

CHARLOTTE CODE

CHAPTER 5:

APPEALS AND VARIANCES

Section 5.101. Authority of City of Charlotte.

- (1) The Board of Adjustment shall have the authority to hear and decide appeals from and to review any specific order, requirement, decision, or determination made under these regulations by the Zoning Administrator, or by his or her authorized designee. *(Petition No. 2006-116 §5.101(1), 01/16/07)*
- (1A) The Board of Adjustment shall have the authority to hear and decide all appeals regarding the issuance or denial of a Certificate of Appropriateness by the City of Charlotte Historic District Commission in the nature of certiorari within the times prescribed for appeals of administrative decisions pursuant to G.S. 160D-405(d).
- (2) The Board of Adjustment shall have the authority to hear and decide petitions for variances from the requirements of these regulations so that the spirit, purpose, and intent of the Zoning Ordinance is met, such that public safety is secured, and substantial justice is achieved.
(Petition No. 2006-16 §5.101(2), 03/20/06)
(Petition No. 2014-087 §5.101(2), 10/20/2014)
- (3) The Board of Adjustment shall have the authority to impose reasonable and appropriate conditions and safeguards that the Board judges to be reasonably related to the condition or circumstance that gives rise to the need for a variance.
(Petition No. 2006-16 §5.101(3), 03/20/06)
- (4) The Board of Adjustment shall not have jurisdiction with respect to [Section 6.201](#) Conditional Zoning Districts except as provided in this section. The Board of Adjustment shall have jurisdiction with respect to conditional zoning districts if the request pertains to a variance from specified minimum requirements of the zoning ordinance and is filed with the Board prior to the approval of a conditional zoning district. In addition, the Board of Adjustment may also hear and decide on various petitions for approved conditional zoning district plans on matters related to ordinance provisions which are not associated with specifically approved conditions of the plan that are more restrictive than minimum ordinance requirements. At no time shall the Board of Adjustment have authority to consider a variance relating to the number of or size of permissible signs in a conditional zoning district.
- (5) Pursuant to G.S. § 160D-406 the Board of Adjustment only has the statutory authority to grant or to deny variances and to determine if the zoning administrator correctly or incorrectly interpreted and applied the zoning ordinance in rendering a decision. The Board of Adjustment does not have jurisdiction to address or rule upon constitutional and federal and state statutory issues or any other legal issues beyond its statutory authority.
(Petition No. 2014-087 §5.101(5), 10/20/2014)

CHARLOTTE CODE

- (6) Variance approvals attach to and run with the land.

Section 5.102. Initiation of an appeal or variance.

- (1) An appeal must be initiated by any person aggrieved or by any officer, department, board, or bureau of the City of Charlotte or Mecklenburg County.
- (2) A petition for variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.

Section 5.103. Filing of notice of appeal.

- (1) A notice of appeal, in the form prescribed by the Board of Adjustment, shall be properly filed by the owner or other party within thirty (30) days of the receipt of the written determination by the Zoning Administrator or of his or her authorized designee. Any other person with standing to appeal has thirty (30) days from receipt from the source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the U.S. Postal Service. If an applicant fails to request variances at that time, then the applicant shall forfeit the right to seek variances for the stated violations. The notice filed with the Zoning Administrator shall be accompanied by a nonrefundable filing fee as established by City Council. Failure to timely and properly file such notice and the fee shall constitute a waiver of any rights to appeal under this chapter and the Board of Adjustment shall have no jurisdiction to hear the appeal.

(Petition No.

2006-116 §5.103(1), 01/16/07)

- (2) The Zoning Administrator shall transmit to the Board of Adjustment all administrative papers, records, and other information regarding the subject matter of the appeal. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board, a copy is also provided to the applicant and to the property owner if that person is not the applicant. Administrative materials may be provided in written or electronic form.
- (3) An appeal stays all proceedings and enforcement actions, including fines in furtherance of the action appealed from, unless the officer from whom the appeal

CHARLOTTE CODE

is taken certifies to the Board of Adjustment, after notice of appeal has been filed, that because of facts stated in the certificate a stay would cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of these regulations. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from which the appeal is taken and on due cause shown.

Section 5.104. Filing of variance petition.

A petition for variance, in the form prescribed by the Board of Adjustment, shall be filed with the Zoning Administrator, accompanied by a nonrefundable filing fee as established by the Charlotte City Council.

(Petition No. 2005-78 §5.104, 06/20/05)

Section 5.105. Determination of completeness.

A notice of appeal or a variance petition will not be deemed properly filed unless it is complete. Upon proper filing, the Board of Adjustment shall schedule the appeal or variance for a hearing.

Section 5.106. Staff review.

Within three days after the proper filing of a completed variance petition or notice of appeal application, the Zoning Administrator shall transmit the variance petition and notice of appeal application to the Planning staff. As soon as reasonably practical upon receiving the variance petition and appeal application, the Planning staff shall make comments, if any, to the Zoning Administrator about the filed applications. The Zoning Administrator shall take into consideration any such comments from the Planning staff whether a variance appears to be necessary or whether an appeal application appears to be necessary.

Section 5.107. Notice and hearing.

The Board of Adjustment shall, in accordance with rules adopted by it for such purpose, follow statutory procedures for evidentiary hearings and quasi-judicial decisions required by G.S. 160D-406, on any appeal or variance petition, which comes before it.

As per G.S. § 160D-406 notices of hearings shall be mailed to (1) the person or entity whose appeal, application or request is the subject of the hearing; (2) to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and (3) to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing.

