

## REMINDER

When applying for a variance, it is important to realize that you have the responsibility of proving that you need the variance because of a hardship. Also, please note that Board members are **not** allowed to discuss the case or gather evidence outside the public hearing.

### How many Board members have to vote in favor of a variance in order for it to pass?

Four-fifths of the Board's members, or 6 of the 7 members, must vote in favor of each finding of fact for a variance to be granted. For example, a variance would be denied if two (2) or more of the Board members voted against any one of the findings of fact. The Board will notify you of their decision in writing regardless of whether the variance passed or failed within 5 days of the meeting. (Article 11.3.2.g).

### What happens if the variance is granted?

If the Board decides to grant the variance, they may place certain restrictions or conditions on the variance to protect the public interest and neighboring property owners.



For example, if you are permitted to construct your building five feet from the property line rather than the required ten feet, you might have the condition that your maximum building height is thirty feet rather than the permitted thirty five feet.

### What options do you have if your variance is denied?

If your variance is denied, you may abide by the ordinance requirement, or you may choose to appeal the decision to the Mecklenburg County Superior Court. If you choose to appeal the decision, you will have 30 days to do so from date you receive the Board's decision letter.

If you would like additional information, please contact the Huntersville Planning Department at 704-875-7000.



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The Town of Huntersville Zoning Ordinance is available online at [www.huntersville.org](http://www.huntersville.org) (click on *Departments*, then *Planning*, then *Zoning and Subdivision Ordinance*).

# Board of Adjustment Variance Requests



## Planning Department

Phone: 704-875-7000  
Web site: [www.huntersville.org](http://www.huntersville.org)



## What is the Board of Adjustment?

The Board of Adjustment is a quasi-judicial board with 7 permanent members and 3 alternate members comprised of Citizens residing in Huntersville and its Extraterritorial Jurisdiction. The Board of Adjustment is a volunteer board appointed by the Town Board of Commissioners.

## What is their function?

The Board of Adjustment has two main functions:

1. **Consider variance requests**-if certain hardships exist, the Board can vary the law to alleviate the hardship.
2. **Consider appeal requests**-If you do not agree with Planning Staff's interpretation of the Zoning Ordinance, you may appeal the decision to the Board of Adjustment. The Board does not have power to change the Ordinance and is limited to its interpretation. Decisions are based on what the Board believes to be the actual meaning and intent of the ordinance. (Information regarding this process may be found in a separate brochure).



## What factors are considered in variance cases?

Standards for granting a variance can be found in Article 11.3.2.f of the Zoning Ordinance.

1. Before granting a variance, the Board of Adjustment shall have made the following findings:
  - a. That practical difficulties or unnecessary hardships (as defined in #2 below) would result from the strict application of these regulations; and
  - b. That the variance is consistent with the objectives and policies of any adopted plan for the district or area covering the property, any other adopted written policies governing land development, and the construction and improvement of public facilities, and the general intent of these regulations; and
  - c. That the public safety and welfare have been protected and substantial justice done.
2. Only the 3 following conditions shall constitute a practical difficulty or unnecessary hardship and **all must be met:**
  - a. The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property; and

b. The difficulty or hardship is peculiar to the property in question and is not generally shared by other properties classified in the same zoning district and/or used for the same purposes; and

c. The difficulty or hardship resulting from the application of these regulations would prevent the owner from making a reasonable use of the property. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance is not grounds for granting the variance.

3. The Board of Adjustment shall not grant a variance which would allow the establishment of a use which is not otherwise permitted in the district, would result in the extension of a non-conforming use, or would change the zoning classification of any or all of the subject property. 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 sufficient reason for granting the requested variance.
4. The fact that the property may be utilized more profitably will not be considered adequate to justify the Board of Adjustment in granting a variance.