

CHAPTER 13: BOARD OF ADJUSTMENT

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CHAPTER 13: BOARD OF ADJUSTMENT

Section 13.1 Appointment and Terms of Board of Adjustment

- A. There shall be a Board of Adjustment consisting of five regular members and two alternates, all appointed by the Board of Commissioners. One regular member shall reside in each of the county's four Townships (Moyock, Crawford, Poplar Branch, and Fruitville). The remaining regular member shall be designated as an at large appointee. The at large appointee and both alternates shall reside within the county.
- B. Board of Adjustment regular members and alternates shall be appointed for three year staggered terms, but both regular members and alternates may continue to serve until their successors have been appointed. At the adoption of this ordinance the Board of Commissioners shall make appointments at their discretion to fulfill statutory requirements of three year terms. Terms shall be on a calendar year basis (January 1 through December 31). Vacancies may be filled by the Board of Commissioners for the unexpired terms only.
- C. Regular Board of Adjustment members may be removed by the board at any time for failure to attend three consecutive meetings or for failure to attend 30 percent or more of the meetings within any 12 month period or for any other good cause related to performance of duties. Alternate members may be removed for repeated failure to attend or participate in meetings.
- D. If a regular or alternate member moves outside the county or outside the township represented by that member that shall constitute a resignation from the board, effective upon the date a replacement is appointed.
- E. An alternate member may sit in lieu of any regular member. When so seated, alternates shall have the same powers and duties as the regular member they replace.

Section 13.2 Meetings of the Board of Adjustment

- A. The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with hearing applications and requests expeditiously.
- B. The Board of Adjustment shall conduct its meetings in accordance with the quasi judicial procedures set forth herein.
- C. Minutes shall be kept of all Board of Adjustment meetings.
- D. All meetings of the Board of Adjustment shall be open to the public, and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.

Section 13.3 Quorum

- A. A quorum for the Board of Adjustment shall consist of four members (including alternates sitting in lieu of regular members). A quorum is necessary for the board to take official action.
- B. A member who has withdrawn from the meeting without being excused as provided in Section 13.4 shall be counted as present for purposes of determining whether a quorum is present.

Section 13.4 Voting

- A. The concurring vote of four-fifths (4/5) of the members (regular members or alternates sitting in lieu thereof) shall be necessary to reverse any order, requirement, decision, or determination of the Administrator or to decide in favor of the applicant any matter upon which it is required to pass under any Ordinance including the issuance of a conditional use permit or to grant any variance. All other actions of the board shall be taken by majority vote, a quorum being present.
- 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 in accordance with Subsection C or has been allowed to withdraw from the meeting in accordance with Subsection D.
- C. A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:
 - 1. If the member has a direct financial interest in the outcome of the matter at issue;
 - 2. If the matter at issue involves the member's own official conduct;
 - 3. If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or,
 - 4. If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.
- D. A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

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- E. A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.
- F. A roll call vote shall be taken upon the request of any member.

