

ARTICLE 11

BOARD OF ADJUSTMENT

Section 11.1 Board of Adjustment Powers, Duties and Procedure *(rev. 11.11.2013)*

A Board of Adjustment is hereby established, which Board shall have all the powers and duties as authorized by Section 160A-388 of the General Statutes of North Carolina, and as otherwise provided for in this Ordinance. Generally, such powers and duties shall include, but not be restricted to, the following:

- a. Hearing and deciding all appeals from decisions made by the Zoning Administrator.
- b. Hearing and granting variances from the provisions of this Ordinance.

11.1.2 Establishment of Zoning Board of Adjustment

The Board of Adjustment shall consist of five (5) regular members who are residents of the Village of Wesley Chapel and shall be appointed by the Village Council. In addition, two (2) alternate members who are residents of the Village of Wesley Chapel, and appointed by the Village Council shall serve on the Board of Adjustment in the absence of any regular member.

Additionally, the Board of Adjustment will include two (2) members from the Extra Territorial Jurisdiction (ETJ) Area. This number is based on proportionate population representation and should be annually reviewed by the Village Council to ensure adequacy. ETJ members shall have and may exercise all powers and duties of regular members. The initial appointment of the ETJ members will consist of one member for an initial two (2) year term and one for an initial three (3) year term. Thereafter, members shall be appointed for three (3) years each. *(Added 02.12.07)*

The terms of office of the members of the Board of Adjustment shall be for overlapping terms of three (3) years. Initial appointment of the members shall be as follows:

One (1) regular member shall be appointed by the Village Council for a one-year term; two (2) for two-year terms; and two (2) for three-year terms. Thereafter, members shall be appointed for three (3) years each. Alternate members shall be appointed for a term of three (3) years each. Nothing herein contained shall be so interpreted as to forbid any member from being appointed to succeed himself.

Vacancies occurring for any reason other than expiration of term shall be filled as soon as is reasonably possible after such vacancy occurs by the Village Council making the appointment, and such appointment shall only be for the period of the unexpired term. Members may be removed for cause by the Village Council upon written charges and after public hearing.

At time of appointment, the Council shall designate one regular member as Chairman. Such alternate member(s), while attending any regular or special meeting of the Board of Adjustment and serving in the absence of any regular member shall have and may exercise all the powers and duties of such regular members.

11.1.3 Jurisdiction

Each member of the Board of Adjustment shall have equal rights, privileges, and duties in all matters coming under the Board's purview.

Section 11.2 Administrative Review (revised 11.11.2013)

The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official charged with the enforcement of this Ordinance, and apply such interpretation to particular fact situations.

11.2.1 A written appeal may be taken by the Village or by any person with standing per NCGS 160A-393(d) who has first requested and received a written ruling from the Zoning Administrator. All applications for appeals shall be filed with the Village Clerk. An appeal to the Board of Adjustment shall be made by the property owner of the lot(s) in question within thirty (30) days of receipt of the written decision made by the Zoning Administrator. 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. One means of constructive notice of the decision shall be if the person receiving a written decision from the Zoning Administrator posts a sign that says "Zoning Decision" or "Subdivision Decision" in letters that are at least six (6) inches high. Said sign shall be prominently posted on the property that is subject to the decision and shall remain posted for at least ten (10) days. Verification of the posting shall be provided to the official who made the decisions. All applications for appeals shall be filed with the Village Clerk.

11.2.2 An appeal of a notice of violation or other enforcement order stays all

proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, 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 the ordinance. In such cases, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment or by a court.

- 11.2.3** The official whose decision is being appealed shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is being taken. Said information shall also be given to the appellant and to the owner of the property that is subject to the appeal if the appellant is not the property owner.
- 11.2.4** The Board of Adjustment must conduct a public hearing of the appeals application within forty (40) calendar days of receipt of the notice of appeal. However, if enforcement proceedings are not stayed, the appellant may file with the Village Clerk a request for an expedited hearing to occur within fifteen (15) days of the date such request is made.
- 11.2.5** Notice of the public hearing of the subject appeal shall be given in the following manner: Notice shall be given to (1) the appellant; (2) to the owner of the property that is subject to the appeal if the owner did not initiate the appeal, and; (3) to the owners of all parcels of land abutting the parcel that is the subject of the appeal. Said notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the hearing. During this same time period, the Village shall place prominent notice of the hearing on the site that is subject to the hearing or on an adjacent street or highway right-of-way.
- 11.2.6** The official whose decision is being appealed shall be present at the public hearing as a witness. The appellant shall not be limited to matters stated in the notice of appeal. If any party or the Village would be unduly prejudiced by the presentation of matters not on the public hearing notice, the Board of Adjustment may continue the public hearing.
- 11.2.7** The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination with reference to the appeal. A motion to approve such modification must be approved by a minimum of three (3) sitting members of the Board of Adjustment.
- 11.2.8** The parties to the appeal may agree to mediation of other forms of alternative dispute resolution.

