

ARTICLE VI

BOARD OF ADJUSTMENT

6.1 Establishment of the Board of Adjustment (Watershed Review Board)

The Board of Adjustment, also known as the Watershed Review Board, is hereby created, which shall consist of five (5) members, all residents of the Town of Taylortown. Members of the Board shall take the oath of office as required by G.S. 153A-26 and 160A-61 prior to the commencement of their terms of office and shall strictly adhere to the Town's Code of Ethics.

The Town Board of Commissioners may, in its discretion, appoint one (1) alternate member to serve on the Board in the absence of any regular member. Alternate members shall be appointed for the same terms, at the same time, and in the same manner as regular members. Alternate members, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

The Board of Commissioners may appoint its own members to serve as the five (5) members of the Board of Adjustment. If this procedure is used, when a member officially goes off of the Board of Commissioners, he is automatically resigned from the Board of Adjustment and a new member of the Board of Commissioners shall be appointed to the vacant seat on the Board of Adjustment for the balance of the resigned member's term. If the Board of Commissioners is to serve as the entire Board of Adjustment the terms of office shall be exactly the same and membership in one shall mean automatic membership in the other and resigning from one shall include automatic resignation from the other. In this case, meetings of the Board of Adjustment shall not be held on the same evenings as the Board of Commissioners.

If the Board of Commissioners determines to appoint members, initial appointment of the members shall be as follows: Three (3) for a term of two years, and two (2) members for a term of three (3) years. Thereafter, all members shall be appointed for a full three (3) year term. Vacancies shall be filled for the unexpired term only. Members may be removed for cause by the Board of Town Commissioners upon written charges and a after public hearing.

6.2 Procedures of the Board of Adjustment

A. Purpose

It is the intent of this Ordinance that all questions of interpretation and enforcement shall first be presented to the Zoning Administrator or his authorized representative, and that such questions shall be presented to the Board of Adjustment only on an appeal from the decision of the Zoning Administrator or his authorized representative, and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by law. The Board has the authority to grant zoning variances and minor watershed protection variances.

B. Officers

The Board of Adjustment shall elect a chairman and a vice chairman from its membership and such other officers as the Board deems best.

C. Meetings

Meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the majority of the Board may determine. All meetings of the Board of Adjustment shall be open to the public and subject to the open meetings law. The Board shall keep detailed minutes of its procedures, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact; and final disposition of appeals and other quasi-judicial matters shall be taken, all of which shall be of public record.

D. Voting.

The concurring vote of four-fifths (4/5) of the regular board membership (excluding vacant seats) shall be necessary to grant a variance. A simple majority of the regular board membership (excluding vacant seats) shall be necessary to decide any other quasi-judicial matter (appeals). All other actions of the board shall be taken by majority vote, a quorum being present. For 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 alternatives available to take the place of such members. (b) Once a member is physically present at a board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused.

E. Conflicts of Interest.

(1) A member of any board exercising quasi-judicial functions pursuant to this Ordinance and Chapter 160D 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.

(2) 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.

(3) Resolution of Objection. 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.

A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any other good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

A roll call vote shall be taken upon the request of any member.

F. Appeals to the Board of Adjustment

An appeal from the decision of the Zoning Administrator may be taken to the Board of Adjustment by any person, firm, or corporation aggrieved, or by any officer, department, board, or bureau of the Town. Such appeal shall be taken within thirty (30) days after the decision by the Zoning Administrator, by filing with the Zoning Administrator and with the Clerk to the Board a notice of appeal, specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. The Board of Adjustment shall fix a reasonable time for hearing of the appeal, giving notice to all participants by registered mail. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, after notices of appeal has been filed with him, that by reason of the 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 the 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 to whom an appeal has been made.

D. Notice to Appellant

The decision of the Board, in writing, shall be delivered to the appellant either by personal service, by registered mail, or by certified mail, return receipt requested.

E. Expenses

Members of the Board of Adjustment shall serve without pay but may be reimbursed by the town for any expenses incurred while representing the Board

6.3 Powers and Duties of the Board of Adjustment

A. Administrative Review (Appeal)

The Board shall hear and decide appeals where it is alleged there is error in any order, requirements, decision, or determination made by the Zoning Administrator in the enforcement of this Ordinance. The Board may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination and to that end shall have powers of the Zoning Administrator from whom appeal is taken.

B. Zoning Variances

(1) The Board may authorize upon application in specific cases

variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in undue hardship, so that the spirit of this Ordinance shall be observed, and substantial justice done.

(2) A charge shall be made to the appellant according to town policy in order to cover administrative and advertising costs (Section 3.8). A public hearing shall be held at which the following conditions must be found to exist:

(3) When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

(a) Unnecessary hardship would result from the strict application of the regulation. It is not 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. 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

(c) 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 is not a self-created hardship.

