

**ARTICLE XIII  
THE BOARD OF ADJUSTMENT**

**Section 13.1 APPOINTMENT, DUTIES AND RESPONSIBILITIES**

A Board of Adjustment is hereby established which shall consist of five (5) members to be appointed by the Town Council. One (1) member shall be appointed for a term of three (3) years, two (2) members for two (2) years and two (2) members for one (1) year. Thereafter, each member appointed shall serve for a term of three (3) years or until his successor is duly appointed and qualified. In addition to the five regular members, two (2) supernumerary members shall be appointed to serve on the Board of Adjustment at the call of the Chairman only in the absence of regular members and while serving shall have and exercise the power and authority of regular members. Such supernumerary members shall be appointed to serve for three (3) year terms and shall be eligible for reappointment. Members of the Board of Adjustment may be removed from office by the Town Council for cause upon written charges and after a public hearing. Vacancies shall be filled by resolution of the Town Council for the remaining term of any member whose term becomes vacant.

**Section 13.2 PROCEEDINGS OF THE BOARD OF ADJUSTMENT**

The Board of Adjustment shall adopt rules necessary to conduct its affairs, and in keeping with all applicable state statutes or provisions of this Ordinance. Meetings shall be held at the call of the chairmen and at such other times as the board may determine; the chairman, or in the chairman's absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent, or failure to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be of public record.

**Section 13.3 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT**

The Board of Adjustment shall have the following powers and duties when considering matters within its jurisdiction as defined by state statutes and this Ordinance:

- 13.3.1 To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the administrative official in the enforcement of this Ordinance.
- 13.3.2 To hear and decide any such special exceptions as the Board of Adjustment is specially authorized to pass on by the terms of this Ordinance; to decide such questions as are involved in determining whether special exceptions should be granted; and to grant special exceptions with such conditions and safeguards as are appropriate under this Ordinance, or to deny special exceptions when not in harmony with the purpose and intent of this Ordinance.

13.3.3 To authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted demonstrating all of the following:

- A. That the granting of the variance will not be contrary to the public interest.
- B. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.
- C. That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance.
- D. That the special conditions and circumstances do not result from the actions of the applicant.
- E. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, structures or buildings in the same district. In granting a variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance.
- F. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;
- G. That granting the variance shall not permit a use in a zoning district which prohibits that use; and
- H. That the grant of the variance will be in harmony with the general intent and purpose of this Ordinance, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- I. The burden of proving to the Board of Adjustment that the foregoing conditions have been met is the responsibility of the applicant.
- J. In granting any variance, the Board of Adjustment 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 the variance is granted, shall be deemed a violation of this Ordinance. No

nonconforming use of neighboring lands, structures, or buildings in other zone districts shall be considered grounds for the authorization of a variance.

#### **Section 13.4 DECISIONS OF THE BOARD OF ADJUSTMENT**

In exercising the above-mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end shall have powers of the administrative official from whom the appeal is taken.

The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to effect any variation in the application of this ordinance.

#### **Section 13.5 APPEALS TO THE BOARD OF ADJUSTMENT**

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the Town affected by any decision of the administrative officer. Such appeal shall be made within thirty (30) days after rendition of the order, requirement, decision or determination appealed from in writing to the Board of Adjustment and file same, and two (2) copies of supporting facts and data with the Zoning Administrator. This does not, however, restrict the filing of a request for a special exception or variance by any person at any time as provided for elsewhere in this Article.

13.5.1 Procedure. Upon receipt of said appeal, the Administrative Officer may forthwith examine such appeal or request application and endorse his recommendation thereon together with all documents, plans, papers or other materials constituting the record to the Town Attorney for his review and opinion. The Town Attorney shall represent his opinion to the Board of Adjustment as to whether or not the subject of the appeal falls within the jurisdiction of the Board of Adjustment.

13.5.2 Stay of Proceedings. 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 the notice of appeal shall have been filed with him that by reason of facts stated in the certificate of stay would in his opinion cause imminent peril to life or property. Such proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application of notice to the office from whom the appeal is taken and on due cause shown.

### **Section 13.6 APPEALS TO CIRCUIT COURT**

Any party aggrieved by any final judgment or decision of the Board of Adjustment may within fifteen (15) days thereafter appeal therefrom to the circuit court by filing with such board a written notice of appeal specifying the judgment or decision from which the appeal is taken. In case of such appeal such board shall cause a transcript of the proceedings in the action to be certified to the court to which the appeal is taken, and the action in such court shall be tried de novo.