e. The Board of Adjustment's recommendation, including all conditions proposed to be added to the permit, if one is submitted within the required thirty-one (31) day time period.

The preliminary record shall be sent to the Environmental Management Commission for its review. If the Environmental Management Commission concludes from the preliminary record that the variance qualifies as a major variance, the Commission shall make a final decision on the request and mail it to the Zoning Enforcement Officer. Upon receipt of the final decision, the Zoning Enforcement Officer shall forward the Environmental Management Commission's decision to the applicant by first class mail within five (5) working days of receipt of the decision from the Environmental Management Commission. The approval, with any additional conditions or safeguards, shall become part of any zoning permit issued by the Zoning Enforcement Officer.

If the Board of Adjustment recommends that an application for a major variance involving property within a Water Supply Watershed Overlay District should be denied, then the application shall not be forwarded to the Environmental Management Commission, and shall be considered denied by the Board of Adjustment. The Zoning Enforcement Officer shall send written notice of the denial by first class mail to the applicant within five (5) working days of the Board's decision.

7. Environmental Management Commission Action. If, after having received and reviewed the major variance application and preliminary record, the Environmental Management Commission approves the major variance, the Zoning Enforcement Officer shall send the decision by first class mail to the applicant within five (5) working days of receipt of the decision from the Environmental Management Commission, stating that the major variance was approved.

If the Environmental Management Commission overturns the Board of Adjustment's recommendation for approval of the major variance, the Zoning Enforcement Officer shall send

the Commission's decision by first class mail to the applicant within five (5) working days of receipt of the decision from the Environmental Management Commission, stating that the major variance request was denied, and the reasons for such denial.

8. Application for Zoning Permit. The application for a zoning permit shall be made within one (1) year of receiving a variance approval.

C. Re-submittal of a Minor or Major Variance

If the Environmental Management Commission disapproves a major variance request, or the Board of Adjustment disapproves a major or minor variance request, the Town of Troutman shall not accept an application for a similar variance request affecting the same property(ies) for a period of one (1) year following the date of denial.

16.10.3 Enforcement

- A. These regulations shall be enforced by the Zoning Administrator In addition to other duties, the Zoning Administrator shall keep records regarding any expansions approved to structures classified as existing development, so that the maximum coverage of all new expansions do not exceed that allowed in this Ordinance.
- B. The Zoning Administrator shall maintain a file on all applications for minor and major variances. A copy of information pertinent to any minor variance application request (including minutes of the hearing, findings made by the Board of Adjustment, actions taken by the Board of Adjustment, names and addresses of all persons giving evidence at the public hearing) shall be submitted annually during the last week of December to the Division of Environmental Management, Supervisor of the Classification and Standards Group.

Section 16.11 Special Use Permits

Special Use Permits shall follow the appropriate approval process and submittal requirements for either Major Site Plans and Subdivisions or Minor Site Plans and Subdivisions as defined by this Ordinance. A Special Use Permit application shall be filed with the Zoning Administrator. The application shall be accompanied by a Concept Plan. The Planning Staff and/or Technical Review Committee may, in their review, suggest reasonable conditions to the location, nature, and extent of the proposed use and its relationship to surrounding properties, parking areas, driveways, pedestrian and vehicular circulation systems, screening and landscaping, timing of development, and any other appropriate conditions. Such conditions may include dedication of any rights-of-way or easements for streets, water, sewer, sidewalks, greenways, trails, or other public utilities necessary to serve the proposed development. The Board of Adjustment shall hold a quasi-judicial public hearing and consider the application in accordance with the finds-of-fact below.

16.11.1 Conditions, Evidence, and Findings-of-Fact

In approving an application for a Special Use Permit, the Board of Adjustment may attach fair and reasonable conditions to the approval. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Board of Adjustment. In no instance shall any of these conditions be less restrictive than any requirements which would pertain to that particular development found elsewhere in a similar zoning district. The applicant has the burden of producing competent material and substantial evidence tending to establish the facts and conditions. If any person submits evidence allegedly contrary to any of the facts or conditions, the burden of proof for overcoming such evidence shall rest with the applicant.