(d) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

(4) Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

(5) A variance may be issued for an indefinite duration or for a specified duration only.

(6) The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit 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.

(7) No change in permitted uses may be authorized by variance.

(8) Any other development regulation that regulates land use or development (e.g., Minor Watershed Variances) may provide for variances from the provisions of those ordinances

consistent with the provisions of 160D-705(d).

(9) Burden of Proof on Appeals and Variances

(a) Appeals. When an appeal is taken to the board of adjustment in accordance with §81, the administrator shall have the initial burden of presenting to the board of adjustment sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

(b) Variances. The burden of presenting evidence sufficient to allow the board of adjustment to reach the conclusions set forth in §82(b) as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

(10) Board Action on Appeals and Variances

(a) Appeals.

(1) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the majority vote necessary for adoption, then a motion to uphold the decision appealed from shall be in order.

(2) Record of decision. 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.

(b) Variances.

(1) Before granting a variance, the board must take a separate vote and vote affirmatively (by a four-fifths majority) on each of the four (4) required findings stated in §82(b). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in §82(b) shall include a statement of the specific reasons or findings of fact supporting such motion.

(2) A motion to deny a variance may be made on the basis that any one or more of the four (4) criteria set forth in §82(b) is not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the

specific reasons or findings of fact that support it. This motion is adopted as the board's decision if supported by more than one-fifth of the board's membership (excluding vacant seats).

C. Watershed Protection Variances

For all proposed watershed variances the Town shall notify and allow a reasonable comment period for all other local governments having jurisdiction within the watershed as well as the Town of Carthage, as user of the water supply.

The Board may authorize minor variances in those areas relating to the state water supply watershed protection rules if the request meets the conditions for zoning variances set forth above. A minor watershed protection variance is defined as the reduction of the required vegetative buffer of up to ten percent (10%). Residential density and built upon area requirements cannot be granted minor variances.

Any variance requested which meets the conditions for a zoning variance and is greater than ten percent (10%) reduction in the vegetative buffer or requests an increase in the residential density or built upon area shall be heard by the Board of Adjustment. A decision by the Board to deny the major variance shall be final. Appeal shall be to a court of competent jurisdiction as provided in section 6.4. If it decides in favor of the major variance the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

- 1) The variance application;
- 2) The hearing notices;
- 3) The evidence presented;
- 4) Motions, offers of proof, objections to evidence, and rulings of them;
- 5) Proposed findings and exceptions: and
- 6) The proposed decision, including all conditions proposed to be added to the permit.

The preliminary record shall be sent within thirty (30) days to the

Environmental Management Commission for its review as follows:

- 1) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (a) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (b) the variance, if granted, will not result in a serious threat to the water supply, then the commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a commission decision and send it to the Watershed Review Board. If the commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance'. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.
- 2) If the commission concludes from the preliminary record that the variance qualifies as a major variance and that (a) the property owner can secure a reasonable return from or make a practical use of the property without the variance or b) the variance, if granted, will result in a serious threat to the water supply, then the commission shall deny approval of the variance as proposed. The commission shall prepare a Commission decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.

D. 5/70 Rule

The Board may, after a public hearing, approve a project under the 5/70 Rule (Section 7.17) up to a total of five percent of total town area as of July 1, 1993. Up to ten percent may be submitted to the Environmental Management commission for approval if first approved by the Board after a hearing. A fee shall be paid by the applicant according to town policy to cover administrative and advertising costs (Section 3.8).

E. Administration of Oaths

The chairman or any member temporarily acting as chairman is authorized to administer oaths to witnesses in any matter coming before the Board. All testimony before the Board must be under oath and recorded.

6.4 Appeals from the Board of Adjustment

Anyone with standing to do so pursuant to G.S. 160D may appeal to Superior Court within thirty (30) days of a decision of the Board of Adjustment being filed with the Town Clerk or receipt of a copy of said decision, whichever is later.

6.5 Rules of Conduct for Members

Members of the Board may be removed by the Town Board for cause, including violation of the rules stated below:

- A. Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.
- B. No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested. A Board member shall have a "financial interest" in a case when a decision in the case will: 1) cause him or his spouse to experience a direct financial benefit or loss, or 2) will cause a business in which he or his spouse owns a 10 percent or greater interest, or is involved in a decision-making role, to experience a direct financial benefit or loss. A Board member shall have a "personal interest" in a case when it involves a member of his immediate family (i.e., parent, spouse, or child).
- C. No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the Zoning Administrator, any other member of the Board, its secretary, or clerk prior to the hearing.
- D. Members of the Board shall not express individual opinions on the proper judgement of any case prior to its determination on that case.
- E. Members of the Board shall give notice to the chairman at least forty-eight (48) hours prior to the hearing of any potential conflict of interest which he has in a particular case before the Board.
- F. No Board member shall vote on any matter that decide an application or appeal unless he had attended the public hearing on that application or appeal.