

## **ARTICLE VII**

### **ADMINISTRATION**

- 700 The Town Council shall designate a zoning administrator to be responsible for the enforcement of the provisions of this Ordinance.
- 700.1 If the Zoning Administrator shall find that any provisions of this Ordinance are being violated, the person or persons responsible for such violations shall be notified in writing indicating the nature of the violation and ordering that the person or persons desist from such violation and stating the action necessary to eliminate it. The Zoning Administrator shall order the discontinuance of uses of land or buildings in violation of this Ordinance, removal of illegal buildings or the structures or discontinuance of illegal work being done; or shall take any other action authorized by this Ordinance to insure compliance with and to prevent violation of its provisions.
- 701 Building and Sign Permit Required – No building, sign or other structure regulated by this Ordinance shall be erected, moved, added to or structurally altered without a permit issued by the Zoning Administrator. No zoning or sign permit shall be issued by the Zoning Administrator except in conformity with the provisions of this Ordinance, unless a variance is received from the Board of Adjustment as provided by this Ordinance.
- 702 Application for Zoning Permit – All applications for zoning permits shall be accompanied by site plan or plot plan drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Zoning Administrator, including location of existing or proposed buildings or alterations; existing or proposed uses of buildings and land; the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this Ordinance. The site plan or plot plan shall be retained by the Zoning Administrator.
- 703 Permits Issued for Approved Lots Only – The zoning permit shall not be issued for construction on new lots which are created by the subdivision of land unless the subdivision has been approved by the Planning Board. The subdivision plat must be recorded in the Madison County Courthouse and copies of the recorded plat sent to the Zoning Administrator before any zoning permit is issued.

- 704 Temporary Uses – The zoning Administrator is authorized to issue a permit for temporary uses, as follows:
- 704.1 Carnivals, or circus, for a period not to exceed twenty-one (21) days, subject to the approval of the Board of Aldermen.
  - 704.2 Religious meeting, in a tent or other temporary structure, for a period not to exceed thirty (30) days.
  - 704.3 Open lot sale of Christmas trees, in the Industrial or Commercial districts for a period not to exceed forth-five (45 days).
  - 704.4 Satellite real estate sales office representing sales of land on which the use is located, in any district, for a period not to exceed one (1) year.
  - 704.5 Contractor’s office and equipment shed, in any district, for a period covering construction phase of the project not to exceed one (1) year, provided that such office be placed on the property to which it is appurtenant.
  - 704.6 All permits for temporary uses may be renewed provided that it is determined that said use is clearly of a temporary nature, will cause no traffic congestion and will not create a nuisance to surrounding uses.
- 705 Expiration of Zoning Permit – If the work described in any zoning permit has not begun within six (6) months from the date of issuance thereof, said permit shall expire. Upon the beginning of a project, work must be diligently continued until completion with some progress being apparent every twelve (12) months. If such continuance of work is not shown, said permit will expire.
- 706 Complaints Regarding Violations – Any person who is aggrieved by an alleged violation of this Ordinance may file a written complaint with the Zoning Administrator, stating fully the nature of the alleged violation. Whenever the Zoning Administrator receives such a written complaint, he shall record properly such complaint, immediately investigate, and take whatever action is required by this Ordinance.
- 707 Remedies – In any case in which any building or structure is proposed to be or is erected, constructed, reconstructed, altered, maintained, or used; or any land is proposed to be or is used in violation of this ordinance, the Zoning Administrator, Town Manager, Board of Aldermen, Town Attorney, or any other person aggrieved may, in any addition to other remedies provided by law, institute injunctive mandamus, or any other appropriate action or proceeded to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance, or use.
- 708 Penalties for Violation – Any person violating any provision of this Ordinance shall upon conviction be guilty of a misdemeanor and shall be fined, as

determined by the Court for each offense. Each day such violation continues shall constitute a separate offense. No Court conviction shall prevent the Town from taking such other lawful action as is necessary to prevent or remedy any violation.

709 Appeal from the Decision of the Zoning Administrator – It is the intention of this Ordinance that all questions arising in connection with the enforcement of the Ordinance shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator.