Section 13.5 Board of Adjustment Officers

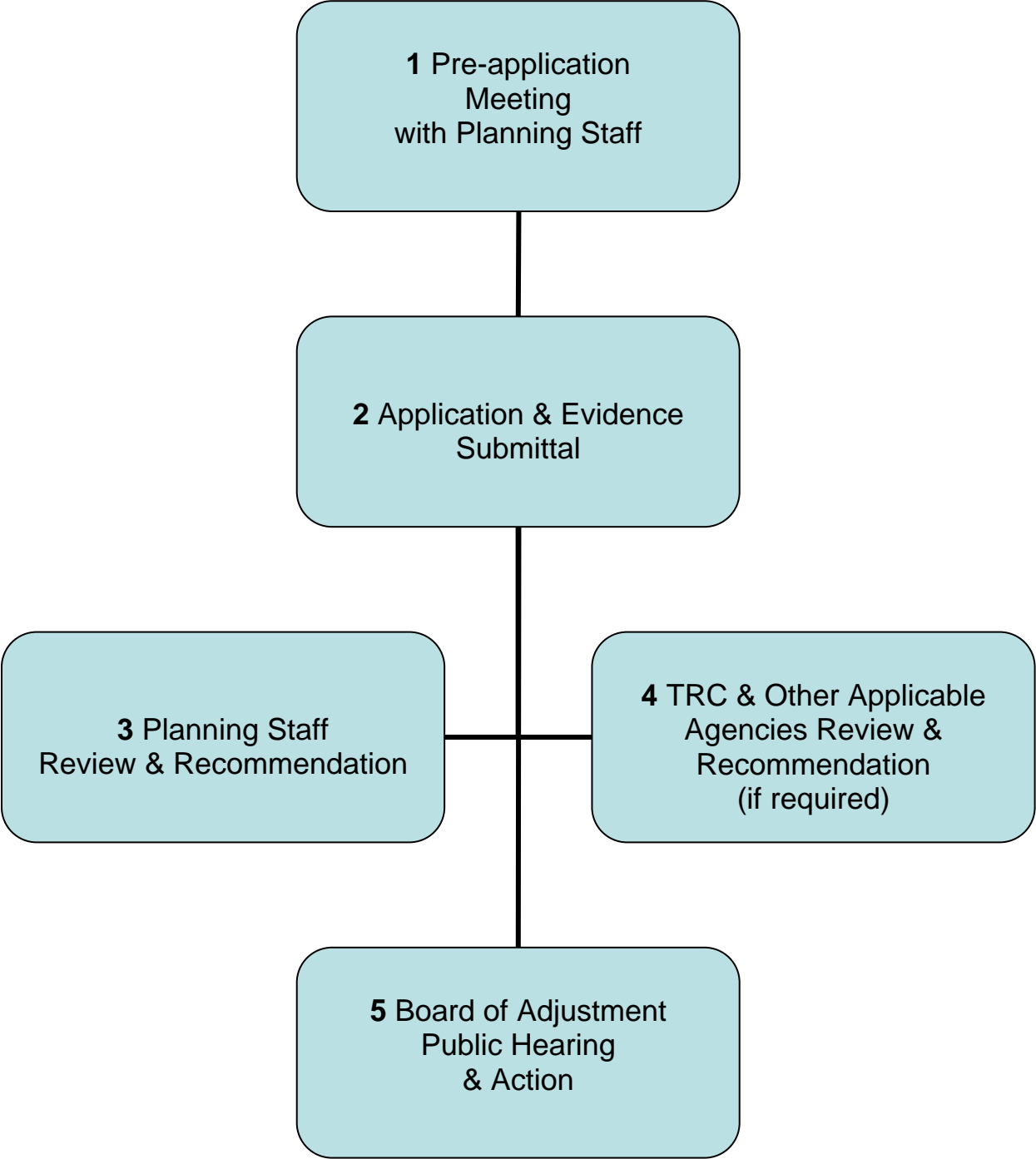
- A. At its first regular meeting in January of each year, the Board of Adjustment shall elect one of its regular members to serve as chairman and preside over the board's meetings and one regular member to serve as vice-chairman. The persons so designated shall serve in these capacities for terms of one year. Vacancies may be filled for the unexpired terms only.
- B. The chairman or any member temporarily acting as chairman may administer oaths to witnesses coming before the board.
- C. The chairman and vice-chairman may take part in all deliberations and vote on all issues.

Section 13.6 Powers and Duties of the Board of Adjustment

- A. The Board of Adjustment shall hear and decide:
 - 1. Applications for variances, as provided in this chapter;
 - 2. Appeals from any order, decision, requirement, or interpretation made by the administrator, as provided this chapter;
 - 3. Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines, as provided in this chapter;
 - 4. Applications for conditional use permits, as provided in Chapter 11; or,
 - 5. Any other matter the board is required to act upon by any other county ordinance.
- B. The board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this ordinance.

Section 13.7 Review Process (PB 10-22, 8/2/10)

The following review process shall be followed for Variances, Appeals, and Interpretation requests to the Board of Adjustment. The procedure and provisions for Conditional Use Permits is addressed in Chapter 11 of the UDO.



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A. Pre-Application Meeting

It is required that an applicant have a pre-application meeting with the administrator prior to the submission of the application. Appeals must be taken within ten days after the date of the decision of order appealed from.

B. Application and Evidence Submittal

All applications covered in this chapter (other than a planned unit development variance, see Chapter 4) shall be submitted to the Board of Adjustment by filing a copy of the application in the office of the administrator. Conditional use applications are addressed in Chapter 11.

C. Administrator Review and Recommendation

The administrator shall serve as staff to the Board of Adjustment and shall provide technical assistance to the Board of Adjustment as requested. The administrator will prepare an analysis for the board prior to the public hearing.

