

P19-28

PENDING AMENDMENT

Hope Mills Zoning Ordinance

CURRENT MEETING INFORMATION:

County Joint Planning Board, May 21, 2019 at 7:00 pm, Historic Courthouse, 130 Gillespie Street, Fayetteville, 2nd floor hearing room

CASE HEADING:

P19-28. REVISION AND AMENDMENT TO THE TOWN OF HOPE MILLS ZONING ORDINANCE, REGARDING PROVISIONS RELATED TO THE BOARD OF ADJUSTMENT, SPECIFICALLY ARTICLE XVII BOARD OF ADJUSTMENT IN ITS ENTIRETY. (HOPE MILLS)

ADDITIONAL INFORMATION:

Complete text is attached.

CONTACT INFORMATION:

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ARTICLE XVII
BOARD OF ADJUSTMENT

Sec. 102A-1701. Establishment

The Board of Commissioners, pursuant to N.C. Gen. Stat. § 160A-388, does establish a Board of Adjustment. The powers and duties of the Board of Adjustment shall be exercised by five members appointed by the Board of Commissioners. Two alternate members shall also be appointed to serve in the event one or more of the five appointed members are unavailable. The Board of Adjustment is an independently operating board, and shall be bound by and shall follow the requirements of this Article. The Board of Adjustment will meet on an as-needed basis.

Sec. 102A-1702. Composition

The Board of Adjustment shall appoint a Chairperson who shall preside over all meetings of that board. The Town Clerk shall serve as the Secretary of the Board of Adjustment, and shall keep minutes of the proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact. The Board of Adjustment shall also elect a Vice-Chairperson by majority vote from among its members. Members shall be appointed for three year terms, and are eligible for reappointment at the close of their terms.

Sec. 102A-1703. Powers and Duties

When sitting as the Board of Adjustment, the Board shall have the following powers and duties:

- (A) **Appeals.** To hear and decide appeals from decisions of the Town Manager, Development & Planning Administrator, Flood Administrator, Stormwater Department, Historic Resource Commission, and/or other administrative officials charged with enforcement of this ordinance. To this end, the Board shall have all the powers of the officer from whom the appeal is taken. An appeal to the Board of Adjustment shall be conducted in accordance with the provisions of Sec. 102A-1705, "Appeals."
- (B) **Variances.** When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board shall vary any of the provisions of the ordinance. Requests for variances shall be processed and considered in accordance with the provisions of section Sec. 102A-1706, "Variances."
- (C) **Special Use Permits.** The Board of Adjustment is authorized to hear and decide special use permits in accordance with the provisions of Sec. 102A-1707, "Special Use Permits."
- (D) **Interpretations.** The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions in accordance with Sec. 102A-1708, "Interpretations."
- (E) **Oaths.** The Chairman or any member temporarily acting as Chairman is authorized in his or her official capacity to administer oaths to witnesses in any matter coming before the Board.

- (F) **Subpoenaing witnesses.** 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), as set forth in Sec. 102A-1705(B), 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.

Sec. 102A-1704. Fees.

A fee shall be paid to the town for each application for an appeal or variance. The fee shall be adopted and periodically amended by the Board of Commissioners as needed to cover the administrative costs and advertising associated with the appeal or variance. A copy of the fee schedule shall be available for review in the office of the Town Clerk.

Sec. 102A-1705. Appeals.

- (A) 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, subject to the terms of this section. The Board of Adjustment will not hear appeals related to building code violations, and those appeals should be directed to the Department of Insurance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination.
- (B) 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. Persons having standing pursuant to G.S. 160A-393(d) include the following:
- (1) Any person meeting any of the following criteria:
 - a. Has an ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.
 - b. Has an option or contract to purchase the property that is the subject of the decision being appealed.

- c. Was an applicant before the decision-making board whose decision is being appealed.
 - (2) Any other person who will suffer special damages as the result of the decision being appealed.
 - (3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.
 - (4) A city whose decision-making board has made a decision that the council believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of an ordinance adopted by that council.
- (C) **Notice of Decision.** The official who made the decision shall give written notice of the decision 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 deliver, electronic mail, or by first-class mail.
- (D) **Time to Appeal.** The owner or other party shall have thirty (30) days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- (E) **Constructive Notice.** 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.
- (F) **Record on Appeal.** The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision 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.
- (G) **Stay of Enforcement.** 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.

- (H) **Hearings Within a Reasonable Time.** Subject to the provisions of subsection (G) above, the board of adjustment shall hear and decide the appeal within a reasonable time.
- (I) **Hearing.** 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.

