

ARTICLE 14

BOARD OF ZONING ADJUSTMENT

Section 14.1 Establishment of Board of Zoning Adjustment

The Board of Zoning Adjustment shall consist of six (6) regular members; five (5) members shall be appointed by the New London Town Board and one (1) by the Board of Commissioners with recommendations by the New London Town Board for overlapping terms of four (4) years. In addition, two (2) alternate members shall serve on the Board of Adjustments. One alternate member shall each be appointed by the Town Board and the Stanley County Board of Commissioners. Alternate members shall serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member. [G.S. 160D-302 (a)] Any vacancy in the membership of the BZA shall be filled for the unexpired term in the same manner as the initial appointment. Board of Zoning Adjustment shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision (G.S. 160D-406). Members of the Board of Zoning Adjustments 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 board member's participation at or prior to the hearing or vote on that matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.¹² (G.S. 160D-109(d), (e), (f)).

Section 14.2 Appointment and Terms

- 14.2.1 The Board of Adjustment shall consist of six (6) regular members and two (2) alternates. Alternate members shall serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same times, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member. [G.S 160D-302 (a)]
- 14.2.2 All regular and alternate Board of Adjustment members shall be appointed for four (4) year staggered terms. Terms shall begin on July 1st and expire on June 30th.

Section 14.3 Powers, Duties, and Procedures

The Board of Zoning Adjustment (BZA) shall have all the powers and duties as authorized by the General Statutes of North Carolina, and in the manner provided for in this ordinance. Generally, such powers and duties shall include, but not be restricted to, the following:

- 14.3.1 Hearing and deciding all appeals from decisions made by the Administrator.
- 14.3.2 Hearing and deciding appeals that require interpretation of this Land Development Ordinance including setting sign and/or parking regulations for uses whose requirements are not specifically listed in this ordinance.
- 14.3.3 Hearing and granting variances from the provisions of this Ordinance.
- 14.3.4 Jurisdiction.

The members appointed to the Board of Zoning Adjustment by the Stanly County Board of Commissioners as representatives of the area outside the Town of New London shall be residents of such area and citizens of Stanly County. Such members shall have equal rights, privileges, and duties with other members of the Board in all matters under the purview of the Board of Zoning Adjustment.

Section 14.4 Interpretation

The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision or determination made by the Administrator pertaining to this Ordinance.

- 14.4.1 An appeal may be taken by any person who has first appealed to and received a ruling from the Administrator. An appeal to the Board of Zoning Adjustment shall be made within 45 days of the decision made by the Administrator.
- 14.4.2 An application for an appeal, specifying the grounds thereof, shall be filed with the Administrator who shall immediately transmit all papers with reference to the case to the Board of Zoning Adjustment.
- 14.4.3 The Board of Zoning Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from.
- 14.4.4 The Board of Zoning Adjustment shall have all the powers of the Administrator in making an order, requirement, interpretation decision or determination with reference to the appeal.

Section 14.5 Variances

When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Zoning Adjustment shall have the power to vary or modify any of the regulations or provisions of the ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board. These regulations provide that the Board of Zoning Adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained, provided no change in permitted uses may be authorized by variance. [G.S.160D-705 (d)]

14.5.1 The Board of Adjustment, in considering an application for a variance shall give due consideration to the following:

- (A) No nonconforming use of land or structures in the same district, and no permitted use of land or structures in other districts, shall be considered grounds for the granting of a variance.
- (B) The request for a variance for a use expressly, or by inference, prohibited in the district involved, shall not be granted.

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

- (A) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance as evidenced:
 - 1. If the property owner complies with the provisions of the ordinance, the property owner can secure no reasonable return from, or make no reasonable use of, his property, and
 - 2. The hardship results from the application of the ordinance, and
 - 3. The hardship is suffered by the applicant's property, and
 - 4. The hardship is not the result of the applicant's own actions, and
 - 5. The hardship is peculiar to the applicant's property.
- (B) That the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit; and
- (C) That in the granting of the variance, the public safety and welfare have been assured and substantial justice has been done, and

- (D) That the reasons set forth in the application justify the granting of a variance, and that the variance is a minimum one that will make possible the reasonable use of land or structures.

14.5.3 The Board of Zoning Adjustment, in granting a variance, may prescribe appropriate conditions and safeguards in conformity with this ordinance.

- (A) Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this ordinance and punishable as prescribed in Section 12.5 of this ordinance.

14.5.4 Any order of the Board of Zoning Adjustment in granting a variance shall expire, if a building permit, or certificate of occupancy (if a building permit is not required), has not been obtained within one (1) year from the date of the decision.

Section 14.6 Application Procedure

The following regulations shall apply to all applications submitted to the Board of Zoning Adjustment.

14.6.1 Before a petition to the Board of Zoning Adjustment shall be considered, a completed application on a form provided by the Town of New London shall be accompanied by a fee schedule (as determined by the Town Board). The application shall be accompanied by a map clearly showing the subject property and all contiguous property on either side and to the rear, and all property across any street or public right-of-way from the subject property. In addition, a list of names and addresses of the owners of said properties, from the most recent official records, shall be provided.

14.6.2 The filing of any application stays all proceedings unless the Administrator certifies that a stay in his opinion will 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 that event, proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Zoning Adjustment, Town Board or by a court of record.

14.6.3 The Board of Zoning Adjustment shall hold a public hearing on all applications no later than 31 days after having been filed with the Administrator. The administrator shall give notice of the public hearing by publishing a notice in a newspaper having general circulation in the New London area at least ten (10) days prior to the date established for the hearing. In addition, the applicant and all abutting property owners shall be sent a notice of the public hearing at least ten (10) days prior to the public hearing. Notification of abutting property owners shall not be required for any interpretations of this Land Development Ordinance or any appeals of decisions made by the Administrator.

14.6.4 The concurrent vote of four-fifths (4/5) of the voting members of the Board of Zoning Adjustment shall be necessary to reverse any order, requirement, decision or determination of the administrative official or to approve any application for a variance. 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. [G.S. 160D-406 (i)] A member of the Board of Zoning Adjustment 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 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. [G.S. 160D-109 (e)]

- 14.6.5 All decisions of the Board of Zoning Adjustment shall be filed with the Administrator and a written copy thereof shall be delivered to the applicant.
- 14.6.6 An application for a rehearing shall be made in the same manner as provided for in the original hearing within a period of 15 days after the date of denial of the original application. In addition, specific information to enable the Board of Zoning Adjustment to determine whether or not there has been a substantial change in facts, evidence, or conditions in the case, shall be presented in writing, or graphically. A petition for a rehearing shall be denied by the Board of Zoning Adjustment, if, in its judgment, such change in facts, evidence or conditions has not been proven. In the event that the Board of Zoning Adjustment finds that a rehearing is warranted, it shall thereupon proceed in the same manner as for the original hearing.
- 14.6.7 Any order of the Board of Zoning Adjustment authorizing the issuance of a variance or a change in a non-conforming use or structure shall expire if a building permit, or certificate of occupancy is not required, has not been obtained within one (1) year of the Board of Zoning Adjustment's decision.

Section 14.7 Appeals from the Board of Zoning Adjustment

Any person who has standing under G.S. § 160D-1-2 or the town may appeal a decision to the Board of Zoning 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. The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice pursuant to G.S. 160D-4-3(b) given by first class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service (G.S. 160D-405(d)).