

ARTICLE X

BOARD OF ADJUSTMENT

Section 10-1 Creating the Zoning Board of Adjustment

10-1.1 There shall be and is hereby created, under North Carolina General Statutes 160A-388 and 160A-362, a Board of Adjustment (hereafter called the Planning and Zoning Board) consisting of five (5) members and two (2) alternate members. Five (5) of the members, and one (1) of the alternate members shall reside within the Town of Hertford and shall be appointed by the Town Commissioners of the Town of Hertford. One (1) of the alternates shall reside within the town's extraterritorial jurisdiction and shall be appointed by the Board of Commissioners of Perquimans County. The five (5) members of the Board shall have initial terms of office as follows: one (1) member appointed for a term of one (1) year; two (2) members appointed for terms of two (2) years; and two (2) members appointed for terms of three (3) years. Alternate members shall be named to a term of three (3) years and shall serve in the absence of a regular member and shall during such service have the same statutory powers of that absent member. At completion of the initial terms of office for each member, all additional appointments to vacancies of the Board shall be for three (3) year terms. Vacancies shall be filled for the unexpired term only. The Town Commissioners upon written charges and after public hearing shall remove members and alternate members for cause. The members and alternate members of the Board may receive compensation for their services as designated by the Town Commissioners.

10-1.2 Meetings

The Board shall elect one of its members as Chairman and another as Vice Chairman who shall serve for one (1) year. The Board shall designate one of its members as secretary. The Board shall draw up and adopt the rules of procedures under which it will operate. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his absence, the acting Chairman, may administer oaths. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or his absence or failure to vote, indicating such fact, and also keep records of its examination and any other official action.

Section 10-2 Powers and Duties

10-2.1 The Zoning Board of Adjustment shall have the following powers and duties:

- a) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision, determination, or refusal made by the Zoning Administrator or other administrative officials in the carrying out or enforcement of any provisions of the ordinance. A concurring vote of four (4) members of the Board shall be necessary to reverse, wholly, or partly any order, requirement, decision, permit, determination or refusal pertaining to property within the corporate limits.

- b) To authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interests where, owing to special conditions a literal enforcement of the provisions of this ordinance would result in unnecessary hardship. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this ordinance. The Board shall not grant a variance from the terms of this ordinance unless and until the following findings are made:
 - 1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved;
 - 2. That literal interpretation of the provisions of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.
 - 3. That the special conditions and circumstances do not result from the actions of the applicant;
 - 4. That granting the variance requested will not confer on the applicant such a material alteration that is denied by this ordinance to other land, structures, or buildings in the same district, viewing the special conditions of the land of the applicant as will equitably result in effecting a purpose of this section.
- c) To hear and decide such conditional uses as the Board is specifically authorized to pass on by the terms of the ordinance (Article II and IV).

Section 10-3 Filing and Notice for an Appeal

10-3.1 Appeals from the enforcement and interpretation of this ordinance and appeals for variances may be taken to the Board of Adjustment by any person aggrieved or by any office, department, and board of the bureau of the town affected. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property or that because of the transitory nature of the charged violation a stay would seriously interfere with enforcement of the ordinance, in which case proceedings shall not be stayed other than by a restraining order, which may be granted by the Board or by a court of record on application or notice to the officer from whom the appeal is taken and due case shown.

(a) Hearing of the Appeal

After receipt of notice of an appeal, the Board Chairman shall schedule the time for a hearing, which shall be at a regular or special meeting within forty-five (45) days from the filing of such notice of appeal.

(b) Notice

At least one (1) week prior to the date of the hearing, the Town of Hertford should furnish all adjoining property owners with written notices of the hearing.

(c) Fees for Appeal or Variances

A fee of one hundred fifty (\$150) dollars shall be paid to the Town of Hertford, North Carolina, for each appeal, to cover the necessary administrative costs and advertising.

Section 10-4 Appeal from the Zoning Board of Adjustment

10-4.1 An appeal from the decision of the Zoning Board of Adjustment may be made to the Perquimans County Superior Court within thirty (30) days after the decision is made by the Board, but not thereafter.