

Article XIV
Board of Adjustment – Zoning Board

Section 1. Board of Adjustment Created

A Board of Adjustment is hereby established. The Board shall consist of five (5) members appointed by the Board of Commissioners for staggered terms of four (4) years. The Board of Commissioners shall have the option of appointing one (1) alternate to serve on the Board of Adjustment. Alternates shall have no voting power except for in the absence of a regular appointed board member (11/02). Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board.

Section 2. Jurisdiction and Decisions of the Board of Adjustment

The concurring vote of four-fifths (4/5) of the Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official charged with the enforcement of this ordinance, or to decide in favor of the applicant any matter which it is required to pass under the Zoning Ordinance or to affect any variance in such ordinance.

On all appeals, applications and other matters brought before the Board of Adjustment the Board shall inform in writing all the parties involved of its decision and the reasons for that decision.

Section 3. Officers, Rules, and Regulations

The Board of Adjustment shall elect a Chair and a Vice-Chair for its members who shall serve for one (1) year or until their successors are elected. The Board shall appoint a Secretary, who may be a municipal officer, an employee of the Town or a member of the Zoning Board. The Board shall adopt rules and bylaws in accordance with the provisions of this ordinance and of Chapter 160A-388 of the General Statutes of North Carolina. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chair, or in his absence the Vice-Chair, may administer any oaths and compel the attendance of witnesses by subpoena. All meetings of the Board shall be open to the public.

Section 4. Conduct of Hearing

All hearings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, and the absence or failure of any member to vote.

Section 5. Disposition of Appeals

The final disposition of each appeal shall be by recorded resolution indicating the reasons of the Board, therefore, based on findings of fact and conclusions of law, all of which shall be a public record.

Section 6. Appeals from Decisions of the Zoning Enforcement Officer

Appeals to the Board of Adjustment may be taken by any person aggrieved by a decision of the zoning enforcement officer or other authorized administrative official of the Town of Ramseur affected by any decisions of the official, based on this ordinance. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the designated administrative official and with the Board of Adjustment a written notice of appeal specifying the grounds. All papers constituting the record upon which the action appealed from was taken shall forthwith be transmitted to the Board of Adjustment.

The Board of Adjustment shall fix a reasonable time for the hearing of appeals or other matters referred to it, and given notice thereof to the parties in interest, and decide the same within a reasonable time. Upon a hearing, any party may appeal in person, or by agent or by attorney.

Section 7. Appeal Stays All Proceedings

An appeal stays all proceedings in furtherance of the action appealed from, unless the zoning enforcement officer certifies to the Board after the notice of appeal shall have been filed with him by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, or because the violation charged is transitory in nature and a stay would interfere with enforcement of the ordinance. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a Court of Record on application, on notice to the administrative official and on due cause shown.

Section 8. Powers of the Board of Adjustment

The Board shall have the following powers:

- a) Administrative Review. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination made by the zoning enforcement officer or duly authorized official. The concurring vote of four-fifths of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the enforcement officer or other authorized official, to decide in favor of the applicant any matter which it is required to pass under the zoning ordinance or to effect any variation in the ordinance.
- b) Special Uses. To hear and grant special uses according to the terms of this ordinance upon which the Board of Adjustment is required to pass.
- c) Variances. 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 will result in undue hardship, and so that the spirit of this ordinance shall be observed and substantial justice done.

*Town of Ramseur, NC
Zoning Ordinance*

In considering all proposed variances to this ordinance, the Board shall, before making any finding in a case, first determine that the proposed variance will not allow the establishment of a use not otherwise permitted in a district; extend in area or expand a non-conforming use of land; change the district boundaries shown on the zoning map; impair any adequate supply of light and air to adjacent property; materially increase the public danger of fire; materially diminish or impair established property values within the surrounding area or in any other respect impair the public health, safety, morals, and general welfare.

In granting a variance, the Board may attach thereto such conditions regarding the location, character, and other features of proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this ordinance.

Such variance may be granted in an individual case of unnecessary hardship upon a finding by the Board of Adjustment that the following conditions exist:

- i. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.
- ii. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located.
- iii. A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.
- iv. The requested variance will be in harmony with purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.
- v. The special circumstances are not the result of the applicant.
- vi. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.
- vii. The variance is not a request to permit a use of land, or structure which is not permitted by right or by conditional use in the district involved.

At the time of a request for a variance, the person making the request shall pay a fee set by the Board of Commissioners to cover advertising and administrative costs.

Section 9. Re-hearings

The Board shall refuse to hear an appeal or application previously denied, if it finds there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

Section 10. Review by Certiorari

Any person or persons, jointly or severally, aggrieved by any decision of the Board or any taxpayer, or any officer, department, board, or bureau of Town of Ramseur, may present to a court of competent jurisdiction a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality; whereupon such decision of said Board shall be subject to review by certiorari as provided by law. Any appeal to the Superior Court shall be taken within 30 days after the decision of the Board is filed in the office of the Town Clerk and a written copy thereof is delivered to the appellant by personal service or registered mail, whichever is later.

Section 11. Planning Board Conflict of Interest

Members of the Board of Adjustment providing advice to the Town Board shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

A member of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.