

TITLE III ADMINISTRATION
CHAPTER 32: DEPARTMENTS, BOARDS, AND COMMISSIONS
BOARD OF ADJUSTMENT

§ 32.15 CREATION; MEMBERS.

(A) There shall be and is hereby created a Board of Adjustment consisting of ~~eight~~**Five** members.

(B) Five members shall be citizens and residents of the town and shall be appointed by the Town Council; ~~three members shall be citizens and residents of the area lying outside the corporate limits of the town but within the town planning area and shall be appointed in accordance with G.S. § 160A-362.~~

(C) The members of the Board of Adjustment shall receive no compensation for their services.

(D) The term of office of the members of the Board of Adjustment shall be for overlapping terms of three years. ~~Since the Haw River Town Council has appointed itself as the Town of Haw River Board of Adjustment, newly sworn-in members of the Council, upon being sworn in to serve a term on the Town Council, become immediately eligible to be appointed to the Board of Adjustment. Such appointments shall be for three-year terms, and a reappointment of one year to complete the four-year term to which the Town Council is elected. Thereafter, as terms expire, all new appointments shall be for three-year terms. Nothing herein shall be construed as to forbid any member from being reappointed.~~ Vacancies occurring for any reason other than expiration of term shall be filled as soon as is reasonably possible after the vacancy occurs by the proper board making the appointment. Such appointment shall be for the unexpired term, or for a longer term up to three years if needed to prevent the termination of four or more terms in the same year. Members of the Board of Adjustment may be removed for cause by the Town Council upon written charges and after public hearing. ('87 Code, § 32.015) (Ord. passed 4-5-76; Am. Ord. passed 8-5-96; Am. Ord. passed xx-xx-15)

Formatted: Justified

Formatted: Font color: Red

~~the termination of four or more terms in the same year. Members of the Board of Adjustment may be removed for cause by the Town Council upon written charges and after public hearing. ('87 Code, § 32.015) (Ord. passed 4-5-76; Am. Ord. passed 8-5-96; Am. Ord. passed 11-15-15)~~

§ 32.16 ORGANIZATION; OFFICERS; MEETINGS.

The Board of Adjustment shall elect a Chairperson and a Vice-Chairperson, each of whom shall serve for one year or until he or she is reelected or his or her successor is elected. The Board of Adjustment shall appoint a Secretary who may be an officer or an employee of the town. It shall adopt rules for the conduct of its business. Meetings shall be held at the call of the Chairperson and at such other times as the Board of Adjustment may determine. The Chairperson or, in his or her absence, the Vice-Chairperson may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the Board of Adjustment shall be open to the public. The Secretary shall keep minutes of the proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating this fact. The Board of Adjustment shall keep records of the examinations and other official actions, all of which shall be filed immediately in the office of the Board of Adjustment and shall be a public record. ('87 Code, § 32.016) (Ord. passed 4-5-76)

Formatted: Justified

§ 32.17 POWERS AND DUTIES.

(A) The Board of Adjustment shall have the following powers and duties:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning regulations.

(2) ~~(a)~~ To authorize upon appeal in specific cases those variances from the terms of the zoning regulations as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the zoning regulations will, in an individual case, result in unnecessary hardship so that the spirit of the zoning regulations shall be observed, public safety and welfare secured, and substantial justice done. ~~No variance shall be granted in any individual case unless the Board of Adjustment finds unnecessary hardship that based upon a showing that all of the following conditions exist:~~

Formatted: Font color: Red

(1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;

Formatted: Indent: Left: 0"

- (2) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located;
- (3) A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located;
- (4) The requested variance will be in harmony with purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.
- (5) The special circumstances are not the result of actions by the applicant, excluding the act of purchasing property or properties with knowledge that circumstances exist that may justify the grant of a variance.
- (6) The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.

~~1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.~~

~~2. The application of the zoning regulations to this particular piece of property would create an unnecessary hardship.~~

~~3.~~

(b) No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

~~Such conditions are peculiar to the particular piece of property involved.~~

Formatted: Font color: Red

~~4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the zoning regulations.~~

~~5. The variance is not a request to permit a use of land, building, or structure that is prohibited by the zoning regulations in the district in which the property is located.~~

~~6. The condition for which the variance is sought did not arise from an action of the property owner.~~

~~(b) The Board of Adjustment may impose reasonable conditions upon any variance it grants. These conditions shall be in furtherance of the objectives of the particular regulation from which the variance is granted.~~

Formatted: Tab stops: 3.46", Centered + Not at 0" + 0.3" + 0.6" + 0.9" + 1.2" + 1.5" + 1.8" + 2.1" + 2.4" + 2.7" + 3" + 3.3" + 3.6" + 3.9" + 4.2" + 4.5" + 4.8" + 5.1" + 5.4" + 5.7" + 6" + 6.3" + 6.6" + 6.9"

(3) To hear and decide request for Special Use Permits as needed per the Zoning Ordinance Special Use Article (§§155.080 – 155.086).

(B) In exercising the above mentioned powers, the Board of Adjustment may, in conformity with the provisions of the zoning regulations, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination made by the Zoning Enforcement Officer, and to that end shall have the powers of the Zoning Enforcement Officer from whom the appeal is taken, and may issue or direct the issuance of a permit. ~~The concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of an administrative official charged with the enforcement of the zoning regulations, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the zoning regulations.~~ A simple majority vote of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of an administrative official charged with the enforcement of the zoning regulations, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, including special and conditional uses. Matters concerning a variance request must meet a supermajority vote of 4/5ths or greater from the Board of Adjustment.

(C) Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board, or bureau of the town affected by any decision of the Zoning Enforcement Officer. Such appeals shall be taken within not more than 60 days by filing with the Zoning Enforcement Officer and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The Zoning Enforcement Officer shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal or other matter referred to it, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party in interest may appear in person or by agent or attorney.

(D) An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him or her that, by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application.

(E) Any person or persons jointly or individually aggrieved by any decision of the Board of Adjustment, or any taxpayer, any officer, department, board, or bureau of the town shall have recourse to the courts as provided by law.

(‘87 Code, § 32.017) (Ord. passed 4-5-76) (Am. Ord. passed xx-xx-15)

Cross-reference:

Duties with respect to flood damage prevention, see § 151.37

Members of Planning and Zoning Board sitting as members, see § 155.260

Ordinance Amendment Approved 12/05/16 By Town Council.