

**CHAPTER 12
BOARD OF ADJUSTMENT**

Section 12.1 Authority Of Board Of Adjustment

- A. The Board of Adjustment shall have the authority to hear and decide appeals from any order, decision, determination, or interpretation made by the Zoning Administrator pursuant to or regarding these regulations.
- B. The Board of Adjustment shall have the authority to hear and decide petitions for all variances from the requirements of these regulations, except major variance applications regarding one or more lots located within a Water Supply Watershed Overlay District,
- C. The Board of Adjustment shall have the authority to make recommendations on major variances for lots located within a Water Supply Watershed Overlay District.
- D. The Board of Adjustment shall have the authority to deny a major variance application concerning property located within a Water Supply Watershed Overlay District.
- E. The Board of Adjustment shall have the authority to make an interpretation of any portion of this Ordinance.
- F. The Board of Adjustment shall have the authority to change the use of, or expand certain nonconformity's.
- G. The Board of Adjustment shall have the authority to grant a special exception for the location of a satellite dish antennae as per Section 5.10.10.D.

Section 12.2 Membership

The Board of Adjustment shall consist of five (5) members. All five (5) members shall be citizens and residents of the Town of Badin and shall be appointed by the Badin Town Council for **three year terms**. The Town Council shall also appoint two (2) alternate members to serve on the board in the absence of any regular member. Each alternate member, while attending any meeting of the board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board of Adjustment.

The terms of office of the members of the Board of Adjustment shall be for overlapping terms of three (3) years. Initial appointment of the members shall in each case be as follows:

One (1) member shall be appointed for a one-year term; two (2) for two-year terms; and two (2) for three-year terms. Thereafter, members shall be appointed for three (3) years each. Said alternate members shall serve for a term of one (1) year each. Nothing herein contained shall be so interpreted as to forbid any member from being appointed to succeed himself.

Vacancies occurring for any reason other than expiration of term shall be filled as soon as is reasonably possible after such vacancy occurs by the proper Board making the appointment, and such appointment shall only be for the period of the unexpired term. Members may be removed for cause by the appointing board upon written charges and after public hearing.

Section 12.3 Meetings, Hearings and Procedures

- A. All meetings and hearings shall be open to the public and shall be conducted in accordance with the procedure set forth in these regulations and **rules of procedure** adopted by the Board of Adjustment. Such rules of procedures may be amended by the Board of Adjustment membership.
- B. Any rules of procedure adopted by the Board of Adjustment shall be kept on file at the offices of the Zoning Administrator and shall be made available to the public at any meeting or hearing of the Board of Adjustment.

Section 12.4 Staff

The Zoning Administrator shall serve as staff to the Board of Adjustment and shall provide technical assistance to the Board of Adjustment as requested.

Section 12.5 Initiation of Appeals and Variances

- A. An appeal may be initiated by any aggrieved party or by any officer, department or board of Badin.
- B. A petition for a variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.

Section 12.6 Administrative Review, Appeals And Interpretation

The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision, interpretation or citation made by the Zoning Administrator and apply such interpretation to particular fact situations. In addition, the Zoning Administrator may ask the Board of Adjustment to interpret any portion of the Zoning Ordinance.

- 12.6.1** The Board of Adjustment may, after having held a public hearing on the matter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed or make an interpretation of the Zoning Ordinance.
- 12.6.2** The Board of Adjustment shall have all the powers of the Zoning Administrator in making any order, requirement, decision, interpretation or determination with reference to an appeal or petition.
- 12.6.3** An appeal may be made by any person who has received a ruling from the Zoning Administrator. An appeal to the Board of Adjustment shall be made within thirty (30) days of the decision, order, determination, or interpretation made by the Zoning Administrator. The Zoning Administrator may make an appeal to the Board of Adjustment at any time.

Section 12.7 Variance

When practical difficulties, special conditions, or unnecessary hardships would result from carrying out the strict letter of this Ordinance, the Board of Adjustment shall have the power to vary or modify any of the regulations or provisions of this Ordinance relating to the construction or alteration of buildings or structures or the use of land for all variance requests except major variance requests regarding parcels of land located within a Water Supply Watershed District. For major variance applications related to regulations or provisions in this Ordinance for lots located within the Water Supply Watershed District, the Board of Adjustment shall have the power to make recommendations on such applications.

12.7.1 The Board of Adjustment, in considering an application for a variance, shall give due consideration to the following:

- A. The citing of other nonconforming or conforming uses of land or structures in the same or other districts, shall not be considered grounds for the granting of a variance.
- B. The request for a variance for a particular use expressly, or by inference, prohibited in the district involved, shall not be approved. Certain temporary uses, however, are allowed per Section 5.9.

