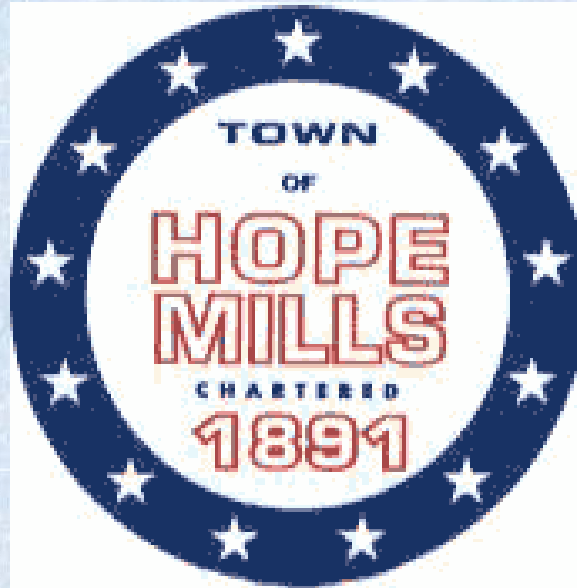


**TOWN OF HOPE MILLS
BOARD OF ADJUSTMENT SPECIAL TRAINING MEETING
MONDAY, JUNE 17, 5:00 P.M.
LUTHER BOARD MEETING ROOM**

CALL TO ORDER –

1. Administration of Oaths of Office, Town Clerk Jane Starling.
 - Elyse Craver
 - Elizabeth Cooper
 - Bryan Marley
 - Joanne Scarola
 - Carla Welsh
 - Harold Dove – Alternate
 - Susan Moody - Alternate
2. Training Session by Planning & Development Administrator Chancer McLaughlin and Town Attorney Dan Hartzog, Jr.
3. ADJOURNMENT.



Board of Adjustment Policies and Procedures

Board of Adjustment

- The Board of Adjustment has five regular members, and two alternate members who are appointed by the Board of Commissioners.
- The chairperson is elected by the members and presides over Board of Adjustment meetings.
- The Board of Adjustment meets on an as-needed basis.
- All decisions of the Board of Adjustment are quasi-judicial.

Powers and Duties of the Board of Adjustment

- Appeals – the Board will hear appeals of administrative decisions by Town staff.
- Variances – the Board may consider variances from strict application of the zoning ordinance.
- Special Use Permits – the Board will hear and decide special use permits.
- Interpretations – the Board can interpret the zoning map to pass upon disputed questions of lot lines, district boundary lines, or other similar questions.

Conducting Hearings

- The Board has the authority to administer oaths to witnesses, and to subpoena witnesses and compel production of evidence necessary for the purposes of the hearing.
- Chairperson presides over the hearing, and performs the following functions:
 - Recognizes speakers and members of the Board before they can be heard
 - Rules on objections and requests
 - May limit testimony or evidence that is irrelevant, repetitive, incompetent, inflammatory, or otherwise inadmissible (rules of evidence do not apply, but the Board may only consider evidence that is part of the record in matters of appeal)

Who can appear?

- Individual applicants or property owners, for themselves or through an attorney (if applicant desires a non-lawyer to act as a representative, the Board must vote on whether to allow this)
- Corporations or business entities must be represented by an attorney
- Expert witnesses – engineers, architects, etc.
- All witnesses should be sworn in before providing testimony

Expert Witnesses

- May provide opinions and conclusions which require a particularized knowledge that a lay witness would not possess.
- Pursuant to N.C. Gen. Stat. 160A-393(k), expert testimony is required to establish sufficient evidence of the following:
 - The use of property in a particular way would affect the value of other property.
 - The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
 - Matters about which only expert testimony would generally be admissible under the rules of evidence.

Witness Examination

- Witnesses may be examined and cross-examined by the Board and the applicant or property owner
- The Board can only make decisions on evidence in the record, so the hearing is the opportunity to elicit relevant testimony

Appeals

- Town administrative officials often make decisions regarding zoning or enforcement of Town ordinances that regulate land use or development.
- Under certain situations, citizens who wish to challenge such decisions may appeal to the Board of Adjustment.
- The Board of Adjustment is authorized to heard these appeals and determine whether the administrative official correctly applied the relevant ordinance.

