

BOARD OF ADJUSTMENT

or any officer, department, board, or bureau of the county may file such an appeal.

(C) *Variance of the chapter requirements.*

§ 153.285 ORGANIZATION.

(A) This chapter establishes a Board of Adjustment. This Board will consist of five members who are citizens and residents of the town to be appointed by the Town Board of Commissioners. Members appointed by the Commissioners shall be appointed as follows: two members for one year, two members for two years, and one member for three years; thereafter, all members shall be appointed for a period of three years. (Note: it is the intent to create three-year staggered terms for the five members). Members shall be eligible for reappointment for a maximum of two consecutive terms, at which point they would not be eligible for reappointment for at least one year. An appointment to fill a vacancy on the Board will be for the remainder of the unexpired term. There shall also be three alternates appointed for three-year terms to serve until they are replaced by a successor. Alternates may sit in on an official meeting of the Board in the absence of one or more members of the Board at a given meeting. ('72 Code, § 24-1401) (Ord. 477, passed 2-8-88; Am. Ord. 566, passed 3-28-89; Am. Ord. 687, passed 8-5-91) (Ord.1306, passed 9-8-03)

(1) The Board of Adjustment will hear and decide appeals on variances from the requirements of the chapter which relate to the establishment or extension of structures or uses of land. Before a variance request is granted the Board must find: that practical difficulties or unnecessary hardship would result if the strict letter of the law were followed; that the variance is in accordance with the general purpose and intent of the chapter; and that the public health, safety and welfare have been assured and substantial justice done. The Board may not grant a variance which would allow the establishment of a use which is not otherwise permitted in the district, would result in the extension of a nonconforming use, or would change the district boundary or zoning classification of the property in question.

(2) In reaching a decision on a variance request, the Board will be guided by the following principles in its evaluation of conditions which constitute practical difficulties or unnecessary hardships.

(a) The difficulty or hardship would result strictly from the provisions of this chapter and from no other cause, including the actions of the owner or previous owners of the property.

(b) The difficulty or hardship is peculiar to the property in question and is not generally shared by other properties in the neighborhood.

(c) The difficulty or hardship resulting from the application of the provisions of the chapter would prevent the owner from securing a reasonable return or making a reasonable use of the property. However, the fact that the property could be utilized more profitably will not be considered as grounds for granting the variance request. ('72 Code, § 24-1403) (Ord. 477, passed 2-8-88)

§ 153.286 RULES OF PROCEDURE.

The Board of Adjustment will adopt rules and regulations for its own operation necessary to carry out the provisions of this chapter. The Town Planning Department will maintain copies of the adopted rules for public information. ('72 Code, § 24-1402) (Ord. 477, passed 2-8-88; Ord. No. 1418, passed 2-14-05)

§ 153.287 DUTIES OF BOARD.

The Board of Adjustment is assigned a certain number of specific duties by this chapter. Those duties are listed below.

(A) *Interpretation of the chapter.* The Board of Adjustment is responsible for interpreting the provisions of this chapter if there is a question about the meaning or application of a provision. Once the Board has made an interpretation on an issue, the Zoning Administrator will use that interpretation in the administration of this chapter. The Board may also ask that the chapter be amended to clarify a problem that has come to the Board's attention.

(B) *Administrative review.* The Board of Adjustment will hear and decide appeals where it is alleged that there is an error in any determination, order, requirement, or decision made by the Zoning Administrator. Any person who feels that his/her legal or property rights may have been affected

§ 153.288 APPEALS AND HEARINGS.

The Board of Adjustment will hold public hearings on any appeal or variance request which comes before it. All administrative papers and other information relating to an appeal or variance will be transmitted to the Board. The Board will give notice of the time, place and subject of its hearings to the persons making the appeal or variance request and to the owners of property that adjoins or is directly across a street or alley from the property involved in the hearing. The Board will keep minutes of its hearings and records of the votes of each member.

('72 Code, § 24-1404) (Ord. 477, passed 2-8-88)

§ 153.289 ACTIONS OF BOARD.

The Board of Adjustment will decide on an appeal or a variance request by adopting a resolution and placing the resolution in the minutes of the meeting. The resolution will state the reasons the Board used and the findings of fact and conclusions of law made by the Board to reach a decision. The concurring vote of four-fifths majority of the members of the Board will be required to override a decision of an administrative official charged with enforcement of the chapter or to decide in favor of the persons making an appeal or a variance request.

('72 Code, § 24-1405) (Ord. 477, passed 2-8-88)

§ 153.290 REHEARING.

Deleted in its entirety. (Ord. 1509-A, passed 9-11-06)

§ 153.291 FILING OF APPEAL PETITIONS; FEES.

Petitions for appeals to be considered by the Board of Adjustment must be filed with the Town Clerk and accompanied by the necessary application fee as established by the Town Commissioners.

('72 Code, § 24-1407) (Ord. 477, passed 2-8-88)