12.7.2 The Board of Adjustment, may only approve a variance or make a recommendation on a major variance involving land located in a Water Supply Watershed District after having first held a public hearing on the matter and having made the following determinations:

- A. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance.
- B. That the variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
- C. That in the granting of the variance, the public safety and welfare have been assured and substantial justice has been done; and
- D. That the reasons set forth in the application justify the granting of a variance, and that the variance is a minimum one that will make possible the reasonable use of land or structures.

12.7.3 The Board of Adjustment, in approving all variances, (except major variances involving land located in the Water Supply Watershed District which are subject to the Environmental Management Commission approval), may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which a variance is approved, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Section 11.8 of this Ordinance.

The Board of Adjustment, in making recommendations regarding major variance applications, may recommend fair and reasonable conditions and safeguards in conformity with this Ordinance, conditions may also be attached to any major variance by the Environmental Management Commission as part of their approval process. Violations of any conditions or safeguards prescribed by the Environmental Management Commission, and made a part of the terms under which the major variance was approved, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Section 11.8 of this Ordinance.

12.7.4 Unless otherwise authorized by the Board of Adjustment or the Environmental Management Commission and included in its decision to approve a variance, any order of the Board of Adjustment or the Environmental Management Commission in approving a variance shall expire, if a building permit, or certificate of occupancy (for a use for which a building permit is not required), has not been obtained within one (1) year from the date of its decision.

Section 12.8 Nonconformities

The Board of Adjustment shall hear and decide appeals from any land owner **(i)** to make a change in use of a nonconforming use to a less-intense nonconforming use; **(ii)** to make a change in location of a

nonconforming use of land to another location on the same property; or **(iii)** allow the replacement of a nonconforming use, or **(iv)** allow a nonconforming manufactured home to remain on the same lot as a principal structure, if it is occupied by a blood relative of the owner-occupant of the principal structure.

12.8.1 The Board of Adjustment may only grant a change in a nonconforming use or replacement of a nonconforming structure which has been destroyed after having first held a public hearing and having determined that:

- A. **(i)** Said change will be more suitable and appropriate for the lot(s) on which it is located than the existing situation, and **(ii)** That the proposed change will have a less harmful effect than the existing situation on the properties surrounding the lot(s) in question, and
- B. That the decision to grant the change will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise be detrimental to the public welfare.

12.8.2 The Board of Adjustment, in granting said changes, may prescribe appropriate conditions and safeguards in conformity with this Ordinance in order to conform with Sections 12.8.1(A) and (B). Violation of such conditions and safeguards when made a part of the terms upon which the change was granted, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Section 11.8 of this Ordinance.

Section 12.9 Temporary Use Permits and Special Exceptions

12.9.1 The Zoning Administrator may grant an extension of a temporary use permit for a manufactured house as per Section 5.9.4 for a period no longer than nine (9) months if the Zoning Administrator determines that construction is proceeding in a diligent manner; the granting of such permit of the manufactured home on the site does not have a negative effect on abutting properties.

12.9.2 The Board of Adjustment is given the authority as per Section 5.10.10 to allow a special exception to allow a satellite dish antennae in the side or front yard in a Residential (R-A- R-20, R-10) District. Prior to allowing such special exception, a public hearing must first be held and advertised.

In allowing this special exception, the Board of Adjustment may authorize fair and reasonable conditions. Any such conditions imposed upon such approval shall be made part of the permit issued. Violation of such conditions shall be considered a violation of this Ordinance.

12.9.3 The Board of Adjustment may grant a special exception to allow a non-conforming sign having historic, significant social value, or other justifiable reason to be continued as per Section 6.8.11.

Section 12.10 Application Procedure

The following regulations apply to all applications submitted to the Board of Adjustment:

12.10.1 Before a petition for an administrative appeal, interpretation of the Zoning Ordinance, variance, change or replacement of a nonconformity, or allowance of a temporary use , or special exception shall be heard and a public hearing conducted by the Board of Adjustment, an application shall be submitted to the Zoning Administrator along with a fee in accordance with fee schedule established by the Town Council. Said fee shall be waived for any petition initiated by the Zoning Administrator or other officials of Badin

who initiate a request on behalf of Badin. For variance requests, the application shall be accompanied by a map clearly identifying the subject property, all contiguous pieces of properties (including all properties traversed and/or separated by a road, stream, right-of-way, or any similar natural or man-made configuration). In addition, a list of names and addresses of the owners of said properties, from the most recent official tax records, shall be provided by the applicant.

12.10.2 The filing of any application stays all proceedings unless the Zoning Administrator certifies that a stay in his opinion will cause imminent peril to life or property, or, that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the Ordinance. In that event, proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment, Town Council or by a court of record.

12.10.3 Within five (5) working days after having received an application for an appeal, interpretation, variance, change or expansion of a nonconformity, or allowance of a temporary use, the Zoning Administrator shall determine whether the application is complete. If he determines that the application is not complete, he shall serve a written notice on the appellant or petitioner specifying the application's deficiencies. The Zoning Enforcement Officer shall take no further action on the application until the deficiencies are remedied. If the Zoning Administrator fails to so notify the appellant or petitioner, the application shall be deemed complete.