When hearing an appeal pursuant to G.S. 160A-400.9(e) (i.e. from a decision of the Historic Preservation Commission granting or denying a certificate) 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).

- (K) **Alternative Dispute Resolution.** The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The board of adjustment may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

Sec. 102A-1706. Variances.

- (A) An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Town Clerk. The applicant may submit reports, arguments, proposed findings or other documents along with the application.
- (B) When unnecessary hardship 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 to 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.
- (C) In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.
 - (D) A variance may be issued for an indefinite duration or for a specified duration only.
 - (E) The nature of the variance and any conditions attached to it shall be entered on the face of the certificate of zoning compliance, or the certificate of zoning compliance may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this ordinance.
 - (F) The concurring vote of four-fifths of the board shall be necessary to grant a variance.

Sec. 102A-1707. Special Use Permits

- (A) The various uses set forth in the matrix in Article IV, because of special site or design requirements, operating characteristics or potential adverse effects on surrounding property and neighborhoods, shall be permitted only upon approval by the Board of Adjustment in accordance with the standards and conditions set forth in this section.
- (B) Special use permits shall be granted by the Board of Adjustment as permitted for only those uses enumerated in Sec. 102A-403 (use matrix) as special uses. Uses specified as a special use in Sec. 102A-403 shall be permitted only upon the issuance of a special use permit by the Board of Adjustment.
- (C) **Application.** The owner or owners of all property included in the petition for a special use permit shall submit a complete application and five copies of a detailed site plan (drawn in accordance with the specifications listed in Sec. 102A-1503) to the County Planning Staff. The staff will schedule the application to be heard by the Board of Adjustment in accordance with the adopted time schedule. The Town Clerk shall also notify the commanders of the military bases of any application affecting the use of property located

within five or less miles of the perimeter boundary of said bases. Developers are encouraged to discuss their special use plans with the County Planning and Town Staff prior to submission of the application. The staff shall assist the developer upon request by reviewing special use plans to ensure that the technical requirements of this ordinance are met before submission to the Board of Adjustment.

(D) **Consideration of Application.** The Board of Adjustment shall consider the application, site plan and any other evidence presented in accordance with this article and may grant or deny the special use permit requested. In granting a special use permit, the board shall find that:

- (1) The use will not materially endanger the public health or safety if located according to the plan submitted and proposed;
- (2) The use meets all required conditions and specifications;
- (3) The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and
- (4) The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with Hope Mills' most recent and officially adopted land use plan, either comprehensive or a detailed area plan.

(E) **Final Disposition.** In granting approval of a special use permit, the Board of Adjustment shall impose such reasonable terms and conditions as it may deem necessary for the protection of the public health, general welfare, and public interest. In granting a special use permit, the Board of Adjustment may give due consideration the considerations set forth in Subsection (D) above, as well as to any or all of the following:

- (1) The compatibility of the proposal, in terms of both use and appearance, with the surrounding neighborhood;
- (2) The comparative size, floor area and mass of the proposed structure in relationship to adjacent structures and buildings in the surrounding area and neighborhood;
- (3) The frequency and duration of various indoor and outdoor activities and special events, and the impact of these activities on the surrounding area;
- (4) The capacity of adjacent streets to handle increased traffic in terms of traffic volume, including hourly and daily levels and weight-bearing limitations;
- (5) The added noise level created by activities associated with the proposed use;
- (6) The requirements for public services where the demands of the proposed use are in excess of the individual demands of the adjacent land uses, in terms of police and

fire protection, and the presence of any potential or real fire hazards created by the proposed use;

- (7) Whether the general appearance of the neighborhood will be adversely affected by the location of the proposed use on the parcel;
- (8) The impact of night lighting in terms of intensity, duration and frequency of use, as it impacts adjacent properties and in terms of presence in the neighborhood;
- (9) The impact of the landscaping of the proposed use, in terms of maintained landscaped areas, versus areas to remain in a natural state, as well as the openness of landscaped areas, versus the use of buffers and screens;
- (10) The impact of a significant amount of hard-surfaced areas for buildings, sidewalks, drives, parking areas and service areas, in terms of noise transfer, water runoff and heat generation;
- (11) The availability of public facilities and utilities;
- (12) The harmony in scale, bulk, coverage, function and density of the proposed development and compliance with the development standards of the Individual uses; and/or
- (13) The reasonableness of the request as compared to the purpose and intent of the most recent land use plan, this ordinance, and officially adopted policies, for the physical development of the district, and protection of the environment.