Who can appeal?

- Section 102A-1705(B) lists the individuals who may appeal to the Board of Commissioners.
- Only persons with standing under N.C. Gen. Stat. 160A-393(d) may appeal.
- The ordinance adopted mirrors the language in the statute.

Who can appeal?

- Someone who has an ownership interest in the property that is subject of the decision being appealed.
- The applicant before the decision-making board whose decision is being appealed.
- Someone who will suffer special damages as a result of the decision being appealed.
- An pre-existing association which is organized to protect the interests of the local area in which the property is located, provided that at least one member would have individual standing.
- A City whose board has made a decision that the council believes improperly granted a variance or has made a decision inconsistent with the City's ordinance.

Time to Appeal

- The Town official making the final decision shall give written notice of the decision to the owner of the property, and the party who sought the decision.
- The owner or other party has 30 days to appeal from receipt of the decision. Any other party with standing to appeal has 30 days from construction notice of the decision.
- Constructive notice is provided by posting a sign with the words “Zoning Decision” or “Subdivision Decision” on the property for 10 days. Posting is the responsibility of the landowner or applicant.

Record on Appeal

- The official who made the decision shall provide all documents and exhibits considered in making the decision. A copy of these documents shall also be provided to the owner or subject of appeal.
- Hearing on appeal is in the nature of certiorari, which means the Board is limited to consider only the matters considered below, and cannot accept new evidence

Stay of Decision

- The filing of an appeal stays enforcement of the decision until the hearing can occur, unless the stay would cause imminent peril to life or property, the violation is transitory in nature, or the stay would seriously interfere with enforcement of the ordinance.
- If enforcement is not stayed, aggrieved party may seek a restraining order to enforce stay, and may request expedited hearing (within 15 days of request).

Hearings on Appeal

- Town official who made the decision will be a witness at the hearing
- Appellant may present issues outside the notice of appeal, but hearing may be continued if any party would be prejudiced by hearing additional matters
- Board may affirm, wholly or partly, or may modify the decision
- Decisions on appeal are made by majority vote

Variations

- Variations may be granted where unnecessary hardship would result from carrying out the strict letter of a zoning ordinance.
- Applicant for variance may submit reports, arguments, proposed findings, or other documents along with the application

What must be shown?

- Unnecessary hardship – does not require a showing that no reasonable use can be made of the property
- Hardship results from conditions particular to the property (hardships resulting from personal circumstances or which are common in the neighborhood or general public cannot be considered)
- Hardship did not result from actions taken by the applicant
- Requested variance is consistent with the spirit, purpose, and intent of the ordinance

Special Use Permits

- Special Use Permits may be granted only as permitted in Sec. 102A-403 (matrix) as special uses
- Application for special use permit will be submitted to the County Planning Staff, who will schedule the application to be heard by the Board
- Board shall consider the application, site plan, and any other evidence presented and may grant or deny the special use permit requested

Consideration of Application

- In order to grant special use permit, Board must find the following:
 - Use will not materially endanger public health or safety
 - Use meets all required conditions and specifications
 - Use will maintain or enhance the value of adjoining or abutting properties, **or** that the use is a public necessity
 - Location and character of use will be in harmony with the area where it is located and is in general conformity with Town's adopted land use plan

May also consider:

- Compatibility with surrounding neighborhood
- Comparative size of proposed structures in relation to surrounding area
- Frequency and duration of activities and special events, and the impact of these activities on surrounding area
- Capacity of adjacent streets to handle increase in traffic
- Added noise level
- Requirements for public services
- Affect on general appearance of the neighborhood

May also consider:

- Impact of night lighting and its impact on neighborhood
- Impact of landscaping versus the use of buffers and screens
- Impact of hard surfaced areas in terms of noise transfer, water runoff, and heat generation
- Availability of public facilities and utilities
- Harmony in scale, bulk, coverage, function, and density, and the compliance with developmental standards
- Reasonableness of request compared to purpose and intent of land use plan, Town ordinances and policies, physical development of district, and protection of the environment

Conditions

- Board may impose reasonable terms and conditions as it deems necessary for the protection of public health, general welfare, and public interest
- Any such conditions imposed shall be entered into the minutes of the hearing and placed on the permit and approved plans
- Such conditions shall run with the land and be binding on heirs, successors, or assigns
- Special use permit is good for one year, unless otherwise specified
- If any condition imposed is found to be illegal or invalid, the special use permit is null and void, and process is restarted

Denial of Special Use Permit

- If denied, the Board shall enter the reason for its denial in the minutes
- The Board may not reconsider the application without a substantial material change concerning the property or the application

Modification of Plans

- Board shall review any change in site plans submitted as part of a special use application, and may impose new conditions if appropriate
- County Planning and Town Staff may approve minor modifications provided the changes do not materially alter the original plan as approved

Noncompliance

- Compliance is an essential element of the validity of the special use permit
- If Chief Building Inspector determines the applicant is noncompliant, the matter is placed on the Board's agenda for consideration of whether to revoke the permit

Interpretations

- Board is authorized to interpret the zoning map to pass upon disputed questions of lot lines or boundary lines, or other similar questions
- Application shall contain sufficient information for the Board to make the necessary interpretation

Rules for Ordinance Interpretation

- Main goal is to give effect to the intent of the legislative body that enacted the ordinance
- Absent a definition in the ordinance, the plain meaning of a word controls
- Ordinances should be construed as a whole
- Ordinances should be interpreted to avoid absurd consequences
- If conflicting provisions cannot be reconciled, the last adopted provision controls
- When ordinance restricts property rights, restrictions must be clearly included in the ordinance (cannot be implied restriction on property rights)

If uncertainty exists:

- Boundaries indicated as approximately following centerlines of alleys, streets, highways, streams or railroads shall be construed to follow such centerlines
- Boundaries indicated as following lot lines, Town limits, or extraterritorial boundary lines shall be construed as following such lines, limits, or boundaries
- Boundaries indicated as following shorelines shall be construed as following such shorelines

If uncertainty exists

- Where a district boundary divides a lot or where distances are not specifically indicated on Official Zoning Maps, the boundary shall be determined by measurement, using the scale of the Official Zoning Map
- Where any street or alley is officially closed or withdrawn, the regulations applicable to each parcel of abutting property shall apply to that portion of the street or alley added to the parcel by virtue of the closure or withdrawal

Voting

- A 4/5 vote is required to grant a variance
- All other actions are by majority vote
- Vacant positions of the board are not used for calculation of the requisite majority
- All decisions shall be made within a reasonable time, and shall be based on competent, material, and substantial evidence in the record
- Decision is reduced to writing and delivered to applicant, property owner, and anyone else who has requested a copy
- Board is not legally bound by prior decisions, but similar cases should produce similar results. It is incumbent on the Board to know how and why prior cases were decided the way they were.

Quasi-Judicial

- Board acts as a quasi-judicial body
- This means that the Board is determine how ordinance provisions apply to individual situations, rather than adopting new policies
- The Board of Adjustment does not have the authority to modify any particular ordinance provision
- Hearings are akin to court proceedings, and due process must be provided
- Board should make factual findings to support its decisions, and those findings should be based on the competent evidence in the record

Due Process

- Hearings must provide Due Process under state and federal constitutions
- Applicant or property owner must be given meaningful opportunity to be heard and present testimony and admissible evidence
- Violations of due process could include:
 - Member having a fixed opinion prior to hearing
 - Undisclosed ex parte communications
 - Close familial, business, or other associational relationship with affected person
 - Financial interest in the outcome
- Any potential conflict or issue must be disclosed prior to the hearing

Reversal of Decision

- Board may reverse decision after public hearing in the following situations:
 - Approval was obtained by fraud
 - Use for which approval was granted is not being executed
 - Use for which approval was granted has ceased to exist or has been suspended for a year or more
 - Permit is being exercised contrary to the terms and conditions of approval, or in violation of regulation or statute
 - Use for which approval was given is detrimental to public health or safety, or constitutes a nuisance

Appeal

- All decisions of the Board are quasi-judicial in nature, and may be appealed to Superior Court by the filing of a petition pursuant to N.C. Gen. Stat. 160A-393.