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The Board of Adjustment shall issue a Special Use Permit if it has evaluated an application and determined the four findings below to be true.

- A. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
- B. The use meets all required conditions and specifications, and
- C. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
- D. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with the adopted land use plans and other plans for physical development of the Troutman area as adopted by the Town Board.

16.11.2 Effect of Approval and Expiration of Approval

If an application for a Special Use Permit is approved by the Board of Adjustment, the owner of the property shall have the ability to develop the use in accordance with the stipulations contained in the Special Use Permit or develop any other use listed as a “permitted use” for the general zoning district in which it is located. Any Special Use Permit so authorized shall be perpetually binding to the property included in such permit unless subsequently changed or amended by the Board of Adjustment.

Unless the Board of Adjustment issues a Special Use Permit which either is specifically exempt from any time constraints or has some other specified time period for implementation, the applicant must either record a final plat or secure a valid building permit within a one (1) year period from date of issuance of the Special Use Permit. In addition, if the project for which a Special Use Permit was issued is, not complete and a valid final plat or building permit is not in place at the end of said one (1) year period, the Zoning Administrator shall notify the applicant of either such finding, and within sixty (60) days of said notification, the Board of Adjustment shall make a decision concerning the rescission of the Special Use Permit. After having conducted a public hearing the Board of Adjustment may then rescind the Special Use Permit or extend the life of the Special Use Permit for a specified period of time not to exceed one (1) year.

16.11.3 Alterations to Site and Amendments to Special Use Permit

Minor changes in the detail of the approved site which:

- will not alter the basic relationship of the proposed development to adjacent property, and
- will not increase the gross floor area of any non-residential use by the smaller of ten (10) percent or 10,000 square feet, and
- will not decrease the off-street parking ratio or reduce the yards provided at the periphery of the site by greater than five (5) feet

may be made with approval of the Zoning Administrator on a one-time basis only. Further changes to the development may only be made by the Board of Adjustment by amending the Special Use Permit. Any request to materially change the Special Use Permit once it has been issued shall be reviewed in entirety through the Board of Adjustment approval process.

16.11.4 Re-application Following Denial

If a request for a Special Use Permit is denied by the Board of Adjustment, similar application for the same property or any portion thereof shall not be filed until the expiration of a one (1) year period from the date of the most recent denial by the Board of Adjustment. The waiting period shall not be applicable

where the application for a Special Use Permit is substantially different from the original application. The term “substantially different” as herein applied shall mean:

- The proposed principal use is different than the use contained in the original application; or
- The gross floor area of the proposed development is fifty (50) percent or more smaller than contained in the original application.

Section 16.12 Nonconformities

A. The Board of Adjustment shall hear and decide appeals from any land owner:

- To make a change in use of a nonconforming use to a less-intense nonconforming use;
- To make a change in location of a nonconforming use of land to another location on the same property; or To allow the replacement of a nonconforming use, or
- To allow a nonconforming manufactured home to remain on the same lot as a principal structure, if it is occupied by a blood relative of the owner-occupant of the principal structure.

B. The Board of Adjustment may only grant a change in a nonconforming use or replacement of a nonconforming structure which has been destroyed after having first held a public hearing and having determined that:

- Said change will be more suitable and appropriate for the lot(s) on which it is located than the existing situation, and
- That the proposed change will have a less harmful effect than the existing situation on the properties surrounding the lot(s) in question, and
- That the decision to grant the change will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise be detrimental to the public welfare.

C. The Board of Adjustment, in granting said changes, may prescribe appropriate conditions and safeguards in conformity with this Ordinance in order to conform with (B) above. Violation of such conditions and safeguards when made a part of the terms upon which the change was granted, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Chapter 14 of this Ordinance.