

Town Commission Ordinance

ORDINANCE NO. PZ-14-03
CTA-14-07

**AN ORDINANCE ADOPTED BY THE BOARD OF COMMISSIONERS
OF THE TOWN OF FUQUAY-VARINA, NC
TO AMEND THE TOWN CODE OF ORDINANCES
PART 9: PLANNING AND REGULATION OF DEVELOPMENT
CHAPTER 4: ZONING
ARTICLE I: PROVISIONS FOR USES PERMITTED AS SPECIAL EXCEPTION
AND
ARTICLE O: BOARD OF ADJUSTMENT**

BE IT ORDAINED, by the Board of Commissioners of the Town of Fuquay-Varina the following:

Section 1. Article I, §9-4091 GENERAL RESTRICTIONS. is hereby amended by deletions and additions to reflect current findings and standards as follows:

- (a) Requests for special exceptions shall be granted in accordance with the provisions of Article O Board of Adjustment.
- (b) Permission may be granted for the establishment of uses listed as special exceptions if the Board of Adjustment finds from the evidence produced after a study of the complete records that:
 - (1) The proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.
 - (2) The proposed use meets all required conditions and specifications.
 - (3) The proposed use will not substantially injure the value of adjoining property or the use is a public necessity.
 - (4) The locations and character of the proposed use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located

and in general conformity with the plan of development of the Town of Fuquay-Varina and its Ordinances.

Section 2. Article I, §9-4092 ADDITIONAL RESTRICTIONS AND REVOCATION OF PERMITS. is hereby amended by deletions and additions as follows:

(a) The Board of Adjustment may impose or require such additional restrictions and standards as may be necessary to protect the health and safety of workers and residents of the community, and to protect the value and use of property in the general neighborhood only in accordance with the provisions of Article O Board of Adjustment.

(b) Wherever the Board of Adjustment shall find, in the case of any permit granted pursuant to the provisions of these regulations, that any of the terms, conditions, or restrictions, upon which such permit was granted are not being complied with, said Board shall rescind and revoke such permit after giving the notice to all parties concerned and granting full opportunities for a public hearing, and as provided by the North Carolina General Statutes.

Section 3. Article O, §9-4151 CREATED. is hereby amended by adding a part number as follows:

(b) All members of the Board of Adjustment shall have the same rights, privileges, and duties whether the matters at issue arise within the corporate limits or in the extraterritorial jurisdiction area.

(1) Alternates shall serve only in the absence of a regular member.

Section 4. Article O, §9-4152 PROCEEDINGS. is hereby as follows:

The Board of Adjustments shall adopt the necessary rules to conduct its affairs and establish regular meeting dates. All meetings of the Board shall be open to the public and a public record of all findings and decisions shall be maintained.

(a) *Voting.*

(1) The concurring vote of four-fifths of the board shall be necessary to grant a variance.

(2) A majority vote of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.

(3) For the purposes of this Section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(4) *Conflict of Interests.* A member of the Board exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial

interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Section 5. Article O, §9-4153 FILING AND NOTICE FOR AN APPEAL. is hereby amended by deletions and additions to procedures for petitions to the Board of Adjustment as follows:

§9-4153 NOTICE OF HEARING FOR APPEALS, SPECIAL EXCEPTIONS AND VARIANCES.

Notice of hearings conducted pursuant to this Section shall be mailed to:

- (1) The person or entity whose appeal, application, or request is the subject of the hearing.
- (2) To the owner of the property that is the subject of the hearing if the owner did not initiate the hearing.
- (3) To the owners of all parcels of land abutting the parcel of land that is the subject of the hearing.
- (4) To any other persons entitled to receive notice as provided by this Zoning Ordinance.
- (5) *Mailing Procedures.* In the absence of evidence to the contrary, the Town may rely on Wake County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing.
- (6) *Posted Notice.* Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

Section 6. Article O, §9-4154 FEES FOR VARIANCES OR APPEALS. is hereby amended by clarifying types of petitions for which fees can be applied as follows:

§9-4154 FEES FOR VARIANCES, SPECIAL EXCEPTIONS OR APPEALS.

The fee as so adopted by the Town Board and stated on the application shall be paid to the Town of Fuquay-Varina, North Carolina, for each application for a variance, special exception or appeal to cover the necessary administrative costs and advertising.

Section 7. Article O, §9-4155 POWERS AND DUTIES. is hereby amended by deletions and additions to powers and duties of the Board of Adjustment as follows:

(a) *Appeals.* The Board of Adjustment shall hear and decide appeals from decisions of administrative officials charged with enforcement of the Zoning Ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to the following:

- (1) Any person who has standing under G.S. 160A-393(d) or the Town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a

notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.

(2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(3) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(4) *Constructive Notice.* It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six (6) inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(5) The official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(6) *Stay of Enforcement During Appeal.* An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(7) Subject to the provisions of subdivision (6) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.

(8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.

(9) When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).

(10) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution.

(b) *Special Exceptions.* The Board of Adjustment may hear and decide special exceptions in accordance with standards and procedures specified in the Ordinance. Reasonable and appropriate conditions may be imposed upon these permits. Permission may be granted for the establishment of uses listed as special exceptions if the Board of Adjustment finds from evidence produced after a study of the complete record that:

(1) The proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.

(2) The proposed use meets all required conditions and specifications.

(3) The proposed use will not substantially injure the value of adjoining property or the use is a public necessity.

(4) The locations and character of the proposed use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the Town of Fuquay-Varina and its Ordinances.

(c) *Variances.* When unnecessary hardships would result from carrying out the strict letter of the Zoning Ordinance, the Board of Adjustment shall vary any of the provisions of the Ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

(d) *Uses Permitted by this Ordinance.* No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(e) *Quasi-Judicial Decisions.* The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.

(1) *Findings of Fact.* Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board or such other office or official as the ordinance specifies.

(2) *Delivery of Written Decision.* The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(f) *Oaths.* The Chair of the Board or any member acting as chair and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

(g) *Subpoenas.* The Board of Adjustment through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

Section 8. Article O, §9-4156 APPEALS FROM DECISIONS. is hereby amended by deletions and additions as follows:

§9-4156 JUDICIAL REVIEW.

(a) Every quasi-judicial decision shall be subject to review by Wake County Superior Court by proceedings in the nature of certiorari pursuant to G.S. 160A-393.

(b) Any petition for review by the Wake County Superior Court shall be filed with the Clerk of Superior Court within 30 days after the decision of the Board of Adjustment is effective, or after a written copy thereof is given in accordance with this Ordinance. The decision of the Board of Adjustment may be delivered to the aggravated party either by personal service or by registered mail or certified mail return receipt requested. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition."

BE IT FURTHER ORDAINED, by the Board of Commissioners of the Town of Fuquay-Varina that this ordinance shall take effect immediately upon its adoption.

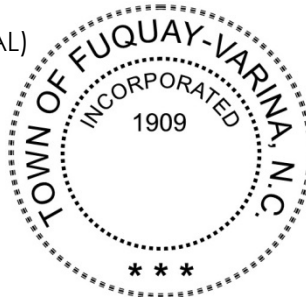
Adopted this the 4th day of August 2014 in Fuquay-Varina, North Carolina.

FUQUAY-VARINA, NORTH CAROLINA

John W. Byrne, Mayor

ATTEST:

(TOWN SEAL)



Rose H. Rich, Town Clerk