

**CHAPTER 1  
ARTICLE XII  
BOARD OF ADJUSTMENT**

**§ 1200. ESTABLISHMENT OF BOARD OF ADJUSTMENT**

The Village Council of the Village of Sugar Mountain hereby establishes the Sugar Mountain Board of Adjustment. Members of the Board shall be appointed by the Village Council. The Board shall constitute, function, and may be referred to as the Sugar Mountain Board of Adjustment. (Amended 10-16-2007).

**§ 1201. APPOINTMENT AND TERMS OF BOARD OF ADJUSTMENT.**

(A) There shall be a Board of Adjustment consisting of five regular in-town members, two regular extra-territorial jurisdiction members, and three alternate in-town members, and two alternate extra-territorial jurisdiction members. Five (5) regular members of the Board shall be citizens of the Town of Sugar Mountain and shall be appointed by the Village Council, and two (2) regular extra-territorial jurisdiction members shall be appointed by the Avery County Board of Commissioners and shall be a citizen of the extraterritorial area outside the town limits. The Town Council shall appoint three alternate members for the municipalities' regular members and the Avery County Board of Commissioners shall appoint two (2) alternate member for the extraterritorial members. Alternates shall serve on the Board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Each alternate, while attending any regular or special meeting of the Board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member. Extra-territorial jurisdiction members shall only serve on matters involving property located within the extra-territorial jurisdiction. All members shall be residents of the Village of Sugar Mountain or its extra-territorial jurisdiction, respectively.

(B) Board of Adjustment regular members and alternates shall be appointed for three-year staggered terms, but both regular members and alternates may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only.

(C) Members may be reappointed to successive terms without limitation.

(D) Unless the Village Council takes specific action to excuse the absences and reappoints a member after being informed by the Administrator of the member's failure to attend, regular Board of Adjustment members may be removed for failure to attend three consecutive meetings or for failure to attend 50% of the regular meetings in any 12-month period. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the Board, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced. Alternate members may likewise be removed for failure to attend or participate in three consecutive meetings for which the member's attendance is requested. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Village Council may propose removal of a member for any other good cause related to

the performance of Board duties, but before removal on that basis, the member shall be given an opportunity to appear before the Village Council to address the issues involved.

(E) If a regular or alternate member moves outside the jurisdiction of the Village that shall constitute a resignation from the Board.

### **§ 1202. MEETINGS OF THE BOARD OF ADJUSTMENT.**

(A) The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it can take action as expeditiously as reasonably as possible.

(B) The Board shall conduct its meetings in accordance with the quasi-judicial procedures.

(C) All meetings of the Board shall be open to the public, and whenever feasible the agenda for each Board meeting shall be made available in advance of the meeting.

(D) Compensation for service on the Board of Adjustment may be set by the Village Council, and maybe changed at any time. No compensation will be paid for periods in which no meetings have occurred.

### **§ 1203. QUORUM.**

A quorum shall consist of four members of the Board, and shall be necessary for the transaction of any business. The Board shall not pass upon any questions relating to an appeal from a decision, order, requirement, or determination of the Zoning Administrator, or an application for a variance or Conditional Use Permit when there are less than four members present. In those cases where the chapter requires a four-fifths favorable vote of the Board, a continuance shall be offered to the parties to obtain the presence of a full board if feasible based upon vacancies and existing membership.

### **§ 1204. VOTING.**

(A) The concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For 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.

(B) Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with division (C) below or has been allowed to withdraw from the meeting in accordance with division (E) below.

(C) A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate an affected person's constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to:

- (1) A member having a fixed opinion prior to hearing the matter that is not susceptible to change.
  - (2) A member having undisclosed ex parte communications.
  - (3) A member having a close familial, business, or other associational relationship with an affected person.
  - (4) A member having a financial interest in the outcome of the matter.
- (D) 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.
- (E) A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.
- (F) A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.
- (G) A roll call vote shall be taken upon the request of any member.

#### **§ 1205. BOARD OF ADJUSTMENT OFFICERS.**

- (A) At its first regular meeting in January, the Board of Adjustment shall, by majority vote of its membership (excluding vacant seats) elect one of its members to serve as chairperson and preside over the Board's meetings and one member to serve as vice-chairperson. The persons so designated shall serve in these capacities for terms of one year. Vacancies may be filled for the unexpired terms only by majority vote of the Board membership (excluding vacant seats).
- (B) The chairperson or any member temporarily acting as chairman may administer oaths to witnesses coming before the Board.
- (C) The chairperson and vice-chairperson may take part in all deliberations and vote on all issues.
- (D) The chairperson or vice-chairperson may make or second any motion.

