

AN ORDINANCE AMENDING THE ZONING ORDINANCE
OF THE TOWN OF PITTSBORO

BE IT ORDAINED by the Board of Commissioners of the Town of Pittsboro as follows:

1. That Article XI of the Zoning Ordinance of the Town of Pittsboro be deleted and the following inserted in lieu thereof:

“ARTICLE XI
BOARD OF ADJUSTMENT

11.1. Powers and Duties

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

1. Hear and decide appeals from any order, decision, requirements or interpretation made by the Planning Director Zoning Enforcement Officer if otherwise permitted in accordance with standards and procedures specified in the ordinance.
2. Hear and decide applications for Special and Conditional Use Permits if otherwise permitted in accordance with standards and procedures specified in the ordinance. Reasonable and appropriate conditions may be imposed upon these permits.
3. Hear and decide applications for variances.
4. Hear and decide questions involving interpretations of the zoning map including disputed district boundary lines and lot lines.
5. Hear and decide any other matter the Board is required to act upon by any other town ordinance.

As used in this Article, the term "decision" includes any final and binding order, requirement, or determination. The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits.

11.1.1 Appeals. The Board of Adjustment shall hear and decide appeals from decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development pursuant to all of the following:

1. Any person who has standing under G.S. 160A-393(d) or the town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.

2. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

3. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

4. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

5. The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

6. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

7. Subject to the provisions of subdivision (6) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.

8. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order,

requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

9. When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).

11.1.2 Special and Conditional Use Permits. If the ordinance provides, the Board of Adjustment may hear and decide special and conditional use permits in accordance with standards and procedures specified in the ordinance. Reasonable and appropriate conditions may be imposed upon these permits.

11.1.3 Variances. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

~~11.1.4 (RESERVED)~~

~~11.1.5 (RESERVED)~~

11.1.46 Fee for Appeals. A fee established by the Town shall be paid for each application for a variance, exception or appeal, to cover the necessary administrative costs and advertising.

11.1.57. Notice of Hearing. Notice of hearings conducted pursuant to this Article shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing;

to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

11.1.8-6 Construction. Upon granting of any favorable decision upon an appeal or variance resulting in the issuance of a building permit, the permit must be obtained and construction begun within 180 days of the date of the Board of Adjustment hearing after which the decision of the Board shall be null and void.

11.2 Membership

11.2.1. Number. The Board of Adjustment shall consist of 5 regular members, and two alternate members.

11.2.2 Composition between Town and ETJ. The composition of membership between Town and ETJ residents shall be as follows:

1. The composition of the regular members shall reflect proportional representation between the Town's corporate limits and the ETJ. ETJ membership shall be based on the proportionality of population between the Town and the ETJ. This shall be determined by estimating the total population in the ETJ as a percentage of the population in the Town's corporate limits and the ETJ and multiplying this percentage by 5 (the total required regular membership), and rounding up to the next whole number. ~~Members appointed from the ETJ shall be residents of the ETJ and citizens of Chatham County~~[P1]. OR

The composition of the regular members shall reflect proportional representation between the Town's corporate limits and the ETJ. The number of regular members appointed who reside in the extraterritorial zoning jurisdiction shall at a minimum meet the requirements of N.C.G.S. 160A-362 for proportional representation, but shall in no instance be less than one. OR[P2]

The composition of the regular members shall reflect proportional representation between the Town's corporate limits and the ETJ. This shall be determined by estimating the total population in the ETJ as a percentage of the population in the Town's corporate limits and the ETJ and multiplying this percentage by the total required regular membership. The whole number product resulting therefrom shall be the number of ETJ members[P3], but not less than one. OR

The composition of the regular members shall reflect proportional representation between the Town's corporate limits and the ETJ. An ETJ position shall be created or the number of ETJ positions reduced on the Board of Adjustment when the population of the entire ETJ constitutes

a full fraction of the Town's population divided by the total membership of the Board of Adjustment or when the population of the ETJ falls below a full fraction of the Town's population divided by the total membership of the Board of Adjustment, respectively[P4].