D. TRC and Other Applicable Agencies Review

If applicable, a review by an agency, such as TRC, shall occur prior to the public hearing. Any information gathered in the review shall be considered in the hearing.

E. Board of Adjustment Public Hearing and Action

1. The Board of Adjustment shall hold a public hearing on an application after a complete application has been filed with the administrator. The Board of Adjustment shall decide on the matter which was presented at the public hearing.
2. The Board of Adjustment shall hear and decide all requests as expeditiously as possible, consistent with the need to follow regularly established agenda procedures.
3. Notice of public hearing shall be given as follows:
 - a. The planning staff shall provide notice to all property owners within 200 feet of the extreme limits of the subject site as their names appear in the county tax record at least 10 days, but not more than 25 days, prior to the hearing. The notice shall include the date, time, place of the board meeting, and nature of the hearing.
 - b. The department shall provide notice to the general public of the public hearing by publishing the date, time, place, and nature of the hearing at

least ten days before the hearing in a newspaper of general circulation in the county.

- c. The department will also post a notice outlining the date, time, place, and nature of the hearing in a conspicuous location on the property.
- d. All required notices shall include the following:
 - i. State the date, time, and place of the applicable meeting/public hearing;
 - ii. Summarize the nature and character of the proposal;
 - iii. If the proposal involves a change in zoning district classification, reasonable identify the property whose classification would be affected by the amendment;
 - iv. State the time and place or places within the county where the text, maps, and plans for the proposal may be examined.
 - v. the full text of the amendment can be obtained from the Planning Department; and,
 - vi. State that substantial changes in the proposal may be made following the public hearing.
- e. In instances where an applicant elects to postpone consideration of a proposal after required notification has been accomplished, the applicant shall be responsible for resending notice to adjacent property owners by certified mail with the new meeting and/or hearing date as required above as well as any applicable fees to the county for re-advertisement.
- f. The administrator shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is not the board's intention that failure to comply with any of the notice provisions that are not statutorily required shall render any decision invalid.
- g. All meetings and hearings shall be open to the public, and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.
- h. All persons who intend to present evidence to the permit issuing board shall be sworn.
- i. All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (crucial findings) shall be based upon reliable evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in

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question appears to be particularly reliable, and the matter at issue is not seriously disputed.

- j. When a matter is taken to the Board of Adjustment, the administrator shall have the initial burden of presenting to the board 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. The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set, as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.
- k. In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Adjustment, the applicant may agree to modify his application, including the plans and specifications submitted. Unless such modifications are so substantial or extensive that the board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the planning staff.
- l. Before granting a variance, the board must take a separate vote and vote affirmatively (by a 4/5 majority) on each of the required findings. A motion to make an affirmative finding shall include a statement of the specific reasons or findings of fact supporting such motion.
- m. A motion to deny a variance may be made on the basis that any one or more of the findings are not satisfied or that the application is incomplete. 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 member.
- n. Any decision made by the Board of Adjustment shall be put into writing and mailed via certified mail, return receipt requested, to the applicant and all other persons who make a written request for a copy. In addition to a statement of the board's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the board's findings and conclusions, as well as supporting reasons or facts, whenever this ordinance requires the same as a prerequisite to taking action.
- o. The Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross examination of witnesses so that the matter at issue may be heard and decided without undue delay.

- p. The Board of Adjustment may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of eight weeks or more elapses between hearing dates.
- q. A tape recording shall be made of all hearings, and such recordings shall be kept for at least two years. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.
- r. Whenever practical, all documentary evidence presented at a hearing, as well as all other types of physical evidence shall be made a part of the recording of the proceedings and shall be kept by the county for at least two years.

Section 13.8 Variances

13.8.1 Administrative Variances (PB 09-31, 9/21/09)

- A. The administrator shall have the authority, as qualified below, to approve a reduction in the minimum setback requirements in the case of any building existing or partially constructed which does not comply with such requirements applicable at the time such building was erected or a single family dwelling proposed on a nonconforming lot of record. Such reduction may be approved in accordance with the following provisions:
 - 1. The setback reduction does not exceed twenty percent of the required setback or two feet whichever is less;
 - 2. Such reduction will not impair the purpose and intent of the ordinance;
 - 3. The reduction will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
 - 4. The reduction will not create an unsafe condition with respect to both other property and public streets;
 - 5. To enforce compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and,
 - 6. The reduction will not result in an increase in density or impervious surface coverage from that permitted by the ordinance.