#### **§ 1206. POWERS AND DUTIES OF BOARD OF ADJUSTMENT.**

- (A) The Board of Adjustment shall hear and decide:
- (1) Appeals from and review any order, decision, requirement, or determination made by the Administrator.
  - (2) Applications for Conditional Use Permits.
  - (3) Applications for variances.

(4) Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines.

(5) Any other matter the Board is required to act upon by any other Village ordinance.

(B) The Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this subchapter.

(C) The Board of adjustment may subpoena witnesses and compel the production of evidence.

#### **§ 1207. APPEALS TO THE BOARD OF ADJUSTMENT.**

(A) An appeal from any final order, requirement, decision or determination or part thereof made by the Administrator may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the Administrator a properly filled out and signed application form and payment of the applicable fee. The fee shall be reimbursable in the event that the Board of Adjustment wholly reverses the order, requirement, decision or determination of the Administrator or part thereof which is being appealed.

(B) An appeal must be taken within 30 days after the date of the receipt of any final order, requirement, decision or determination appealed from. Unless established at an earlier date by a return receipt for a certified mail notice, the date of receipt shall be conclusively presumed as three days after the notice of the decision or order appealed from has been deposited in the United States mail with proper postage affixed, and addressed to the aggrieved party.

(C) Whenever an appeal is filed, the Administrator shall forthwith transmit to the Board of Adjustment the written notice of appeal and all the papers constituting the record relating to the order, requirement, decision or determination appealed from.

(D) An appeal stays all actions by the Administrator seeking enforcement of or compliance with the order, requirement, decision or determination appealed from, unless the Administrator certifies to the Board of Adjustment that (because of facts stated in the certificate) a stay would, in his or her opinion, cause imminent peril to life or property, or that because the situation appealed from is transitory in nature, an appeal would seriously interfere with enforcement of this subchapter. In that case, enforcement proceedings shall not be stayed except by order of the Board of Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the Administrator and all other persons who have qualified as parties under the duly enacted Rules of Procedure of the Board of Adjustment.

(E) The Board of Adjustment may reverse or affirm, wholly or in part, or may modify the order; requirement, decision or determination appealed from, and shall make any order, requirement decision or determination that in its opinion ought to be made in the case before it. To this end, the Board shall have all the powers of the Administrator from whom the appeal is taken.

#### **§ 1208. VARIANCES.**

(A) An application for a variance shall be submitted to the Board of Adjustment by filing a properly filled out and signed Application Form with the Administrator and payment of the applicable fee.

(B) When unnecessary hardship would result from carrying out the strict letter of this section, the Sugar Mountain Board of Adjustments shall vary any of the provisions of this section 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; and

(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; and

(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; and

(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.

(C) No change in permitted uses may be authorized by variance.

(D) Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

**§ 1209. ADDITIONAL REQUIREMENTS FOR VARIANCES WITHIN WATER SUPPLY WATERSHEDS.**

(A) The Administrator shall notify in writing each local government having jurisdiction in the watershed district as well as any entity using the watershed for water consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Administrator prior to a decision by the Board of Adjustment. Such comments shall become a part of the record of proceedings of the Board of Adjustment.

(B) If the application calls for the granting of a major variance, and if the Board of Adjustment decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

(1) The variance application;

(2) The hearing notices;

(3) The evidence presented;

(4) Motions, offers of proof, objections to evidence, and rulings on them;

- (5) Proposed findings and exceptions; and
- (6) The proposed decision, including all conditions proposed to be added to the permit.

(C) The preliminary record shall be sent to the NC Environmental Management Commission for its review as follows:

(1) If the commission concludes from the preliminary record that the variance qualifies as a major variance and that [i] the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and [ii] the variance, if granted, will not result in a serious threat to the water supply, then the commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a commission decision and send it to the Board of Adjustment. If the commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

(2) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that [i] the property owner can secure a reasonable return from or make a practical use of the property without the variance or [ii] the variance, if granted, will result in a serious threat to the water supply, then the commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Board of Adjustment. The Board shall prepare a final decision denying the variance as proposed.

(D) A record of all variances granted within water supply watersheds by the Village shall be submitted the NC Environmental Management Commission on or before January first of the year following the granting of the variance.

## **§ 1210 INTERPRETATIONS.**

(A) The Board is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions.

(B) An application for a map interpretation shall be submitted by filing the application with the Administrator. The application shall contain sufficient information to enable the Board to make the necessary interpretation.

