

## **Sec. 21-126. Hearings and appeals.**

(a) *Requests for variance.* Procedures for a request for a variance from this chapter are as follows:

(1) The decision of the city arborist or senior urban forester to deny an application for a variance from the requirements of this chapter shall entitle the person submitting the application (petitioner) to a public hearing before the Commission if such person submits a written request for a hearing to the chair of the commission within ten (10) working days of receipt of the decision denying the variance. As soon as possible after the receipt of the request, the chair of the Commission will set a date, time and place for the hearing and notify the petitioner of the hearing by mail. The time specified for the hearing shall be either at the next regularly scheduled meeting of the commission from the submission of the request, as soon thereafter as practical, or at a special meeting. The chair may appoint a three-member board selected from the appointed members of the Commission to act as an appeal board and hear the request of the petitioner. The hearing shall be conducted by the Commission in accordance with subsection (d) of this section.

(2) The Commission or its designated appeal board may grant a variance from the requirements of this chapter upon a finding that:

a. Practical difficulties or unnecessary hardship would result if the strict letter of the law were followed; and

b. The variance is in accordance with the general purpose and intent of this chapter.

(b) *Appeals of decisions, notices of violation and assessments of civil penalties.* Any party dissatisfied with a decision of the City adversely affecting such party in the application or enforcement of this chapter, including notices of violations and assessments of civil penalties, may request a public hearing before the commission. Procedures for such hearings are as follows:

(1) The issuance of a decision, including a notice of violation or assessment of a civil penalty by the City, shall entitle the person subject to the decision or responsible for the violation (petitioner) to a public hearing before the commission if such person submits a written request for a hearing to the chair of the commission within thirty (30) days of the receipt of a decision, notice of violation or assessment of a civil penalty.

(2) As soon as possible after the receipt of the request, the chair shall set a time and place for the hearing and notify the petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the commission from the submission of the request, as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to subsection (d) of this section.

(c) *Petition for review of commission's decision.* Any party aggrieved by the decision of the commission shall have thirty (30) days from the receipt of the decision to file a petition for review in the nature of certiorari with the clerk of Mecklenburg County Superior Court.

(d) *Hearing procedure.* The following shall be applicable to any hearing conducted by the commission pursuant to subsection (a) or (b) of this section:

(1) At the hearing, the petitioner and the City shall have the right to:

a. Be present and be heard;

b. Be represented by counsel; and

c. Present evidence through witnesses and competent testimony relevant to the issues before the commission.

(2) Rules of evidence shall not apply to a hearing conducted pursuant to this section, and the commission may give probative effect to competent, substantial and material evidence.

(3) At least seven (7) days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the commission.

(4) Witnesses shall testify under oath or affirmation to be administered by the court reporter or another duly authorized official.

(5) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. Both the representative for the City and for the petitioner shall have the right to cross examine witnesses.

(6) At the conclusion of the hearing, the commission shall render its decision on the evidence submitted at such hearing and not otherwise.

a. If, after considering the evidence presented at the hearing, the commission concludes by a preponderance of the evidence that the grounds for the City's actions are true and substantiated, the commission shall, as it sees fit, uphold the City's action.

b. If, after considering the evidence presented at the hearing, the commission concludes by a preponderance of the evidence that the grounds for the City's actions are not true and substantiated, the commission may, as it sees fit, reverse or modify any order, requirement, decision or determination of the City. The commission bylaws will determine the number of concurring votes needed to reverse any order, requirement, decision or determination of the City.

(7) The Commission 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. The decision of the commission shall be based on findings of fact and conclusions of law to support its decision.

(8) The commission shall send a copy of its findings and decision to the petitioner and the City. If either party contemplates an appeal to a court of law, the party may request and obtain, at his own cost, a transcript of the proceedings.

(9) The decision of the commission shall constitute a final decision.

Section 2. These amendments shall apply to all development and additions to existing sites within the corporate limits of this city and its extraterritorial jurisdiction, unless one of the following exemptions applies as of the effective date:

(1) Residential and nonresidential development and additions to existing sites submitted and accepted for review;

(2) Zoning use application submitted and accepted for review for uses that do not require a building permit;

(3) Valid building permit issued pursuant to G.S. 153A-344 or G.S. 160A-385, so long as the permit remains valid, unexpired, and unrevoked;

(3) Common law vested right established (e.g., the substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid governmental approval to proceed with a project); and/or

(4) A conditional zoning district (including those districts which previously were described variously as conditional district, conditional use district, parallel conditional district and parallel conditional use district) approved, provided formal plan submission has been made and accepted for review prior to the date that the vested rights for the conditional zoning district expire pursuant to G.S. 160A-385.1 and Sec. 1.110 of the Charlotte zoning ordinance.

Section 3. This ordinance shall be effective January 2011

Approved as to form:

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City Attorney