

## **CHAPTER 11 - Appeals.**

### **ARTICLE 11.1. - PURPOSE.**

This Chapter provides for relief from the requirements of this Ordinance under the following types of appeals: variances from the requirements of this Land Management Ordinance and appeals from administrative decisions.

### **ARTICLE 11.2. - DEFINITIONS REFERENCED.**

The definitions of certain terms referenced in this Chapter are set forth in Chapter 12 Interpretation and Definitions.

### **ARTICLE 11.3. - HARDSHIP VARIANCE.**

#### **Sec. 11.3.1. - Hardship Variance Process**

The following Article outlines the process for considering a reduction or other revision to the strict application of the minimum standards and provisions of this Ordinance to a particular property or development that would result in undue hardship to the property owner, builder, or developer.

11.3.1.1 The following Article does not address proposals to vary the application of any provision of the Building Codes. See ARTICLE 11.4. -

11.3.1.2 The following Article does not address requests for variance from the requirements of the Flood Damage Prevention Article. See Chapter 5.

#### **Sec. 11.3.2. - Board of Zoning Appeals.**

The Board of Zoning Appeals shall hear and decide appeals for variance from the requirements of this Ordinance, as allowed under State law, in accordance with the requirements of this Article.

#### **Sec. 11.3.3. - Prohibited variances.**

The Board of Zoning Appeals may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map.

11.3.3.1 The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

#### **Sec. 11.3.4. - Eligible applicants.**

Parties and individuals required and/or eligible to initiate variance application are as follows:

11.3.4.1 Property owner

11.3.4.2 Agent of property owner

11.3.4.3 Any member of the County Council

#### **Sec. 11.3.5. - Application procedures.**

11.3.5.1 Step 1. Administrative examination.

11.3.5.1.1. An applicant shall complete an application for a variance on a form or forms maintained by Building and Planning Department. The applicant shall state the nature of the variance, provide evidence of unnecessary hardship, and state the necessity for a variance.

11.3.5.1.2. Upon receipt of an application, the Building and Planning Director shall examine it for completeness, and shall, within 10 days, either return the application for additional information or forward it to Board of Zoning Appeals for review and action. The application must be deemed complete at least 30 days prior to the date for a public hearing in order for it to be placed on the agenda.

#### 11.3.5.2 Step 2. Public notice.

In addition to public notice in a newspaper of general circulation, notice of an application for a variance shall be given to all parties of interest.

#### 11.3.5.3 Step 3. Public hearing.

The Board of Zoning Appeals shall conduct a public hearing on all variance applications.

#### 11.3.5.4 Step 4. Review and action.

11.3.5.4.1. Applications for a variance shall be evaluated by the Board of Zoning Appeals on the basis of the following conditions, upon which findings of fact shall be based:

11.3.5.4.1.1. That a variance from the terms of this Ordinance will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in an unnecessary hardship;

11.3.5.4.1.2. That the spirit of the Ordinance will be observed, public safety and welfare secured, and substantial justice done;

11.3.5.4.1.3. That there are extraordinary and exceptional conditions pertaining to the particular piece of property;

11.3.5.4.1.4. That these conditions do not generally apply to other property in the vicinity;

11.3.5.4.1.5. That because of these conditions, the application of the Land Management Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

11.3.5.4.1.6. That the authorization of a variance will not be of substantial detriment to adjacent property or to the public good and the character of the zoning district will not be harmed by the granting of the variance.

#### 11.3.5.4.2. Conditions of approval.

In granting a variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare.

#### 11.3.5.4.3. Insufficient record for review.

If the Board of Zoning Appeals determines the record is insufficient for review, the Board may remand a matter to the Building and Planning Director upon motion by a party or the Board's own motion. A party's motion for remand may be denied if the Board determines that the record is sufficient for review. The Board must set a rehearing on the remanded matter without further public notice for a time certain within 60 days unless otherwise agreed to by the parties. The Board must maintain a list of persons who express an interest in being informed when the remanded matter is set for rehearing, and notice of the rehearing must be mailed to these persons prior to the rehearing.

11.3.5.5 Step 5. Notification.

11.3.5.5.1. All applicants shall be notified in writing of final decision.

11.3.5.6 The final decision shall include all findings of fact and conclusions of law must be delivered to applicants by certified mail.