CHARLOTTE CODE

In the absence of evidence to the contrary, the county tax listing shall be used 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 period, the city 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.

(Petition No. 2014-087 §5.107),10/20/2014)

Staff shall transmit to the Board of Adjustment all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board, a copy is also provided to the applicant and to the property owner if that person is not the applicant. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

All parties with standing shall be allowed to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments.

For appeals of administrative decisions, the administrator or staff person who made the decision (or his or her successor if the person is no longer employed) shall be present at the quasi-judicial hearing to appear as a witness.

If any aggrieved party wishes to receive a written copy of the decision of the Zoning Board of Adjustment pursuant to section 5.113(1), then the aggrieved party, as stated in G.S. Sec. 160D-1402(c) should file a written request for a copy of the Board's decision with the Secretary or Chairperson of the Zoning Board of Adjustment prior to the date the decision becomes effective.

The decision of the Board of Adjustment 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.

Section 5.108. Standards for granting a variance.

- (1) When unnecessary hardships would result from carrying out the strict letter of the Zoning Ordinance, the Board of Adjustment shall vary any of the provisions of the Zoning Ordinance upon a showing of all of the following:
 - (a) 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.

CHARLOTTE CODE

- (b) 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.
 - (c) 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.
 - (d) The requested variance is consistent with the spirit, purpose, and intent of the Zoning Ordinance, such that public safety is secured, and substantial justice is achieved.
- (2) The Board of Adjustment shall not grant a variance which would allow the establishment of a use which is not otherwise permitted in the district, would result in the extension or expansion of a nonconforming use, or would change the district boundary, or zoning classification of any or all of the subject property.
 - (3) Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.
(Petition No. 2014-087 §5.108(1-3), 10/20/2014)

Section 5.109. Standards for granting an appeal.

- (1) The Board of Adjustment shall reverse or modify the specific order, requirement, decision, or determination under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, requirement, decision, or determination.
- (2) In affirming, reversing, or modifying the order, requirement, decision, or determination, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

Section 5.110. Action by the Board of Adjustment.

- (1) The Board of Adjustment shall grant or deny the variance or shall reverse, affirm, or modify the order, decision, requirement, or determination under appeal.
- (2) 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.

CHARLOTTE CODE

- (3) The board shall vote in accordance with state law. Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) 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.
- (4) 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 approved by the board, signed by the chair or other duly authorized member of the board, and protected from further editing. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board.
- (5) The decision of the Board of Adjustment 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.
- (6) If any aggrieved party wishes to receive a written copy of the decision of the Zoning Board of Adjustment pursuant to [section 5.113\(1\)](#), then the aggrieved party, as stated in G.S. Sec. 160D-1402(c) should file a written request for a copy of the Board's decision with the Secretary or Chairperson of the Zoning Board of Adjustment prior to the date the decision becomes effective. (*Petition No. 2014-087 §5.110(1-3), 10/20/2014*)

Section 5.111. Effect of grant of variance or reversal or modification of administrative decision.

After the Board of Adjustment approves a variance, or reverses or modifies an order, requirement, decision, or determination, of the Zoning Administrator, the appellant or petitioner shall be required to follow the applicable procedures of Chapter 4 for the approval of a building permit and certificate of occupancy in order to proceed with development of the subject property. Unless otherwise specified by the Board, a decision of the Board granting a variance shall automatically expire if a building permit is required, pertaining to the need for the variance, and is not obtained within two years from the date of the meeting of the Board at which the Board rendered its decision. In addition, if two years have expired, the Zoning Administrator shall have the authority to issue the permit if the Zoning Administrator determines that, based upon the Board's decision, the circumstances for the granting of the variance have not changed and would allow the issuance of the permit. In exercising that authority, the Zoning Administrator shall comply with the procedures of §4.107(4), 'Procedure'.

All orders, requirements, decisions, and determinations made by the Zoning Administrator under those procedures shall be consistent with the variance, reversal, or modification granted to the appellant or petitioner by the Board of Adjustment.

Section 5.112. Rehearing.

The Board of Adjustment may rehear an appeal or variance petition that has been denied at any time after two years from the date of the denial. Prior to that two-year period, the Board of Adjustment shall refuse to rehear an appeal or variance petition unless it finds that there have been substantial changes in the conditions or circumstances relating to the subject property beyond the control of the appellant or petitioner or in the surrounding area or other extraordinary change.

Section 5.113. Appeal from Board of Adjustment.

(Petition No. 2005-78 §5.104(1)(3)(4), 06/20/05)

(Petition No. 2014-087 §5.113(1-3),10/20/2014)

- (1) Every quasi-judicial decision of the Board shall be subject to judicial review by the superior court by proceedings in the nature of certiorari pursuant to G.S. § 160D-1402. Any petition for a review of the Board's decision in the nature of certiorari by the superior court must be filed with the clerk of superior court by the later of (1) 30 days after the decision is effective, or (2) 30 days after a written copy of the decision is given in accordance with subsection (1) of this section. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.
- (2) If a petition for review pursuant to G.S. §160D-406(k) is filed, then the petitioner must order from the court reporter and pay for the original transcript of the hearing for delivery to the secretary of the Zoning Board of Adjustment for preparation of the filing of the record in superior court. If a court ultimately renders a decision in favor of the petitioner, then the City shall reimburse the petitioner for the cost of the transcript. In the event that the petitioner does not order the transcript and does not prevail on appeal, then the City shall request the Court to make the costs of the original transcript part of the costs of the action or recover the costs in the nature of debt owed.

(Petition No. 2014-087 §5.113(1-3),10/20/2014)