2. Members appointed from the ETJ shall be residents of the ETJ. The balance of the Board of Adjustment's membership shall reside within the Town's corporate limits.

3. Membership composition shall be adjusted to reflect changes in the population between the Town and the ETJ every three years.

4. The alternate members shall be residents of the Town.

11.2.3. No elected officials or Town employees. No member of the Town Board or a Town employee shall serve on the Board of Adjustment.

11.2.4. Appointment. Members shall be appointed as follows:

1. Regular members of the Board of Adjustment from the ETJ shall be appointed by the Board of County Commissioners of Chatham County.

2. Regular members of the Board of Adjustment from the Town shall be appointed by the Town Board.

3. Alternate members of the Board of Adjustment shall be appointed by the Town Board.

11.2.5. Term.

The term of office of each member appointed shall be for three (3) year staggered terms, but they may continue to serve until their successors have been appointed. Initially, one (1) regular in-town member and one (1) regular ETJ member shall be appointed for two year terms, and one (1) ETJ member shall be appointed for a one (1) year term.

11.2.6 Removal.

Board of Adjustment members may be removed by the Board of Commissioners at any time for failure to attend three (3) consecutive meetings or for failure to attend thirty percent (30%) or more of the meetings within any twelve (12) month period or for any other good cause related to performance of duties. Upon request of the member proposed for removal, the Board of Commissioners shall hold a hearing on the removal before it becomes effective. Members shall also be removed for cause by the Town Board on written charges and after a public hearing.

11.2.7 Resignation.

If a regular in-town member moves outside the town or if an ETJ member moves outside the planning jurisdiction shall constitute a resignation from the Board effective upon the date a replacement is appointed.

11.2.8 Filling vacancy.

Any vacancy on the Board of Adjustment shall be filled for the unexpired term in the same manner as in the case of the original appointment.

11.2.9 Alternate members.

The alternate members shall consist of a first alternate member and a second alternate member. The alternate members shall vote in the event any member is temporarily unable to vote due to absence or conflict of interest in a case, or for any other cause. The first alternate member shall have priority to replace the first regular member that is absent or unable to vote. The second alternate member shall have priority to replace the second regular member that is absent or unable to vote.

11.3. Voting.

(1) No meeting of the Board of Adjustment shall be called to order, nor may any business be transacted by the Board of Adjustment, without a quorum consisting of at least four members (either regular or alternate) being present.

(2) The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, 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 majority if there are no qualified alternates available to take the place of such members. Members shall not be excused from voting unless disqualified from participating in a case in accordance with the adopted rules of procedure. Failure to vote by a member who has heard the case shall be recorded as an affirmative vote.

(2) A member of any board exercising quasi-judicial functions pursuant to this Article 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 violations of due process 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..

11.4. Interest.

Any member who has an interest in a matter under consideration by the Board of Adjustment shall declare such interest prior to the vote of the Board and abstain from voting on the question. The member declaring the interest is not exempted from participation in the

discussions of the Board on the matter prior to its vote, except as required by NCGS 160A-388(e2).

11.5. Rules of Procedure

The Board of Adjustment may, by a majority vote of its entire membership, adopt rules and regulations governing its procedure, as it may consider necessary or advisable.

11.6. Meetings

Meetings of the Board of Adjustment shall be held once every month, or on an as-needed basis. All meetings shall be held in the Town Hall in a place accessible and open to the public.

11.7. Compensation

The members of the Board of Adjustment shall serve without compensation, but they may be reimbursed for incidental expenses incurred in connection with official duties.

11.8. Staff

The Planning Director shall provide staff support to assist the Board of Adjustment in carrying out its duties.

11.9. Quasi-Judicial Decisions and Judicial Review.

1. The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

2. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.”

11.12. Oaths. The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

11.13. Subpoenas. The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties

2. This ordinance shall be effective upon adoption.

Adopted this ___ day of _____, 2014.

TOWN OF PITTSBORO

BY: _____

ATTEST:
