ARTICLE 6

VARIANCES AND ADMINISTRATIVE APPEALS

6.1 Variances

6.1-1 Purpose. The variance process fulfilled by the *Board of Adjustment* is intended to provide limited relief from the requirements of this Ordinance in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this Ordinance in accordance with G.S.160D-705(d). It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this Ordinance may impose on property owners in general or to increase the profitability of a proposed development. Rather, it is intended to provide relief where the requirements of this Ordinance render the land difficult or impossible to use because of some unique physical attribute of the property itself or some other factor unique to the property for which the variance is requested.

6.1-2 Provisions That May Not Be Varied By the *Board of Adjustment*. In no event shall the *Board of Adjustment* grant a variance:

(A) With respect to any *Conditional Zoning* district or *special use* zoning permit adopted pursuant to this Ordinance. Modifications applicable to Conditional Zoning Districts and/or Special Use Permits may be considered in accordance with the provisions of either Section 5.4-3(F) of this Ordinance for Conditional Zoning districts or Section 7.8-14 of this Ordinance for Special Use Permits respectively.

(B) To the flood protection provisions within a designated floodway district that would result in any increase in the flood levels during the regulatory flood discharge.

(C) Which would permit uses of land or densities not otherwise permitted in the district in which the property is located.

(D) Which would conflict with the North Carolina State Building Code, the North Carolina Fire Prevention Code, or any other codes of the State of North Carolina unless otherwise authorized by laws and/or regulations.

6.1-3 Application. The following process shall be followed in applying for a variance:

(A) An application for a *variance* may be filed by the landowner, a lessee or person holding an option or contract to purchase or lease land, or by an authorized agent of the landowner. Where an agent files the application, the agent shall provide documentation that the owner of the property has authorized the filing of the application. The application for a *variance* shall be filed with the *Planning, Zoning & Subdivision Administrator* on a form provided by the *Planning, Zoning & Subdivision Administrator.*

(B) Before filing the application, the applicant shall meet with the *Planning, Zoning & Subdivision Administrator* to discuss the proposed variance and to become more familiar with the applicable requirements and the variance

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process. Modifications applicable to Conditional Zoning districts and/or Special Use Permits may be considered in accordance with the provisions of either Section 5.4-3(F) of this Ordinance for Conditional Zoning districts or Section 7.8-14 of this Ordinance for Special Use Permits respectively.

(C) An application for a variance shall be filed with the *Planning, Zoning & Subdivision Administrator* on a form provided by the *Planning, Zoning & Subdivision Administrator* and contain the information and plans required on the application form.

(D) The application shall be accompanied by a fee as required by the Town of Granite Quarry.

(E) Once the application is accepted as complete by the *Planning, Zoning & Subdivision Administrator*, the request shall be scheduled for consideration at an evidentiary hearing by the *Board of Adjustment* in accordance with G.S.160D-406.

6.1-4 Action by The *Board of Adjustment*. The following action shall be taken by the *Board of Adjustment* upon receipt of the completed application in accordance with G.S.160D-406:

(A) An evidentiary hearing shall be held on the requested variance within thirty-six (36) days of receipt of a complete application.

(B) Notice of the hearing in accordance with G.S.160D-406(b) and any administrative materials to be presented in accordance with G.S.160D-406(c) shall be deposited in the mail at least ten (10) days but not more than twenty-five (25) days prior to the date of the hearing to:
(1) The person or entity whose variance application or request is the subject of the hearing;
(2) The owner of the property that is the subject of the hearing if the owner did not initiate the hearing;
(3) Owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and,
(4) To any other person who makes a written request for such notice at least ten (10) days prior to the date of the hearing.

(C) A sign stating the purpose, time, date and place shall be prominently posted on the subject property or an adjacent street or highway right-of-way at least ten (10) but not greater than twenty-five (25) days prior to the date of the hearing.

(D) In considering the application, the *Board of Adjustment* shall review the application materials, the staff recommendation, the general purpose and standards set forth in this Article for the granting of variances, and all testimony and evidence received by the Board at the evidentiary hearing.

(E) After conducting the evidentiary hearing, the *Board of Adjustment* may:
1. Continue the evidentiary hearing that has been convened without further advertisement;
2. Deny the request; or
3. Grant the request upon the concurring vote of four-fifths (4/5) of the

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members of the *Board of Adjustment* necessary to grant a variance per G.S.160D-406(i). Any approval or denial of the request shall be accompanied by written findings that the variance meets or does not meet each of the standards set forth in subsection 6.1-6 below or, for flood protection regulation variances, as set forth in Article 18 of this Ordinance. For purposes of this section, vacant positions and members of the Board who are disqualified from voting on the hearing decision shall not be considered "Board members" for calculation of the majority if there are no qualified alternate Board members available to take the place of such members.

6.1-5 Conditions Appropriate conditions, other than a change in the listed use, may be imposed on any variance, provided that the conditions are reasonably related to the variance. (G.S.160D-705(d))

6.1-6 Standards of Review. The *Board of Adjustment's decision shall be based on competent, material and substantial evidence in the record. All persons providing evidence shall be sworn or affirmed by the Chairman or the Clerk to the Board. The Board of Adjustment* shall not grant a variance until it makes each of the following findings per G.S.160D-705(d):

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

(B) 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, shall not be the basis for granting a variance.;

(C) 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.; and,

(D) 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.

6.1-7 Effective Date of Decision. Any decision made by the Board of Adjustment regarding a variance 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 approved by the Board of Adjustment, signed by the Chair and shall be filed with the Town Clerk. The effective date of the decision shall be upon the date it is filed with the Town Clerk. The decision shall be delivered by the *Planning, Zoning & Subdivision Administrator* or their designee via 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 close of the evidentiary hearing on the case. The person making such deliveries shall certify in writing to the file that delivery has been made.

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Following the effective date of the decision of the *Board of Adjustment*, the following actions may be taken:

(A) After the *Board of Adjustment* approves a variance, the applicant shall follow all appropriate procedures set forth in this Ordinance for the receipt of permits, certificates, and other approvals necessary in order to proceed with development.

(B) After the denial of the variance request, the applicant may make application for a rehearing in accordance with *Board of Adjustment*'s rules of procedure and this Ordinance.

6.1-8 Duration. The variance may be issued for a limited duration only. Unless otherwise specified, construction and/or operation shall be commenced within twenty-four (24) months of the date of issuance of a variance, or the variance shall become void.

6.1-9 Appeals. An appeal from any decision of the *Board of Adjustment* may be made by an aggrieved party and shall be made to the Superior Court of the county in which the subject property is located in the nature of certiorari. Per G.S.160D-1405(d), any such petition to the Superior Court shall be filed by the later of thirty (30) days after a written copy of the decision is delivered to the applicant, property owner, and to any other person who, prior to the date the decision becomes effective, has submitted a written request for a copy of the decision. Said decision shall be delivered by personal delivery, electronic mail, or by first class mail. When first class mail is used to deliver the notice, three (3) days shall be added to the time to file the petition.

6.2 Appeals of Administrative Decisions

6.2-1 Purpose. Appeals to the *Board of Adjustment* from the determinations of the *Planning, Zoning & Subdivision Administrator* of the Town of Granite Quarry are permitted as provided for in this section and in accordance with G.S.160D-705(b). Additionally, G.S.160D-1403(b) provides for separate and original civil actions without filing an appeal under this section.

6.2-2 Decisions that may be appealed. Any final and binding order, requirement, or determination made in writing by an administrative officer charged with administering and/or enforcing the provisions of this Ordinance may be appealed to the *Board of Adjustment*. Any such determination shall be given to the owner of the property that is subject to the determination and to the party who sought the determination, if different than the property owner. Said notice shall be delivered by personal delivery, electronic mail or by first-class mail.

6.2-3 Standing - parties who may file an appeal. Any person who has standing under G.S.160D-1402(c) may bring an appeal to the *Board of Adjustment*.

6.2-4 Period to File an Appeal. A person with standing shall have thirty (30) days from the date of receipt of the written determination within which to file an appeal. Any person or entity with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to appeal.