Section 12.11 Public Notification

12.11.1 The Town of Badin shall give notice of all public hearings. Said notice shall become a part of the record of the proceedings of the Board of Adjustment. Notice shall be given in the following manner:

A. Interpretations and Appeals of the Zoning Administrator

1. Notice shall be sent by the Town by first class mail to the applicant at least ten (10) days prior to the public hearing.
2. Notice shall also be posted by the Zoning Administrator in a conspicuous location in the Town Hall at least ten (10) days prior to the public hearing. Both notices shall indicate the nature of the public hearing and the date, time and place at which it is to occur.

B. Variances, Changes and Expansions of Nonconformities, Temporary Use Extensions, Special Exceptions

1. Notices shall be sent by the Town by first class mail to the applicant, and to owners of all contiguous properties at least ten (10) days prior to the public hearing. In addition, if a minor or major variance concerning property located within a Water Supply Watershed District is the purpose of the public hearing, then the Town shall also send notice of the hearing plus a description of the variance request by first class mail to the Clerk of all municipal and county governments having jurisdiction within the same watershed and to any entity using the water supply from that watershed for consumption purposes at least ten (10) days prior to the public hearing. The notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur.
2. Notice shall also be posted by the Zoning Administrator in a conspicuous location in the Town Hall at least ten (10) days prior to the public

hearing. Said notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur.

3. At least one (1) sign shall also be conspicuously placed by the Town on the subject property(ies) indicating the nature of the public hearing and the date, time and place at which it is to occur. Said sign(s) shall be placed on the property(ies) in question at least ten (10) days prior to the public hearing.

Section 12.12 Board Of Adjustment Decision or Recommendation

12.12.1 The Board of Adjustment shall hold a public hearing on an application no later than forty-five (45) days after a complete application has been filed with the Zoning Administrator. The application shall be received by the Board of Adjustment at least fifteen (15) days prior to the next regularly scheduled meeting of the Board to be considered at that meeting. The Board of Adjustment shall decide on the matter which was presented at the public hearing within thirty-one (31) days of the close of the public hearing.

12.12.2 The concurrent vote of four-fifths (4/5) of the voting members of the Board of Adjustment shall be necessary to make an interpretation of the Zoning Ordinance, reverse any order, requirement, decision or determination of the Zoning Administrator, approve a variance, allow for a change or expansion of a nonconformity, approve a temporary use extension, grant a special exception, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to recommend approval on a major variance applications involving property located in a Water Supply Watershed District. In all matters coming before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.

12.12.3 All decisions on variances, except major variances involving property located within a Water Supply Watershed District, by the Board of Adjustment shall be in writing and filed with the Zoning Administrator. A written copy of decisions on variances, except those involving major variances related to property located within a Water Supply Watershed Overlay District shall be sent by first class mail to the applicant within five (5) working days of the date of decision of the Board of Adjustment. If the Board of Adjustment makes a favorable recommendation on a major variance involving property located within a Water Supply Watershed District, with or without additional conditions or safeguards, the Zoning Administrator shall forward the application and the preliminary record as requested in Section 4.4.13(B)(6) to the Environmental Management Commission for their review and decision.

If the Board of Adjustment recommends that an application for a major variance involving property located within a Water Supply Watershed District should be denied, then the application shall not be forwarded to the Environmental Management Commission, and shall be considered denied by the Board of Adjustment. The Zoning Administrator shall send a written notice of the denial by first class mail to the applicant within five (5) working days of the Board's decision.

Section 12.13 Appeals From The Board Of Adjustment

12.13.1 An application for a rehearing shall be made in the same manner as provided for an original hearing within a period of fifteen (15) days after the date of the Board

of Adjustment's decision. In addition, specific information to enable the Board of Adjustment to determine whether or not there has been a substantial change in facts, evidence, or conditions in the case, shall be presented in writing or graphically. A rehearing shall be denied by the Board of Adjustment, if, in its judgment, such change in facts, evidence or conditions has not been proven. A public hearing shall not be required to be held by the Board of Adjustment to consider holding such a rehearing. Approval of said consideration shall, however, require an affirmative vote of at least four (4) voting members. In the event that the Board of Adjustment finds that a rehearing is warranted, it shall thereupon proceed as in the original hearing except that the application fee shall be waived.

12.13.2 Upon the denial of an original application, or upon the denial of an application from which a rehearing has been conducted, a similar application may not be filed for a period of one year after the date of denial of the original application.

12.13.3 Every decision of the Board of Adjustment shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board is filed in the office of the Zoning Administrator, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Zoning Administrator or the Chairman of the Board of Adjustment at the time of the Board's hearing of the case, whichever is later.