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- B. Applications for an administrative variance shall be submitted to the Planning Department. The application shall be in such form and contain such information and documentation as shall be prescribed from time to time by the department but shall in all instances contain at least the following:
1. The name, address, and phone number of the applicant. If the applicant is not the owner of the property in question, (i) the name, address, and phone number of the owner and (ii) the legal relationship of the applicant to the owner that entitles the applicant to make application.
 2. Three copies of an as-built survey for existing encroachments and a survey for proposed construction. The survey shall not to exceed 24" x 36" inches nor be less than 8.5" x 11" and shall be drawn on dimensionally stable reproducible sheets and shall be drawn to scale and shall be at a scale of one inch equals 50 feet or larger. The survey shall include the following:
 - a. Property lines, rights-of-way and easements within 50 feet as a minimum of adjoining parcels.
 - b. Current zoning of the subject site and adjacent properties; adjacent parcels shall be identified with the legal description and owner's name.
 - c. Boundaries of the property with dimensions and with building setback lines on all sides.
 - d. Existing and proposed streets with right-of-way dimension, lots, easements and areas dedicated to public use.
 - e. Location of existing and proposed buildings; number of stories; gross square footage; retaining walls, fences, culverts, bridges, roadways.
 - f. Limits of existing flood hazard areas.
 - g. Location of existing and proposed utilities (water, septic/sewer, gas, electric, telephone) with related easements.
 - h. Location of power poles, guy wires and other major electrical equipment.
 - i. Location of existing and proposed parking; location of existing and proposed access and driveways.
 - j. Location, size and height of any signs.
 - k. Location and nature of existing and proposed fencing and/or screening and general landscaping.

- I. North arrow, scale, acreage.
 - m. A clear designation of the features of the proposed development or use which require a variance and the extent of the variance requested.
 - n. Any other information that may be required to be shown on the site plan by the administrator to determine that the application is in compliance with the codes and ordinances of the county.
 3. A statement of the particular requirements of the ordinance by citation and description.
 4. A statement of the characteristics of the subject property which prevents compliance with the requirements of the ordinance.
 5. A statement of the minimum variance of the requirements of the ordinance which would be necessary to permit the proposed activity.
 6. A statement of the exceptional or undue hardship which would result if said particular requirements of this ordinance were applied to the subject property.
 7. Any additional information and documentation as the director or designee may deem necessary or appropriate to a full and proper consideration and disposition of the particular application.
 8. Where a proposed administrative variance is for a rear or side setback, the applicant shall submit an affidavit from the owner of any abutting property expressing whether such owner accepts or opposes the proposed variance. If consent is not given, the adjustment shall be considered as a standard variance, reviewed, and decided by the Board of Adjustment as provided in this chapter.
 9. A review fee as determined by the Board of Commissioners and included in the Currituck County fee schedule.
- C. Upon receipt of a completed application the administrator shall determine whether the variance requested meets the criteria outlined above for an administrative variance. In any case where the variance requested does not meet the criteria listed above, the applicant may apply to the Board of Adjustment for hearing and decision as provided by the ordinance.
- D. The administrator shall provide written notice to property owners within 200 feet of the subject property and accept written statements for ten working days from the date of mailing and shall grant or deny the administrative variance.

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- E. In taking any such action, the administrator shall be governed by all the procedures, standards, and limitations of this ordinance applicable to the Board of Adjustment in granting administrative variances, except the public hearing requirements.
- F. Within 30 working days after the application for administrative variance is submitted and accepted, the administrator shall approve, conditionally approve, or deny the application. The administrator shall inform the applicant in writing of the conditions, if any, for approval or the reasons for disapproval. Such written notice shall also describe the process of appeals.
- G. The decision of the administrator may be appealed by the applicant to the Board of Adjustment.

13.8.2 Standard Variances

- A. A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it makes detailed written findings that:
 - 1. If the applicant complies strictly with the provisions of the ordinance, he can make no reasonable use of his property;
 - 2. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;
 - 3. The hardship relates to the applicant's land, rather than personal circumstances;
 - 4. The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
 - 5. The hardship is not the result of the applicant's own actions; and,
 - 6. The variance will neither result in the extension of a nonconforming situation in violation of Chapter 16 nor authorize the initiation of a nonconforming use of land.
- B. In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties. In granting a variance the Board of Adjustment shall make detailed written findings of fact and conclusions arising from the facts which explain and justify the decision, which written findings and conclusions shall be incorporated into the minutes of the meeting.