Section 11.3 VariANCES (Rev. 11.11.2013)

11.3.1 A petition for a variance may only be initiated by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or an individual having a written contractual interest in the affected property. Under no circumstances shall the Board of Adjustment grant a variance to allow a use of land or structures not permitted under the terms of this Ordinance in the district involved or for a use expressly, or by inference, prohibited in said district. No variances shall be granted by the Board of Adjustment for the following:

- (a) Setbacks for signs, or the square foot area limitation(s) for such signs.
- (b) Setbacks for Essential Services - Class III.
- (c) Use Variance. (*Amended 1.05.06*)

No variance for setbacks shall be granted which allows the applicant to reduce the applicable setback by more than fifty (50) percent.

11.3.2 The Board of Adjustment, before granting a variance, shall make the following findings:

- a. The hardship is peculiar to the applicant's property. Unnecessary hardship would result from the strict application of the ordinance. (NOTE: It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.)
- b. The hardship results from conditions that are peculiar to the property, such as location, size or topography. (NOTE: 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. (NOTE: 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 variance is consistent with the spirit, purpose, and intent of the ordinance such that safety is secured and substantial justice is achieved.

- 11.3.4** Any order of the Board of Adjustment in granting a variance shall expire, if a Zoning Permit, or Certificate of Compliance for such use (if a zoning permit is not required) has not been obtained within one (1) year from the date of the decision.
- 11.3.5 Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.
- 11.3.6 The Board of Adjustment shall hold a public hearing to review any variance application no later than forty (40) calendar days after the complete application has been received by the Village.
- 11.3.7 Notice of the variance public hearing shall be given in the following manner: Notice shall be given to (1) the appellant; (2) to the owner of the property that is subject to the application if the owner did not initiate the application, and; (3) to the owners of all parcels of land abutting the parcel that is the subject of the application. Said notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the hearing. During this same time period, the Village shall place prominent notice of the hearing on the site that is subject to the hearing or on an adjacent street or highway right-of-way.
- 11.3.8 A motion to approve a variance must receive a “yea” vote by a minimum of four (4) sitting members of the Board of Adjustment.

Section 11.4 Application Procedure *(Rev. 11.11.2013)*

The following regulations apply to all applications submitted to the Board of Adjustment:

- 11.4.1** Before a petition for an appeal or variance shall be considered, a completed application on a form provided by the Village of Wesley Chapel accompanied by a fee (as established by the Village Council) shall be submitted to the Village as set forth in Section 11.2.3. The fee shall be waived for any petition initiated by the Village. The application shall contain the name, address, and telephone number of the applicant(s), and property owners if different from applicant(s), a description of the subject property with reference to deed book and page. The application shall also contain a list of names and addresses of adjoining and contiguous property owners on all sides and across any street and public right-of-way from the subject property. This information shall be based upon the current year Union County tax records. The application shall be accompanied by a map clearly showing

the subject property and all contiguous property on either side and all property across any street or public right-of-way from the subject property.

11.4.2 Reserved.

11.4.3 Reserved.

11.4.4 Reserved.

11.4.5 Reserved.

11.4.6 In all matters before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application. Hearings may be continued, at the sole discretion of the Board and as provided in Section 11.2.6, to permit the applicant to provide additional, missing or incomplete information, when requested, to aid the Board of Adjustment in reaching a proper determination and/or to permit the Board to independently obtain such information. All reasonable expenses incurred by the Village for investigating and processing the matters before the Board of Adjustment are the responsibility of the applicant. These expenses may include, but are not limited to, the solicitation of Professional Engineers' Services, legal advice, expenses of public hearing(s) and the like; and shall be paid in full prior to delivery of the final notification of Board action for the subject matter.

11.4.7 The Board of Adjustment shall have no authority to issue a variance for a waiver of a setback or bulk requirement for a building or structure if the applicant had not first submitted a foundation survey (in accordance with Section 10.3.8) subsequent to the construction of the foundation and prior to the application for a Certificate of Compliance.