All such additional conditions shall be entered in the minutes of the meeting at which the special use permit is granted, on the special use permit itself, and on the approved plans submitted therewith. The specific conditions shall run with the land and shall be binding on the original applicants for the special use permit, their heirs, successors, and assigns. The applicant for the special use permit is responsible for the recordation of the *Notice of Special Use Permit* with the County Register of Deeds prior to application for any zoning/building permit.

If the board denies the special use permit, it shall enter the reason for its action in the minutes of the meeting at which the action is taken. In the event of a denial, the Board of Adjustment shall not consider re-submission of the application for the same special use permit on the same property without a substantial material change concerning the property and the application.

- (F) **Expiration of Permits.** Any special use granted becomes null and void if not exercised within the time specified in such approval, or, if no date is specified, within one calendar year from the date of such approval. Furthermore, once the *Certificate of Occupancy* has been issued for a special use and then the special use ceases to exist for a time period of

one calendar year or more, a re-submittal of the special use application for the same use may be required if there has been a material change in the ordinance standards.

- (G) **Modification to Plans.** The Board of Adjustment shall review any change, enlargement or alteration in site plans submitted as a part of a special use application, and new conditions may be imposed where findings require. The County Planning and Town Staff may approve minor modifications of the approved plans in the same manner as authorized in Sec. 102A-508 for conditional zoning districts, provided that the changes do not materially alter the original plan as approved, and the intent and objectives of the original approval are not deviated from.
- (H) **Noncompliance.** If for any reason any condition imposed pursuant to this section is found to be illegal or invalid, the special use permit shall be null and void and of no effect, and the County Planning or Town Staff shall institute proceedings for the case to be reheard by the Board of Adjustment.

Compliance with all the conditions of a special use permit is an essential element of the special use permit's continued validity and effectiveness. If the Chief Building Inspector determines that a permittee has failed to comply with a condition of an approved special use permit, they shall so notify the permittee or the permittee's successor in interest and shall place the matter on the Board of Adjustment's agenda for the board's decision whether or not to revoke the special use permit. Such hearing shall be on reasonable written notice to the permittee or the permittee's successor in interest and shall be a quasi-judicial proceeding according to quasi-judicial procedures. The decision of the Board of Adjustment shall be a final decision, and a decision to revoke the special use permit may be appealed to the Superior Court of Cumberland County within 30 days after the permittee or the permittee's successor in interest has been served with written notice of the Board of Adjustment's decision. Service by personal delivery or certified mail, return receipt requested, of a certified copy of the Board of Adjustment's approved minutes for its meeting at which such decision is made, shall constitute written notice and service of the Board of Adjustment's decision hereunder.

- (I) **Appeals.** No appeal may be taken from the action of the Board of Adjustment in granting or denying a special use permit except through the Superior Court of Cumberland County in the same manner as set forth in this article for appeal of any Board of Adjustment decision.

Sec. 102A-1708. Interpretations.

- (A) The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Administrator, they shall be handled as provided in Sec. 102A-1705, "Appeals."

- (B) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator. The application shall contain sufficient information to enable the Board to make the necessary interpretation.
- (C) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:
 - (1) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerlines;
 - (2) Boundaries indicated as approximately following lot lines, Town limits or extraterritorial boundary lines shall be construed as following such lines, limits or boundaries;
 - (3) Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline, shall be construed as following such shorelines;
 - (4) Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Maps, the boundary shall be determined by measurement, using the scale of the Official Zoning Map; and
 - (5) Where any street or alley is hereafter officially closed or withdrawn, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added to the parcel by virtue of such closure or withdrawal.
- (D) Interpretations of the location of floodway and floodplain boundary lines may be made by the Administrator as provided in article XVI, "Floodways, Floodplains, Drainage and Erosion," part 1.

Sec. 102A-1709. Voting.

- (A) 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.
- (B) 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.

- (C) 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.

Sec. 102A-1710. Reversal of Decisions.

After a public hearing has been held and approval granted for a special use or variance, the Board of Adjustment may reverse any decision upon finding that the:

- (1) Approval was obtained by fraud;
- (2) Use for which such approval was granted is not being executed;
- (3) Use for which such approval was granted has ceased to exist or has been suspended for one year or more;
- (4) Permit granted is being, or recently has been, exercised contrary to the terms of conditions of such approval or in violation of any regulation or statute; or
- (5) Use for which the approval was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

Sec. 102A-1711. Appeal of Final Decision.

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.