

## TOWN OF MONTREAT ZONING ORDINANCE

### ARTICLE XII - ZONING BOARD OF ADJUSTMENT

- 1200 Establishment of the Zoning Board of Adjustment. The Zoning Board of Adjustment shall be composed of seven members for matters within the Town of Montreat and for extra-territorial jurisdiction matters. The seven member Board of Adjustment shall be comprised of five members residing in the Town of Montreat, one member residing in Buncombe County, and one residing in McDowell County. The five member Board of Adjustment shall be composed of five members residing in the Town of Montreat. Two alternate members shall reside in the Town of Montreat. When a vacancy occurs on the Board for the member representing Buncombe or McDowell County, the Town shall notify the respective Board of County Commissioners and request an appointment within 90 days. If no appointment is made during that period the Town Board of Commissioners shall fill the vacancy. All appointments to the Board of Adjustment shall comply with the requirements of N.C.G.S. § 160A-362 and 160A-388. *(Revised 11/14/02)*
- 1201 Proceedings of the Zoning Board of Adjustment. The Zoning Board of Adjustment shall elect a chair and a vice-chair from its members who shall serve for one (1) year or until reelected or until their successors are elected. The Board of Adjustment shall appoint a secretary. The Board of Adjustment shall adopt bylaws and rules in accordance with the provisions of this Ordinance and N.C.G.S §160A-388. Meetings of the Board of Adjustment shall be held at the call of the chair and at other such times as the board may determine. The chair, or in his/her absence the vice-chair, may administer oaths. All meetings of the Board of Adjustment shall be open to the public.
- 1202 Appeal from the Decision of the Zoning Official. All questions arising in connection with the enforcement of the Ordinance shall be presented first to the Zoning Official and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Official. (See also Section 1203 D)
- 1203 Powers and Duties of the Zoning Board of Adjustment. The Zoning Board of Adjustment shall have the following powers and duties:
- A. Administrative Review. To hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by the Zoning Official in the enforcement of this Ordinance.
  - B. Variance. To authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest where, due to the special conditions, a literal enforcement of the Ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. The existence of a non-conforming use of neighboring land, Building, or Structures in the same Zoning District or of permitted or non-conforming use in other Zoning Districts shall not constitute a reason for granting the requested

variance. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the Board of Adjustment that all the following conditions exist:

- 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 Zoning District;
- 2) Granting the requested variance will not confer upon the applicant any special privileges that are denied to other residents of the Zoning 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 Zoning District in which the property is located;
- 4) The requested variance will be in harmony with the 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 the actions of the applicant;
- 6) The variance requested is the minimum variance that will make possible the legal use of the land, Building or Structure;
- 7) The variance is not a request to permit a use of land, Building or Structure which is not permitted in the Zoning District involved; and
- 8) Without the requested variance, the applicant may make no reasonable use of the property.

In granting a variance, the Board of Adjustment shall make written findings that all of the requirements listed above in 1203 (B) have been met. If a variance is granted it shall be the least possible deviation from the requirements of this subchapter. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Article. Violations of the provisions of the variance granted, including any conditions or safeguards, which are a part of the grant of the variance, shall be deemed a violation of this Ordinance.

- C. Conditional Use Permits. It shall be the duty of the Board of Adjustment to hear requests for Conditional Use Permits upon recommendation from the Planning Commission and grant said permits in accordance with the guidelines set forth by this Ordinance (See Article VIII). *(Revised 6/14/01)*

D. Appeals. Appeals to the Board of Adjustment concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by an officer, department or board of the Town. Appeals shall be taken by filing with the Zoning Official and with the chair of the Board of Adjustment a notice of appeal, specifying the grounds thereof. Appeals shall be filed within thirty (30) days of the date that the person aggrieved or the officer, department or board of the Town has notice of the interpretation or administration of this Ordinance which constitutes grounds for the appeal. The Zoning Official shall immediately transmit to the Board all the papers constituting the record upon which the action appealed from was taken (See also Section 1204). An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Official certifies to the Board, after notice of appeal shall have been filed with him/her, that by reason of facts stated in the certificate a stay would, in his/her opinion cause imminent peril to life or property, in which 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, on notice to the Zoning Official and on due cause shown.

- 1) In exercising the above powers, the Board of Adjustment may, in conformity with the provisions of this Act, reverse or affirm wholly or in part, or may modify the order, requirements, decision or determination and to that end, shall have all of the powers of the Zoning Official and may issue or direct the issuance of a permit or a Certificate of Zoning Compliance.

1204 Application Procedure. The Board of Adjustment shall hear and decide appeals from any decision or determination made by the Zoning Official and all requests for variances.

A. Filing Appeals and Applications. All appeals and applications for variance shall be filed with the Zoning Official, who shall refer such applications to the Board of Adjustment when all required materials have been submitted. All appeals and applications shall be made on the forms provided by the Town for that purpose. All information required on the form shall be completed and all required materials shall be submitted before an appeal or application shall be considered as having been filed. When the completed appeal or application has been filed with the Zoning Official, the Zoning Official shall immediately notify the Chair of the Board of Adjustment that such appeal or application has been filed.

B. Required Materials. All appeals or applications for variance shall be filed together with the following materials:

- 1) A neatly drawn map of the property which is the subject of the appeal or application, drawn to scale and showing the location of any Building and other improvement located on the property and showing any adjoining road;

- 2) If the appeal or variance concerns the elevation of a Building, a drawing showing the elevation of all Building and improvements located on the property which is the subject of the appeal and application;
- 3) Letters from the person who filed the appeal or application addressed to the owners of all property located within two hundred (200) feet of the property which is the subject of the appeal or application and envelopes with postage affixed addressed to all such property owners;
- 4) A copy of the deed for the property which is the subject of the appeal or application for a variance, a copy of the plat showing such property if one exists, and any contract to purchase or other relevant document; and
- 5) A fee set by the Town Council, with recommendations from the Board of Adjustment, which becomes nonrefundable when the Zoning Official gives notice to the Chair of the Board of Adjustment that the completed appeal or application has been filed; and any other materials reasonably required by the Chair of the Board of Adjustment.

C. Time of Hearing. The Chairperson will set the date of hearing in accordance with an annual schedule published in January, maintained by the Clerk to the Board of Adjustment. This schedule will be made available to the Zoning Official in order that he/she may inform applicants of the current schedule. All cases shall be heard within 60 days.

D. Notice of Hearing. The Board of Adjustment shall publish a notice of a hearing in the newspaper of general circulation in the Town weekly for two consecutive weeks at least ten (10) days before the hearing date. Such notice shall state the location of the property which is the subject of the appeal or application, the general nature of the appeal or application, and the time and place of the hearing.

1205 Decision of the Zoning Board of Adjustment. 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 the Zoning Official or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to affect any variation of this Ordinance. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Official and shall be public record. On all appeals, applications and matters brought before the Board of Adjustment, the Board of Adjustment shall inform, in writing, the applicant of its decisions. The Board of Adjustment must also inform, in writing, all persons who specifically request at the meeting a copy of the decision.

1206 Appeals from Decisions of the Zoning Board of Adjustment. Any person who may have a substantial interest in any decision of the Board of Adjustment may appeal any decision of

the Board of Adjustment to the Superior Court in and for the County of Buncombe 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. Such appeal shall be filed within thirty (30) days after the decision of the Board of Adjustment is rendered.

- 1207 Variance Limited to Six Months. Any variance granted by the Board of Adjustment must be acted upon within six months or it shall become null and void. The Board of Adjustment may grant one six month extension of a variance if so requested by the applicant.