

Bald Head Island, NC Code of Ordinances

DIVISION 4.
BOARD OF ADJUSTMENT

State Law References: Board of adjustment, G.S. 160A-388.

Sec. 32-101. Establishment.

(a) The village council shall appoint a board of adjustment consisting of five members and two alternates. The two alternates shall substitute at meetings for absent members. When substituting, such alternates shall have the same voting privileges as an appointed member. The initial establishment of the board will involve staggered term appointments as follows:

- (1) Two members appointed for three-year terms.
- (2) Three members appointed for two-year terms.
- (3) Alternate members appointed for two-year terms.

After initial seating of the board, all members and alternates shall be appointed by the village council for three-year staggered terms.

(b) The two alternates shall substitute in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member.

(c) A member of the board 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.

(Ord. No. 29, § 6.1, 8-17-1991; Ord. No. 2006-1007, 10-26-2006)

Sec. 32-102. Procedures.

(a) *Officers.* The board of adjustment shall hold its first meeting in the month of August. At that meeting, the board of adjustment shall elect one of its members to serve as chair and preside over the board's meetings and one member to serve as vice-chair to serve as acting chair in the absence of the chair. The persons so designated shall serve in these capacities for one year and shall be eligible for reelection. Vacancies in these offices may be filled for the unexpired term only.

(b) *Meetings.*

(1) Meetings of the board of adjustment shall be held at the call of the chair and at such other times as the majority of the board may determine. All meetings of the board of adjustment shall be open to the public. The board shall keep minutes of its procedures, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact; and final disposition of appeals shall be taken, all of which shall be of public record. 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 zoning official or to decide in favor of the applicant

any matter upon which it is required to pass under any ordinance or to grant a variance from the provisions of this chapter.

(2) 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.

(c) *Appeals.* An appeal from the decision of the zoning official may be taken to the board of adjustment by any person, firm, or corporation aggrieved, or by any officer, department, board or bureau of the town. Such appeal shall be taken within 90 days after the decision by the zoning official, by filing with the zoning official and with the board a notice of appeal, specifying the grounds thereof. The zoning official shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board of adjustment shall fix a reasonable time for hearing of the appeal, giving notice to all participants by registered mail. An appeal stays all proceedings in furtherance of the action appealed from, unless the zoning official certifies to the board, after notice of the appeal has been filed with him, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charge is transitory in nature, a stay would seriously interfere with the enforcement of this chapter, in which case, proceedings shall not be stayed other than by a restraining order, which may be granted by the board or by a court of record to whom an appeal has been made.

(Ord. No. 29, § 6.2, 8-17-1991; Ord. No. 2006-1008, 10-26-2006)

Sec. 32-103. Duties generally.

It is the intent of this chapter that all questions of interpretation and enforcement shall first be presented to the zoning official or his authorized representative, and that such questions shall be presented to the board of adjustment only on an appeal from the decision of the zoning official or his authorized representative, and that recourse from the decision of the board of adjustment shall be to the courts as provided by law.

(Ord. No. 29, § 6.3, 8-17-1991)

Sec. 32-104. Administrative review and variances.

(a) *Generally.*

(1) The board of adjustment shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the zoning official in the enforcement of this chapter. The board may, so long as such action is in conformity with the terms of this chapter, reverse or affirm wholly or partly or may modify the order, requirement, decision or determination and to that end shall have the powers of the zoning official from whom appeal is taken.

(2) The board of adjustment shall authorize upon appeal in specific cases variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in undue hardship, so that the spirit of this chapter shall be observed and substantial justice done.

(3) The chairman or any member temporarily acting as chairman is authorized to administer oaths to witnesses in any matter coming before the board. All testimony before the board must be under oath and recorded.

(4) The decision of the board of adjustment shall be delivered to the village clerk, to the applicant by personal service, by certified mail, or registered mail, return receipt requested and to

anyone else at the hearing who makes a request for a copy. A charge shall be made to the appellant according to town policy in order to cover administrative and advertising costs.

(b) *Granting variances.*

(1) Public hearing and certain conditions required. In order to grant a variance, the board of adjustment must conduct a public hearing and find the following conditions to be met:

a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in questions because of its size, shape, or topography that are not applicable to other lands or structures in that same district;

b. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the zoning districts in which the property is located;

c. A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the zoning district in which the property is located;

d. The requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare;

e. The special circumstances are not the result of the actions of the applicant; and

f. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.

(2) *Evaluation of impact of grant.* In considering all proposed variances from this chapter, the board shall, before making any finding in a specified case, first determine that the proposed variance will not constitute any change in the zone shown on the zoning map and will not impair an adequate supply of light and air to adjacent property, or materially increase the public danger of fire and safety, or 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.

(3) *No variance for prohibited uses.* No permitted use of land in other districts shall be considered grounds for the issuance of a variance. Under no circumstances shall the board of adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any expressly or by implication prohibited by the terms of this chapter in the district.

(4) *Attachment of conditions.* In granting a variance the board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purposes of this chapter. 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 chapter and punishable under sections 32-61 through 32-65 of this chapter.

(Ord. No. 29, § 6.4, 8-17-1991)

Sec. 32-105. Appeals.

Appeals to the superior court may be taken by any person, firm, or corporation aggrieved, or by any officer, department, board or bureau of the village affected by any decision of the board of adjustment, provided such appeals shall be taken within 30 days after the decision of the board of adjustment is filed in the office of the zoning official, or after a written copy thereof is delivered to the applicant, whichever is later.

(Ord. No. 29, § 6.5, 8-17-1991)

Sec. 32-106. General provisions.

No land owned by the State of North Carolina may be included within an overlay district or a special use or conditional use district without the approval by the Council of State as required by G.S. 160A-392.

(Ord. No. 2006-1009, 10-26-2006)

Secs. 32-107--32-120. Reserved.