

PART 15

BOARD OF ADJUSTMENT

Section 15.1 Powers, Duties and Procedures

The Board of Adjustment shall have all the powers and duties authorized by North Carolina General Statute 160A-388, and in the manner provided for in this Ordinance. Generally, such powers and duties shall include, but not be restricted to the following:

- 15.1.1 Hearing and deciding all appeals from decisions made by the Administrator or the Historic District Commission.
- 15.1.2 Hearing and deciding all appeals for an interpretation of this Zoning Ordinance.
- 15.1.3 Hearing and granting variances from the provisions of this Ordinance.
- 15.1.4 Hearing applications to replace, change the use of, or expand nonconformities.
- 15.1.5 Hearing and granting permits for certain temporary structures and uses as set forth in Section 5.9 of this Ordinance.
- 15.1.6 Establishment of the Board of Adjustment

A Board of Adjustment is hereby established. Said Board shall consist of three (3) regular members appointed by the Lincolnton City Council who reside inside the corporate limits of the City of Lincolnton and two (2) regular members appointed to said Board by the Lincoln County Board of Commissioners as representatives of the extraterritorial jurisdiction, said extraterritorial representatives being residents of such area. Appointments made by the Lincoln County Board of Commissioners, shall be done only after holding a public hearing on the matter of appointment. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Each member shall be paid at the rate of \$25.00 per meeting attended and may be reimbursed for any expenses incurred while representing the Board.

Three (3) alternate Board of Adjustment members shall be appointed by the Lincolnton City Council. Said members shall serve in the absence of regular Board of Adjustment members. Said alternate members shall be appointed in the same manner as regular members. Such alternate members, while attending any regular meeting of the Board and serving in the absence of a regular member, shall exercise all of the powers and duties of such regular member so absent.

The alternate members shall reside inside the City of Lincolnton Corporate Limits and shall be appointed by the Lincolnton City Council. Alternate members shall be compensated in the same manner as regular members.

Section 15.2 Administrative Review

The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by the Administrator or the Historic District commission and

apply such interpretation to particular fact situations. In addition, the Administrator may ask the Board of Adjustment to make an interpretation of the Zoning Ordinance.

15.2.1 The Board of Adjustment may, after having held a public hearing on the matter, reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed or make an interpretation or determination with reference to the appeal.

Section 15.3 Variances

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. Waivers and modifications associated with the approval of a subdivision plat shall be subject to the provisions of Section 17.8 rather than this Section.

15.3.1 The Board of Adjustment, in considering an application for a variance, shall give due consideration to the following:

- a. The citing of other nonconforming or conforming uses of land or buildings in the same or other districts, shall not be considered grounds for the granting of a variance.
- b. The request for a variance for a use expressly, or by inference, prohibited in the district involved, shall not be granted.

15.3.2. The Board of Adjustment, may grant a variance only after having first held a public hearing on the matter and having made the following determinations:

- a. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance:

This shall be deemed to mean:

1. If the property owner complies with the provisions of this Ordinance, he can secure no reasonable return from, or make no reasonable use of his property; and
 2. The hardship results from the application of the Ordinance; and
 3. The hardship is suffered by the applicant's property; and
 4. The hardship is not the result of the applicant's own action; and
 5. The hardship is peculiar to the applicant's property.
- b. That the variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
 - c. That in the granting of the variance, the public safety and welfare have been assured and substantial justice has been done; and

d. 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.

15.3.3 The Board of Adjustment, in granting a variance, 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 granted, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Section 14.6 of this Ordinance.

15.3.4 Unless otherwise authorized by the Board of Adjustment, any order of the Board of Adjustment in granting a variance shall expire, if a building permit or certificate of occupancy (for a use if a building permit is not required) has not been obtained within one (1) year from the date of the Board of Adjustment's decision.

Section 15.4 **Relief to Dimensional Regulations for Authentic Restoration or Reconstruction Off-Street Parking Requirements in a HO-District Overlay District**

(See Sections 7.23.5 and 7.7.23.6 of this Ordinance)

Section 15.5 **Nonconformities**

The Board of Adjustment shall hear and decide appeals from any land owner (i) to make a change in use of a nonconforming use, (ii) to replace a nonconforming use or structure which has been destroyed, (iii) to make a change in location of a nonconforming use of land; or (iv) for a special exception to allow an expansion of a nonconforming use.

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

- a. (i) Said change will be more suitable and appropriate for the lot(s) on which it is located than the existing situation, and (ii) That the proposed change will have a less harmful effect than the existing situation on the properties surrounding the lot(s) in question, and
- b. 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.

15.5.2 The Board of Adjustment, in granting said changes, may prescribe appropriate conditions and safeguards in conformity with this Ordinance in order to conform with Section 15.5.1(a) and (b). 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 Section 14.8 of this Ordinance.