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6.2-5 Constructive Notice. Per G.S.160D-403(b) persons with standing to appeal shall have constructive notice of a determination from the date a sign providing notice a determination has been made is prominently posted on the property. A sign containing the words "Zoning Decision", "Subdivision Decision" or similar language for other determinations in letters at least six inches high and identifying a means to contact a Town of Granite Quarry official for information about the determination, with said sign being posted for a minimum of ten days. Posting of the sign shall be the responsibility of the landowner or applicant and verification to the Town is required.

6.2-6 Filing of Appeal.

(A) The appeal shall be filed with the *Planning, Zoning & Subdivision Administrator* in writing and shall contain information identifying the property, the owner and the purpose for the request.

(B) The appeal shall be accompanied by a fee as established by the Town.

(C) Upon acceptance of the appeal application by the *Planning, Zoning & Subdivision Administrator*, a hearing shall be scheduled for the *Board of Adjustment* within thirty-six (36) days of the date of submittal of a complete application. Notwithstanding, the appellant can apply for an expedited hearing to occur within fifteen (15) days of such filing as provided in Subsection D below.

(D) The filing of an appeal per G.S.160D-405 shall stay the enforcement of the action appealed unless the *Planning, Zoning & Subdivision Administrator* 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 and property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance. In such case, enforcement proceedings shall not be stayed except by a restraining order granted by the Superior Court of Rowan County on notice to the administrative official from whom the appeal is taken, with due cause shown. If enforcement proceedings are not stayed, the appellant may file for an expedited hearing of the appeal to occur within fifteen (15) days after such request is filed.

6.2-7 Action by the *Board of Adjustment.*

(A) Upon receiving the appeal application, the *Board of Adjustment* shall hold an evidentiary hearing on the appeal. Notice of the hearing shall be as provided in Section 6.1-4. The person whose decision is being appealed shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is being taken. Said information shall also be provided to the applicant and to the owner of the property that is subject to the appeal, if such person(s) is not the applicant.

(B) The evidentiary hearing shall be conducted in accordance with rules of procedure of the *Board of Adjustment* and in accordance with the G.S.160D-406. All persons providing evidence at the hearing shall be sworn or affirmed by either the Chair or the Clerk to the Board. The official who made the decision that is being appealed 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

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Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the evidentiary hearing.

(C) Either after the evidentiary hearing or at a subsequent or continuation meeting to be held within 30 days of the close of the evidentiary hearing, the *Board of Adjustment* shall adopt an order reversing, affirming, wholly or partly, or modifying the contested action. The *Board of Adjustment*'s decision shall be based upon competent, material and substantial evidence.

(D) The *Board of Adjustment* shall not reverse or modify the contested action unless it finds that the administrative officer erred in the application or interpretation of the requirements of this Ordinance.

(E) *The Board of Adjustment* shall not reverse or modify the contested action unless there is a concurring vote of a majority of the Board's members. For purposes of this section, vacant positions and members of the Board who are disqualified from voting on the hearing decision shall not be considered "Board members" for calculation of the majority if there are no qualified alternate Board members available to take the place of such members.

(F) The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.

(G) Any decision made by the Board of Adjustment regarding an appeal 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 approved by the Board of Adjustment, signed by the Chair and shall be filed with the Town Clerk. The effective date of the decision shall be upon the date it is filed with the Town Clerk. The decision shall be delivered by the *Planning, Zoning & Subdivision Administrator* or their designee via 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 close of the evidentiary hearing on the case. The person making such deliveries shall certify in writing to the file that delivery has been made.

6.2-8 Effect of reversal or modification. In the event that the *Board of Adjustment* reverses or modifies the contested action, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance with the reversal or modification granted by the *Board of Adjustment* unless an appeal is taken on the Board's decision.

6.2-9 Appeal from *Board of Adjustment*. An appeal from any decision of the *Board of Adjustment* may be made by an aggrieved party and shall be made to the Superior Court of the county in which the subject property is located in the nature of certiorari. Per G.S.160D-1405(d), any such petition to the Superior Court shall be filed by the later of thirty (30) days after a written copy of the decision is delivered to the applicant, property owner, and to any other person who, prior to the date the decision becomes effective, has submitted a written request for a copy of the decision. Said decision shall be delivered by personal delivery, electronic mail, or by first class mail. When first class mail is used to deliver the notice, three (3) days shall be added to the time to file the petition.

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