(C) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

(1) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams or railroads shall be construed to follow such centerlines;

(2) Boundaries indicated as approximately following lot lines, corporate limits, or extraterritorial boundary lines, shall be construed as following such lines, limits or boundaries;

(3) Boundaries indicated as following shorelines or the centerlines of streams, rivers, lakes, or other bodies of water shall be construed to follow such shorelines or

centerlines, and in the event of change in the shoreline or centerline, the boundary shall be construed as moving with the actual shoreline or centerline;

(4) Boundaries indicated as approximately following designated limits of areas of special flood hazard shall be construed as following such limits;

(5) Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map;

(6) Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

### **§ 1211. BURDEN OF PROOF.**

(A) When an appeal is taken to the Board of Adjustment, the burden of proof and burden of persuasion shall be on the party appealing the order, requirement, decision or determination, but the Administrator or his or her designee shall be present to participate in the hearing and to answer such questions as may be directed to him or her by members of the Board of Adjustment, or by any party duly participating in the hearing, in compliance with the duly adopted Rules of Procedure of the Board of Adjustment.

(B) The burden of presenting evidence sufficient to allow the Board of Adjustment to make its necessary findings on the criteria set forth above, as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

### **§ 1212. BOARD ACTION.**

(A) The Board of Adjustment shall decide any appeal before it in compliance with the procedures set out in its duly adopted Rules of Procedure.

(B) A motion to deny a variance may be made on the basis that any one or more of the criteria set forth for determining a variance are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board's decision if supported by more than one-fifth of the Board's membership (i.e. two or more Board members).

(C) Before granting a variance, the Board must take a separate vote and vote affirmatively by a four-fifths majority on each of the seven required findings set forth in § 1208. Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in § 1208 shall include a statement of the specific reasons or findings of fact supporting such motion.

### **§ 1213. ACTION SUBSEQUENT TO DECISION.**

(A) The decision of the Board shall be reduced to writing and served upon the applicant or appellant and all other persons who make a written request for a copy. A copy of the decision shall also be placed in the office of the Development Services Department.

(B) If a variance is granted, the nature of the variance and any conditions attached thereto shall be entered on the face of the zoning permit.

(C) If a Conditional Use Permit is granted, the terms and conditions of the Conditional Use Permit shall be entered on the face of the zoning permit.

#### **§ 1214. APPEALS FROM BOARD DECISION.**

Every decision of the Board shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the written decision of the Board is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairperson of the Board at the time of its hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested. (N.C.G.S. § 160A-388(e)(2)).

#### **§ 1215. INTERVENTION.**

(A) Any individual or organization who wishes to intervene as a party to any matter before the Board of Adjustment shall complete an application to intervene upon a form which may be obtained from the Zoning Administrator. Such application shall state the proposed intervenor's interest relating to the property or hearing, any practical impairment of the protection of that interest if not allowed to intervene as a party, and whether there is inadequate representation of that interest by existing parties. Such application shall be filed with the Zoning Administrator at least 24 hours prior to the scheduled time for the hearing of the matter before the Board. The Board may waive the deadline for the filing of this application upon good cause being shown for the failure to timely file to intervene.

(B) Upon a hearing on the motion to intervene, the Board of Adjustment shall determine whether intervention is appropriate.

#### **§ 1216. EXTRATERRITORIAL JURISDICTION**

(A) All of the powers granted by N.C.G.S. Chapter 160A, Article 19 et seq., may be exercised by the Village of Sugar Mountain within its corporate limits. In addition, the Village of Sugar Mountain may exercise the aforementioned powers within a defined area extending not more than one (1) mile beyond its limits. With the approval of the Avery County Board of Commissioners and the Village of Sugar Mountain Board of Adjustment, once the population of the Village of Sugar Mountain exceeds a population of more than ten thousand (10,000) but less than twenty-five thousand (25,000), the powers granted by N.C.G.S. Chapter 160A, Article 19, over an area may be extended not more than two (2) miles beyond its limits. The boundaries of the city's extraterritorial jurisdiction shall be the same for all powers conferred in N.C.G.S. Chapter 160A, Article 19 et seq. However, the Village of Sugar Mountain may not exercise extraterritorially any power conferred by this Article that it is not exercising within its corporate limits. In determining the population of the purposes of this Ordinance, the Village of Sugar Mountain Board of Adjustment may use the most recent annual estimate of population as certified by the Secretary of the North Carolina Department of Administration.