15.5.3 The Board of Adjustment may grant a special exception for the expansion of a nonresidential nonconforming use or enlargement of a structure housing such nonconforming use only after having first held a public hearing and having determined each of the following in the affirmative:

- a. The nonconforming use will not occupy any additional lands beyond the boundaries of the lot on which said nonconforming use was located as of the date said use became nonconforming. The lot boundaries used to determine this were those existing at the time the use became nonconforming.
- b. The enlargement of any structure(s) or construction of additional structure(s) housing said nonconforming use will not result in a cumulative increase in total square footage of said building(s) greater than fifty (50) percent of the total building square footage involved with the nonconforming use at the time of the first application for expansion pursuant to this section, or, a cumulative total increase of one thousand (1,000) square feet greater than that existing at the time of first application for such expansion, whichever is greater.
- c. That if a change in use is involved, findings in the affirmative have been made pursuant to Subsection 15.5.1 of this Ordinance.
- d. That the application does not involve any increase of size or height of any signage.
- e. That there will be no odors, light emission (other than that equivalent to street lighting and/or lighting from any signage normally allowed in the N-B District), noises, vibrations, or interference in radio or television detectable from the property boundary without instruments.
- f. That, in consort with the expansion, the entire nonconforming use will be screened on all sides in accordance with Subsection 5.2.3 of this Ordinance. Walls or fences will be permitted only as necessary to reach the required height or opacity and where such structures are used they shall be accompanied by as much planted materials as feasible. Where the nature of the nonconforming use requires substantial street exposure along a major street part or the Board of Adjustment may waive all of the screening along said street. If such screening is waived, four (4) street trees per one hundred (100) linear feet of street frontage shall be provided in lieu of the screening.
- g. Adequate provision and arrangement has been made or will be made concerning the following, where applicable:
 1. access roads or entrance or exit drives with respect to such matters as automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and other emergency, and,
 2. off-street parking and loading areas where required and refuse and other service areas with respect to their impact upon the consideration in (1) immediately above and their economic, noise, glare, odor, and other impacts on adjoining properties and properties in the general neighborhood, and
 3. utilities, water, sewerage, schools, fire, and police protection, and other necessary public and private services and facilities with respect to their location, availability and compatibility.
- h. That the use has been and will remain to be maintained in a manner that does not create a nuisance to neighboring properties.
- i. The use will not materially endanger the public health or safety if allowed to expand as proposed and developed according to plan.

- j. That the proposed expansion together with mitigation plans (such as screening) would be at least equally suitable and appropriate for the lot(s) on which it is located as the existing situation.
- k. That the proposed expansion, together with the mitigating measures would have a no more harmful effect than the existing situation on the properties surrounding the lot(s) in questions.
- l. That the use is not a non conforming use subject to removal after a given period of time (i.e., "amortization")

Note: Such uses include certain manufactured home parks, certain junkyards, and certain signs.

15.5.4 The Board of Adjustment, in granting an expansion pursuant to 15.5.3 may prescribe appropriate conditions and safeguards in conformity with this Ordinance in order to conform to Subsection 15.5.3. Violation of such conditions and safeguards when made a part of the terms upon which the expansion was granted, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Section 14.8 of this Ordinance.

Section 15.6 Application Procedure

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

- 15.6.1** Before a petition for an administrative appeal, interpretation, variance, relief under Section 15.4 or for any permissions under Sections 15.5 or 5.9 shall be heard and a public hearing conducted by the Board of Adjustment, a completed application shall be submitted to the Administrator along with a fee in accordance with fee schedule established by the City Council. Said fee shall be waived for any petition initiated by the Administrator or other official of the City of Lincolnton who initiates a request on behalf of the City. A map clearly identifying the subject property and all contiguous pieces of properties shall accompany the application. In addition, the applicant shall provide a list of names and addresses of the owners of said properties, obtained from the most recent official tax records. Said list shall not be required for any administrative appeal or interpretation petition.
- 15.6.2** The Board of Adjustment shall hold a public hearing on an application no later than sixty (60) days after the completed application has been filed with the Administrator. The Board of Adjustment shall decide on the matter that was presented at the public hearing within thirty-one (31) days of the close of the public hearing. The decision of the Board of Adjustment shall be in writing and shall be sent by first class mail to the applicant by the Administrator within five (5) working days after the Board of Adjustment has made a determination on the application.
- 15.6.3** The City of Lincolnton shall give notice of all public hearings. Said notice shall become a part of the record of the proceedings of the Board of Adjustment. Notice shall be given in the following manner:

- 1. Interpretations and Appeals of the Administrator or Historic District Commission

- a. The City shall send notice by first class mail to the applicant at least ten (10) working days prior to the public hearing. Notice shall also be posted by the Administrator in a conspicuous location in the Lincoln City Hall at least ten (10) working days prior to the public hearing. Said notices shall indicate the nature of the public hearing and the date, time and place at which it is to occur.
2. Variances, Relief Under Section 15.4 and Matters Under Sections 15.5 or 5.9
- a. The City shall send notices by first class mail to the applicant and to owners of all contiguous pieces of property at least ten (10) working days prior to the public hearing. The notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur.
 - b. Notice shall also be posted by the Administrator in a conspicuous location in the Lincoln City Hall at least ten (10) working 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 is to occur.
 - c. A conspicuous sign shall also be placed by the City in a conspicuous location on the subject property(ies) indicating the nature of the public hearing and date, time and place at which it is to occur. Said sign shall be placed on the property(ies) at least ten (10) working days prior to the public hearing.

15.6.4 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 Administrator, grant a variance, allow a change in nonconformity (as herein prescribed in this Ordinance) or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance. 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.

Section 15.7 Appeals From the Board of Adjustment

15.7.1 An application for a rehearing shall be made in the same manner as provided for in the 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. The Board of Adjustment shall deny a rehearing, 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.

Upon the denial of an original application, or upon the denial of an application from which a rehearing has been conducted, a similar application shall not be accepted for hearing for a period of one year after the date of denial of the original application.

15.7.2 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. An 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 Lincolnton City Hall, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Administrator or Chairman of the Board of Adjustment at the time of the Board's hearing of the case, whichever is later.