11.3.5.6.1. An approved variance shall be accompanied by an order of the Board of Zoning Appeals to direct the issuance of a permit.

11.3.5.7 Step 6. Appeals.

11.3.5.7.1. Any person who may have a substantial interest in any decision of the Board of Zoning Appeals may appeal such decision to the circuit court in and for the county by filing with the clerk of such court a petition in writing setting forth plainly, fully, and distinctly wherein such decision is contrary to law.

11.3.5.7.2. Such appeal shall be filed within 30 days after the decision of the board is rendered.

**Sec. 11.3.6. - Consideration of denied applications.**

The Board of Zoning Appeals shall not reconsider a variance application for the same lot, parcel or portion thereof, within a period of one year from the date of final determination and notification.

**ARTICLE 11.4. - VARIANCE FROM BUILDING CODES; APPEAL OF BUILDING OFFICIAL DECISION.**

**Sec. 11.4.1. - Appeals to Building Codes Board of Adjustments and Appeals.**

Whenever the Building Official shall reject or refuse to approve the mode or manner of construction proposed to be followed or materials to be used in the erection or alteration of a building structure, or when it is claimed that the provisions of the Building Codes do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, or when it is claimed that the true intent and meaning of the Building Codes or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the Building Official to the Building Codes Board of Adjustments and Appeals.

**Sec. 11.4.2. - Notice of appeal; time limit.**

11.4.2.1 Notice of appeal shall be in writing and filed within 90 days after the decision is rendered by the Building Official.

11.4.2.2 Appeals hereunder shall be on forms provided by the County.

11.4.2.3 A fee in an amount as established from time to time by the County shall accompany such notice of appeal.

11.4.2.4 In case of a building structure which in the opinion of the Building Official is unsafe or dangerous, the Building Official may, in his order, limit the time for such appeal to a shorter period.

**Sec. 11.4.3. - Variations and modifications.**

11.4.3.1 The Building Codes Board of Adjustments and Appeals, when so appealed to and after a hearing, may vary the application of any provision of the Building Codes to any particular case when, in its opinion, the enforcement thereof would do manifest injustice, and would be contrary to the spirit and purpose of the Building Codes or public interest, or when,

in the board's opinion, the interpretation of the Building Official should be modified or reversed.

11.4.3.2 A decision of the Building Codes Board of Adjustments and Appeals to vary the application of any provision of the Building Codes or to modify an order of the Building Official shall specify in what manner such variation or modification is made, the conditions upon which it is made, and the reasons therefor.

**Sec. 11.4.4. - Decisions.**

Every decision of the Building Codes Board of Adjustments and Appeals shall be final, subject, however, to such remedy as any aggrieved party might have pursuant to the South Carolina Administrative Procedures Act 2. The decision shall be in writing and shall indicate the vote upon the decision. Every decision shall be promptly filed in the office of the Building Official and shall be open to public inspection; a certified copy shall be sent by mail or otherwise to the appellant, and a copy shall be kept publicly posted in the above office of the County for two weeks after filing.

**Sec. 11.4.5. - Time for decision.**

The Building Codes Board of Adjustments and Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay.

**Sec. 11.4.6. - Action on decision.**

If a decision of the Building Codes Board of Adjustments and Appeals reverses or modifies a refusal, order, or disallowance of the Building Codes or varies the application of any provision of these codes, the Building Official shall immediately take action in accordance with such decision.

**ARTICLE 11.5. - APPEAL OF DECISION BY THE BUILDING AND PLANNING DIRECTOR.**

**Sec. 11.5.1. - Board of Zoning Appeals.**

The Board of Zoning Appeals shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Building and Planning Director.

**Sec. 11.5.2. - Filing of appeal.**

The appeal shall be filed within 15 days after notice of decision by the Building and Planning Director.

**Sec. 11.5.3. - Applications.**

Applications appealing decisions of the Building and Planning Director shall be heard and decided by the Board of Zoning Appeals based on information presented by the applicant and the Building and Planning Director relative to the specific ordinance provision being appealed.

**Sec. 11.5.4. - Decision.**

The Board of Zoning Appeals may, in conformity with the provisions of this Chapter, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.