710 Establishment of the Zoning Board of Adjustment – A Zoning Board of Adjustment is hereby established. Said Board shall consist of a total of five (5) members, three (3) of whom shall be citizens and residents of the Town of Mars Hill and shall be appointed by the Board of Aldermen; and two (2) members residing in the area of extraterritorial jurisdiction appointed by the Board of Commissioners of Madison County. All members residing in the extraterritorial area shall have equal rights, privileges, and duties with the other members of the Board in all cases, regardless of whether such cases arise within the Town or within the extraterritorial jurisdiction. In addition, the Board of Aldermen and the Board of Commissioner shall each appoint one (1) alternate member who shall serve for a three (3) year term. Alternates shall serve on the Board in the absence of a member and while serving shall have and may exercise all of the power and duties of a regular member. Initial appointment of regular members shall be as follows: two (2) members for a term of three (3) years; two (2) for a term of two (2) years; and one (1) for a term of one (1) year. After these initial terms of office, the regular term of office shall be three (3) years. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. A quorum shall consist of four (4) members of the Board. Members may be reimbursed for any expense authorized by the Board of Aldermen and incurred while representing the Board. The practice, procedure, and jurisdiction of this Board shall be governed by the provisions of GS 160A-388 and as set out hereafter.

711 Proceedings of the Zoning Board of Adjustment – The Zoning Board of Adjustment shall elect a chairman and vice-chairman from its members who shall serve for one (1) year or until reelected or until their successors are elected. The Board shall appoint a secretary. The Board shall adopt by-laws and rules in accordance with the provisions of this Ordinance and of Article 19, Chapter 160A of the General Statutes of North Carolina. Meetings of the Board shall be held at the call of the chairman and at other such times as the Board may determine.

712 Powers and Duties of the Zoning Board of Adjustment – The Zoning Board of Adjustment shall have the following powers and duties:

712.1 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 Administrator in the enforcement of this Ordinance.

- 712.2 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, owing to the special condition, 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 nonconforming use of neighboring land, building, or structures in the same district or of permitted or nonconforming use in other districts shall not constitute a reason for the requested variance. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the Board of Adjustment that the following conditions exist:
- 712.2.1 There are extraordinary and exceptional conditions pertaining to the particular piece of property in questions because of its size, shape, or topography that are not applicable to other lands or structures in the same district.
  - 712.2.2 Granting the requested variance will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.
  - 712.2.3 A literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.
  - 712.2.4 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.
  - 712.2.5 The special circumstances are not the result of the actions of the applicant.
  - 712.2.6 The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.
  - 712.2.7 The variance is not a request to permit a use of land, building or structure which is not permitted in the district involved.
- 712.3 Appeals – Appeals to the Zoning Board of Adjustment concerning interpretation or administration of the Ordinance may be taken by any person aggrieved or by an officer, Department or Board of the Town. An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board, after notice of reason of facts stated in the certificate a stay would, in his 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 or by a court of record on application, on notice to the Zoning Administrator and on due cause shown. In exercising the above powers, the Zoning 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 the powers of the Zoning Administrator and may issue or direct the issuance of a permit . The Board, in the execution of the duties for which appointed, may subpoena witnesses and in case of contempt may certify such fact to the Superior Court in and for the County of Madison.

- 713 Application Procedure – Persons wishing to seek a variance, request an administrative review, or to make an appeal shall file an application with the Board of Adjustment thirty (30) days prior to the meeting at which it is to be reviewed. An application fee of seventy-five dollars (\$75.00) shall accompany each application and this fee shall be non-refundable except in any case where the application is withdrawn prior to its consideration by any office or Board of the Town. In addition, the applicant shall provide the Zoning Administrator with a list of names and addresses of all persons owning property within two hundred feet (200') of the property in questions.
- 713.1 The Zoning Board of Adjustment shall hold a public hearing regarding any application. Such hearing shall be publicized and held in accordance with NC General Statute 160A-364. If the application is for a variance, written notification shall be made to all property owners within two hundred feet (200') of the subject property.
- 714 Decisions of the Zoning Board of Adjustment – The concurring vote of four (4) members of the Zoning Board of Adjustment shall be necessary to reverse any order requirement, decision or determination of the Zoning Administrator 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 shall keep minutes of its proceedings showing the 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 Administrator and shall be public record. On all appeals, applications and matters brought before the Zoning Board of Adjustment, the Board shall inform the applicant in writing of its decisions.
- 715 Appeals from Decision of the Zoning Board of Adjustment – Any person who may have a substantial interest in any decision of the Zoning Board of Adjustment may appeal any decision of the Board to the Superior Court in and for the County of Madison 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 is rendered and shall follow the rules of civil procedure.