

**ARTICLE L
BOARD OF ADJUSTMENT**

9-3131 Establishment of the Board of Adjustment

A Board of Adjustment is hereby established as provided in Section 160A-388 of the General Statutes of North Carolina. The Planning Board shall function as the Board of Adjustment as provided in Section 160A-388 of the General Statutes of North Carolina. In accordance with NCGS 160A-388(a), Town Council may appoint alternate members to serve on the Board of Adjustment in the absence or temporary disqualification of a regular member.

9-3132 Jurisdiction and Decision of the Board of Adjustment

The concurring vote of four-fifths (4/5) members of the Board of Adjustment – four (4) of the five (5) voting members – shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Enforcement Officer of the Town of Valdese, or to decide in favor of the applicant any matter upon which it is required to pass under the Ordinance or to effect any variation of such Ordinance. In accordance with NCGS 160A-388(e) no member of the Board of Adjustment shall participate or vote in any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall be majority vote rule on the objection. Vacant positions and members who are disqualified from voting are not calculated for the concurring four-fifths vote or simple majority vote. On all appeals, applications and other matters brought before the Board of Adjustment, said Board shall inform in writing all parties involved of its decision and the reasons therefore.

9-3133 Proceedings of the Board of Adjustment

The Board of Adjustment shall elect a chairman and a vice-chairman from its members who shall serve for one (1) year or until re-elected or until their successors are elected. The Board shall appoint a secretary, who may be a municipal officer or an employee of the town. The Board shall adopt rules of procedure in accordance with the provisions of this Ordinance and in Article 19, Chapter 160A of the General Statutes of North Carolina. Meetings of the Board shall be held once a month or at the call of the Chairman. The Chairman, or in his absence the Vice-Chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the Board shall be open to the public.

9-3134 Appeals, Hearings and Notice

Appeals to the Board of Adjustment may be submitted by any person affected by any decision of the Zoning Enforcement Officer or other town official based on this Ordinance. Such appeal shall be taken within a reasonable time, as provided by the rules

of the Board, by filing with the Zoning Enforcement Officer and with the Board of Adjustment a written notice of appeal specifying the grounds thereof. All papers constituting the record upon which the action appealed from was taken shall forthwith be transmitted to the Board of Adjustment.

The Board of Adjustment shall fix a reasonable time for the hearing of appeals or other matters referred to it, and give due notice thereof to the parties in interest, and decide the same within a reasonable time. Upon a hearing, any party may appeal in person, or by agent, or by attorney.

9-3135 Stay of Proceedings

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Zoning Enforcement Officer and on due cause shown.

9-3136 Fees for Variances and Appeals

A fee, set by the Town Council, shall be paid to the Town Clerk of the Town of Valdese, North Carolina for each application for a variance or appeal to cover the necessary administrative costs and advertising.

9-3137 Powers and Duties of the Board of Adjustment

The Board of Adjustment shall have the following powers and duties:

- .1 Administrative Review. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Enforcement Officer in the enforcement of this Ordinance.
- .2 Variances. To authorize upon appeal in specific cases such variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions 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 non-conforming use of neighboring land, buildings, or structures in the same district or of permitted or non-conforming uses in other districts shall not constitute a reason for the requested variance. Such variance may be granted in an individual case of unnecessary hardship upon a finding by the Board of Adjustment that the following conditions exist:

(a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.

(b) Granting the variance requested will not confer upon the applicant any special privileges denied to other residents in the district in which the property is located.

(c) 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.

(d) 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.

(e) The special circumstances are not the result of the actions of the applicant.

(f) The variance requested is the minimum variance that will make possible the legal use of the land, building or structures.

(g) The variance is not a request to permit a use of land, building or structure which is not permitted by right or by special exception in the district involved.

9-3138 Appeals from the Board of Adjustment
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Any person or persons, jointly or severally, aggrieved by a decision of the Board, may within thirty (30) days after the filing of the decision in the office of the Town Clerk, but not thereafter, present to the Superior Court of Burke County a petition duly verified, setting forth that such decision is illegal in whole or in part, specifying the grounds of illegality, whereupon such decision of said Board shall be subject to review by certiorari as provided by law.

Sections 9-3139 through 9-3140 reserved
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