- C. A variance may be issued for an indefinite duration or for a specified duration only. However, the variance from the terms of this Ordinance shall continue for so long as the principal structure shall remain habitable.

13.8.3 Flood Damage Prevention Variances

- A. A variance from any of the requirements set forth in the Flood Damage Prevention Ordinance in Chapter 6, may be issued by the Board of Adjustment for:
1. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.
 2. Functionally dependant facilities if determined to meet the definition as stated in this ordinance.
 3. Any other type of development provided it meets the requirements stated in this section.
- B. In passing upon variances, the board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
1. The danger that materials may be swept onto other lands to the injury of others;
 2. The danger to life and property due to flooding or erosion damage;
 3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 4. The importance of the services provided by the proposed facility to the community;
 5. The necessity to the facility of a waterfront location as a functionally dependant facility, where applicable;
 6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 7. The compatibility of the proposed use with existing and anticipated development;
 8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

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9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and,
 11. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- C. A written report addressing each of the above factors shall be submitted with the application for a variance.
- D. Upon consideration of the factors listed above and the purposes of this ordinance, the board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- E. Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.
- F. Conditions for Variances:
1. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 2. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 3. Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship; and,
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

- G. A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.
 - 1. The use serves a critical need in the community.
 - 2. No feasible location exists for the use outside the Special Flood Hazard Area.
 - 3. The reference level of any structure is elevated or flood-proofed to at least the regulatory flood protection elevation.
 - 4. The use complies with all other applicable Federal, State, and local laws.
 - 5. The Currituck County Board of Adjustment has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to consider a variance at least 30 calendar days prior to granting the variance.
- H. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.
- I. The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

Section 13.9 Appeals

13.9.1 Initiation and Application

- A. An appeal from any final order or decision of the administrator may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the administrator and the Board of Adjustment a written notice of appeal specifying the grounds therefore. A notice of appeal shall be considered filed with the administrator and the Board of Adjustment when delivered to the office of the administrator, and the date and time of filing shall be entered on the notice by the staff.
- B. An appeal must be taken within ten days after the date of the decision or order appealed from.

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- C. Whenever an appeal is filed, the administrator shall forthwith transmit to the Board of Adjustment all the papers constituting the record relating to the action appealed from.

13.9.2 Stay of Proceedings

An appeal stays all actions by the administrator seeking enforcement of or compliance with the order or decision appealed from, unless the administrator sends a written notice to the Chairman of the Board of Adjustments setting forth detailed reasons, which written notice shall constitute the certificate requirement of N.C.G.S. 153A-345(b) that a stay would, in his opinion, cause imminent peril to life or property. If, after the administrator has sent the written notice to the chairman of the Board of Adjustments and has allowed the violator a reasonable opportunity to comply with the ordinance, the violation persists and there is imminent peril to life or property, the administrator may immediately seek injunctive relief from the courts. In that case, proceedings shall not be stayed except by order of the Board of Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the administrator.

13.9.3 Board of Adjustment Action

- A. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed from and shall make any order, requirement, decision or determination that in its opinion should be made in the case before it. To this end, the board shall have all the powers of the officer from whom the appeal is taken. In reversing or modifying the order, requirement, decision, or determination of the administrator, the Board of Adjustment shall make detailed written findings of fact and conclusions arising from the facts which explain and justify the decision, which written findings and conclusions shall be incorporated into the minutes of the meeting.
- B. With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include 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 four-fifths (4/5) vote necessary for adoption, then a motion to uphold the decision appealed from shall be in order. This motion is adopted as the board's decision if supported by more than one member (i.e. regular member or alternate sitting in lieu thereof).
- C. Each decision of the board is considered a final decision when the decision has been typed by the office of the administrator and signed by the administrator, his staff, or designee.

Section 13.10 Interpretations

- A. The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions.

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If such questions arise in the context of an appeal from a decision of the administrator, they shall be handled as provided in this chapter.

- B. An application for zoning map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application in the office of the administrator. The application shall contain sufficient information to enable the board to make the necessary interpretation.
- C. Interpretations of the location of floodway and floodplain boundary lines may be made by the administrator as provided in this ordinance.