

Introduction to...

# **CITY OF NEW BERN BOARD OF ADJUSTMENT**

## **General Purpose**

The Board of Adjustment is recognition of human frailty. If it were possible for the legislative body to write a perfect zoning ordinance that would meet the needs of the community while at the same time avoiding hardship in individual cases, there would be no need for this board. Because the perfect ordinance has not yet been written, the Board of Adjustment has been introduced as an integral part of almost every smoothly operating zoning enforcement mechanism, serving as a "pop-off valve" to relieve pressures that result from hardship cases. The Board is a "quasi-judicial" administrative body that operates on a level between the enforcement officers and the courts. If there were no Board, every appeal from a Zoning Official, Historic Preservation Commission or Building Inspector's decision would have to be taken either to the courts or to the Board of Aldermen (in the form of a request for a change of zone or other amendment to the ordinance). Both courses would be expensive and difficult for the property owner, regardless of how just his case might be.

## **New Bern Board of Adjustment**

The New Bern Board of Adjustment is a "quasi-judicial" administrative board appointed by the Board of Aldermen. The Board of Adjustment consists of ten regular members and three alternate members. Nine regular members are appointed by the Board of Aldermen and one regular member resides within the city's extraterritorial planning area and is appointed by the Craven County Board of Commissioners. Board members serve three -year staggered terms. The Board of Adjustment meets the last Monday of each month in the second floor Courtroom at City Hall.

## **Statutory Powers and Duties**

The state enabling act G.S. 160A-388 authorizes cities to adopt zoning ordinances set forth the responsibilities of the Board of Adjustment as follows:

- (a) The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this Part. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city.
- (b) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in classes of cases or situations and in accordance with

the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.

- (c) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of the ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

### **Powers and Duties as Defined by Local Ordinance**

Section 15 -36 of the Land Use Ordinance defines the powers and duties of Board of Adjustment as hearing and deciding the following:

1. Appeals from any order, decision, requirement, or interpretation made by the zoning administrator, as provided in section 15-91;
2. Applications for special use permits, as provided in section 15-46;
3. Applications for variances, as provided in section 15-92;
4. Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines, as provided in section 15-93;
5. Any other matter the board is required to act upon by any other city ordinance (appeals of the decision of the Historic Preservation Commission, Building Inspector, Flood Plain Manager, etc.)

### **Board of Adjustment Organization**

Because the Board of Adjustment is a "quasi-judicial" administrative body that operates between the enforcement officers and the courts, members must have the ability to read and understand complex land ownership and development issues. Members should have backgrounds related to land ownership and development issues (i.e., law, real estate, banking, building, environmental groups, governmental agencies, community organizations, etc.). A quorum for the Board of Adjustment consists of eight members. A quorum is necessary for the board to take official action. **The concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to grant a variance. A majority of the members of the Board of Adjustment shall be required to decide any other quasi-judicial matter, or to determine an appeal made in the nature of certiorari.**

### **Board of Adjustment Membership (See Attached)**