Section 11.5 Board of Adjustment Action *(Rev. 11.11.2013)*

11.5.1 No motion regarding approval or denial of a variance or an appeal may be made unless one of the sitting members present at the time the motion is made is either the Chairman or the Vice-Chairman. If neither the Chairman nor Vice-Chairman is present, the public hearing shall be continued. 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 supermajority if there are no qualified alternates available to take the place of such members. *(Amended 1.05.06, 1.11.2013)*

11.5.2 Any member(s) of the Board who declares that a potential conflict of

interest may exist with respect to any petition or application before the Board may be excused and replaced by an alternate. 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. In the event fewer than three (3) members remain, no reversal of any prior decision may be made. *(Amended 1.05.06)*

11.5.3 All decisions of the Board of Adjustment shall be reduced to writing and be made within thirty (30) days following conclusion of the public hearing or at the next regularly scheduled meeting of the Board of Adjustment following the hearing conclusion, whichever occurs later. All decisions shall reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chairman or other duly authorized member of the Board.

11.5.4 All decisions of the Board of Adjustment shall be filed with the Zoning Administrator and a written copy thereof shall be sent by the Village to the applicant, the property owner and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. Said notice shall be sent by personal delivery, electronic mail, or by first class mail within fourteen (14) calendar days following the decision, or after receipt of payment for processing per Section 11.4.6, whichever occurs later. The person who makes such delivery shall certify that proper notice has been made. The Board's decision shall not become effective until it is filed in the office of the Village Clerk.

Section 11.6 Appeals from the Board of Adjustment

11.6.1 A written application for a rehearing shall be made in the same manner as provided for an original hearing within a period of fifteen (15) days after the date of denial of the original application. In addition, specific information to enable the Board of Adjustment to determine whether or not there has been a substantial change in fact, evidence, or conditions in the case, shall be presented in writing, and/or graphically. A rehearing shall be denied by the Board, if, in its sole judgment, such change in facts, evidence of conditions has not been proven. In the event that the Board finds that a rehearing is warranted, it shall thereupon proceed in the same manner as prescribed for in the original hearing.

Each such application for rehearing shall be signed by the applicant, shall

be submitted in duplicate, and shall contain the following information:

1. Applicant's full name, address and telephone number; the property owner's full name, address and telephone number if different from applicant.
2. Applicant's interest in the property.
3. The current zoning of the property, and the type of rezoning and/or variance requested.
4. If the proposed change would require a change in the zoning map, an accurate diagram of the property proposed for rezoning.
5. Reference to a specific section, subsection and paragraph item of text proposed to be changed as well as the wording of the proposed change.

Any such rehearing application shall be accompanied by two (2) copies of a map, drawn to an appropriate scale. Said map shall be prepared by an engineer or surveyor registered with the State of North Carolina, and shall be signed and certified to be correct by the preparer. The map shall contain the following:

1. If not in a subdivision of record, the subject property plus such additional property as to show the location of the subject property with reference to the nearest street intersection, railroad, stream or other features easily identifiable on the ground. In addition, all property lines which abut the property shall be shown as well as the names and addresses of all abutting property owners.
2. If the property is in a subdivision of record, a map of such portion of the subdivision drawn to scale, that would relate the subject property to the closest street intersection, and in addition, the name of the subdivision and the plat book and page number on which the plat is recorded. In addition the names of all abutting property owners shall be indicated.
3. All property lines with dimensions, distances of lot from the nearest street intersection and north arrow.
4. Adjoining streets with rights-of-way and paving widths.
5. Existing location of buildings on lot and a listing of uses of all

structures.

6. Zoning classification of all abutting lots.

11.6.2 Upon the denial of the most recent application, or upon the denial of an application for which a rehearing has been conducted, a similar application may not be filed for a period of one (1) year after the date of denial of the original application.

11.6.3 Every decision of the Board of Adjustment shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari per NCGS 160A-393. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court by the later of thirty (30) days after the decision becomes effective or after written copy of the decision is given in accordance with Section 11.5.4. (*Rev. 11.11.2013*)

Section 11.7 Administration of Oaths to Witnesses (*Rev. 11.11.2013*)

The Chairman of the Board of Adjustment or the Vice-Chairman, when temporarily acting as Chairman, or the clerk to the Board of Adjustment shall be authorized in his/her official capacity to administer oaths to witnesses in any matter coming before the Board.

Section 11.8 Rules of Procedure

All meetings and hearings shall be open to the public and shall be conducted in accordance with the procedure set forth in these regulations and supplemental rules of procedure adopted by the Board of Adjustment. Such rules of procedures may be amended by the Board of Adjustment membership at any time.

The rules of procedure adopted by the Board of Adjustment to govern its actions shall be kept on file at the offices of the Zoning Administrator and the Village Clerk, and shall be made available to the public at any meeting or hearing of the Board of Adjustment.

Section 11.9 Staff

The Zoning Administrator shall serve as staff to the Board of Adjustment and shall provide technical assistance to the Board of Adjustment as requested.