(B) When planning to exercise extraterritorial jurisdiction under this Ordinance shall notify the owners of all parcels of land proposed for addition to the area of extraterritorial jurisdiction, as shown on the Avery County tax records. The notice shall be sent by first-class mail to the last addresses listed for affected property owners in the Avery County tax records. The notice shall inform the landowner of the effect of the extension of extraterritorial jurisdiction, of the landowner's right to participate in a public hearing prior to adoption of any ordinance extending the area of extraterritorial jurisdiction, as provided in N.C.G.S. § 160A-364, and the right of all residents of the area to apply to the Avery County Board of County Commissioners to serve as a representative on the planning board and the Village of Sugar Mountain Board of Adjustment, as provided in N.C.G.S. § 160A-362. The notice shall be mailed at least four (4) weeks prior to the public hearing. The person or persons mailing the notices shall certify to the Village Council that the notices were sent by first-class mail, and the certificate shall be deemed conclusive in the absence of fraud.

(C) When the Village of Sugar Mountain annexes, or extends its jurisdiction to include, an area that is currently being regulated by Avery County, the regulations and powers of enforcement for Avery County shall remain in effect until (i) the Village of Sugar Mountain has adopted such regulations, or (ii) a period of sixty (60) days has elapsed following the annexation, extension or incorporation, whichever is sooner. During this period the Village of Sugar Mountain may hold hearings and take any other measures that may be required in order to adopt its regulations for the area.

(D) When the Village of Sugar Mountain relinquishes jurisdiction over an area that it is regulating under this Ordinance, and/or under N.C.G.S. Chapter 160A, Article 19 et seq., to Avery County, the Village of Sugar Mountain's regulations and powers of enforcement shall remain in effect until (i) Avery County has adopted the regulations or (ii) a period of sixty (60) days has elapsed following the action by which the Village of Sugar Mountain relinquished jurisdiction, whichever is sooner. During this period, in accordance with N.C.G.S. Chapter 160A, Article 19 et seq., Avery County may hold hearings and take other measures that may be required in order to adopt its regulations for the area.

(E) Pursuant to N.C.G.S. §160A-361 et seq., the Village of Sugar Mountain Board of Adjustment is designated as the governing body responsible for duties related to the Village of Sugar Mountain's extraterritorial jurisdiction and shall perform the following duties:

- (1) Make studies of the area within its jurisdiction and surrounding areas;
- (2) Determine objectives to be sought in the development of the study area;
- (3) Prepare and adopt plans for achieving these objectives;
- (4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
- (5) Advise the Village of Sugar Mountain's Village Council concerning the use and amendment of means for carrying out plans;
- (6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the Village of Sugar Mountain's Village Council may direct;
- (7) Perform any other related duties that the Village of Sugar Mountain's Village Council may direct.

(F) When the Village of Sugar Mountain elects to exercise its extraterritorial zoning or subdivision-regulation powers under N.C.G.S. § 160A-360, the Village of Sugar Mountain shall provide a means of proportional representation based on population for residents of the extraterritorial area to be regulated. Representation shall be provided by appointing at least one resident of the entire extraterritorial zoning and subdivision regulation area to the Board of Adjustment that makes recommendations or grants relief in these matters. For purposes of this section, an additional member must be appointed to the Board of Adjustment to achieve proportional representation only when the population of the entire extraterritorial zoning and subdivision area constitutes a full fraction of the municipality's population divided by the total membership of the Board of Adjustment. Once the Avery County Board of Commissioners provides proportional representation, no power available to the Village of Sugar Mountain under N.C.G.S. § 160A-360 shall be ineffective in its extraterritorial area solely because the Avery County Board of Commissioners' appointments have not yet been made. If there is an insufficient number of qualified residents of the area to meet membership requirements, the Avery County Board of Commissioners may appoint as many other residents of Avery County as necessary to make up the requisite number. If the Avery County Board of Commissioners fails to make the appointments within ninety (90) days after receiving a resolution from the Village of Sugar Mountain's Village Council requesting that they be made, the Village of Sugar Mountain's Village Council may make them. The outside representatives may have equal rights, privileges, and duties with the other members of the Board of Adjustment to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise they shall function only with respect to matters within the extraterritorial area.

(G) Except as provided in the Zoning Ordinances for the Village of Sugar Mountain, and/or N.C.G.S. Chapter 160A, Article 19 et seq., any building, structure, or other land use in a territory over which the Village of Sugar Mountain has acquired jurisdiction is subject to the ordinances and regulations of the Village of Sugar Mountain. This Amendment shall become effective upon adoption. This Amendment replaces the previous contents of Article XII, Chapter 1 of the Village of Sugar Mountain Code of Ordinances.

Adopted this the \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Dennis Lacey, Mayor

Attest:  
\_\_\_\_\_(SEAL)  
Tammy Floyd, Clerk