

## Application – Board of Adjustment

North Carolina General Statutes provides for and the Town of Oak Island has established a Board of Adjustment. The Board of Adjustment consists of five general members and not more than three alternate members that may serve in the absence of the general members. Alternate members shall be granted all the duties and powers of a general member when serving in the absence of a general member of the Board. The Board of Adjustment conducts itself as a quasi-judicial body and all hearings of the Board of Adjustment shall be evidentiary in nature.

Each decision of the Board of Adjustment shall be based upon findings of fact and conclusions drawn from testimony and/or evidence presented at the hearing. The decision and its accompanying findings of fact and conclusions shall be reduced to writing following the conclusion of the meeting and shall be served on the applicant and in the office of the clerk to the Board of Adjustment.

Generally, the Board of Adjustment will conduct hearings on three separate types of applications. A brief outline of each of the hearing types follows:

### Variances:

A variance may be granted by the board if it concludes that strict enforcement of the code of ordinances would result in practical difficulties or unnecessary hardships for the applicants and by granting the variance, the spirit of the code will be observed, public safety and welfare secured, and substantial justice done. The board may **only** reach these conclusions if it finds that **each** of the following five items can be found to be true.

- a. If the applicant complies strictly with the provisions of the article, he can secure no reasonable return from, or make no reasonable use of the subject property.
- b. The hardship of which the applicant suffers is unique to the subject property in question and is not suffered by neighboring properties.
- c. The hardship results from the terms of the article itself.
- d. The hardship suffered is not the result of the actions of the applicant.
- e. The hardship is related to the physical property and not the condition or personal circumstances of the applicant.

### Appeals:

Appeals to the Board of Adjustment may be made by any aggrieved party affected by the decision of an administrative official of the town based in whole or in part upon the provisions of the town's code of ordinances. In order to appeal the decision of the administrative official, the aggrieved party in alleging that an error in an order, requirement or decision or determination made by the administrative official in the carrying out of the provision of the code of ordinances was made, has the burden of proof and must present substantial evidence to convince the Board of Adjustment of the error.

### Interpretations:

The Board of Adjustment may accept applications for interpretations of the specific intent of any section of the code of ordinances from any party aggrieved by the decision of the administrative official of the town based in whole or in part upon the provisions of the town's code of ordinances. The Board shall take into consideration past and present ordinances, land use plans, and evidence presented prior to rendering a decision on the intent of the code section. The Board of Adjustment shall render a decision based on findings of fact relating to the specific intent of the code. In addition to the findings of fact and conclusions issued, the Board may also, at their discretion, make written recommendations to the Planning Board and Town Council relating to amendments to the code clarifying the intent.

#### Administrative Review:

From time to time the code of ordinances may require review and consideration of applications for the expansion of uses requiring a conditional use permit. It is stated that any use in existence at the time of the adoption of the code that would otherwise require a conditional use permit to be established shall be deemed to have a valid conditional use permit regardless of whether or not it meets the current conditions set forth within the code for the use, i.e., setbacks and like items. The Board of Adjustment shall ensure through its review that as many of the specific and general conditions outlined within the code that can be met are met and that the spirit of the code will be observed, public safety and welfare secured, and substantial justice done. The Board of Adjustment, in rendering its decision shall give due consideration to the affect the expanded development will have on the neighboring land uses and on the development of the town as a whole.

#### **Submittal Information and Procedures:**

The application to the Board of Adjustment shall be received in the Development Services Department not less than fourteen (14) days prior to the date of the next regular monthly meeting of the Board of Adjustment.

Supplementary information is considered a required part of the application. Applications will not be considered accepted for review unless all required information is provided.

A fee in accordance with the town's adopted fee schedule must accompany the application.

The applicant is expected to attend the hearing to present evidence and answer questions of the Board. The applicant must be prepared to be cross examined concerning evidence or testimony provided. The absence of the applicant is grounds to warrant deferral of action by the Board of Adjustment.

#### **Section A. Applicant Information**

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

Property Owner Information (if different from the applicant):

Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

**Section B. Property Information**

Address of site: \_\_\_\_\_

Property Identification Number: \_\_\_\_\_

Lot/Block/Section: \_\_\_\_\_

Zoning District: \_\_\_\_\_

Total Site Area: \_\_\_\_\_

**Section C: Hearing Type**

Please Check One

- A. Variance
- B. Appeal
- C. Interpretation
- D. Administrative Review

**Section D. Required Justifications/Attachments**

If you checked item A. above, please attach an explanation of how you intend to prove that the Board can reasonably find all of the following five items to be true:

- If the applicant complies strictly with the provisions of the article, he can secure no reasonable return from, or make no reasonable use of the subject property.
- The hardship of which the applicant suffers is unique to the subject property in question and is not suffered by neighboring properties.
- The hardship results from the terms of the article itself.
- The hardship suffered is not the result of the actions of the applicant.
- The hardship is related to the physical property and not the condition or personal circumstances of the applicant.

If you checked items B. or C. above please attach an explanation of the details of your appeal or request for interpretation.

If you checked item D and are applying for an administrative review as required by the code of ordinances for an existing conditional use, attach a clear and legible overview of the project and an explanation of how you intend to meet the specific and general conditions outlined within the code. Also attached a statement of how you intend to convince the Board of Adjustment that the spirit of the code will be observed, public safety and welfare secured, and substantial justice done.

Any attachments must be clear and legible and contain only factual information pertinent to the hearing.

### **Section E. Supplemental Information**

- Ten (10) 11"x17" copies of the site plan. The site plan must be clear and legible. See Section F. below for the minimum required information to be contained on the site plan. In most cases of variance requests or administrative review of a conditional use, a site plan will be necessary and required.
- List of the names of owners, their addresses and tax parcel numbers of the properties within one hundred (100) feet of the subject property including those separated by a street right of way.
- One set of addressed (to the adjacent property owners), business size, stamped envelopes. Please include the return address of the Town of Oak Island, Development Services Department, Attn: Clerk to the Board of Adjustment, 8500 E. Oak Island Drive, Oak Island NC 28465.

### **Section F. Required Site Plan Data**

#### **Part 1.**

- Title Box including the project name, applicant name and address of the property
- The present zoning classification
- Property lines and dimensions
- The names of the owners of record of the adjacent properties
- The location and names of all adjacent street rights of way
- The total area of the property
- The location of all existing buildings on the property.
- All existing easements, reservations, or rights of way.

#### **Part 2.**

**In the case of an administrative review of an existing conditional use, provide as much information as possible.**

- Building envelope indicating the required setbacks of the district and/or additional setbacks required by the specific conditions for the use outlined in the code.
- Building layout (to scale) that includes length, width, height, placement of building(s) on lot. If multiple buildings are proposed, identify the use of each building.
- Typical building elevation drawings and proposed exterior treatments.
- The location, size, designation and directional features of all parking spaces (including handicapped), driveways and curb cuts.
- Signage plan including sign type, size and placement on the property.
- Any required or proposed buffering or landscaping plans in accordance with the vegetation preservation ordinance. Indicate the type of buffering to be used.
- Lighting plan.
- If the property is to be developed in phases, a proposed phasing schedule. The proposed phases are to be noted on the site plan drawings.

**Section G. Certification**

In filing this application to the Board of Adjustment, I hereby certify that all of the information presented in the application is accurate to the best of my knowledge, information and belief.

\_\_\_\_\_  
Signature of Applicant(s)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Applicant (if jointly applying)

**Section H. Addendum to Application**

Addendum to application to the Board of Adjustment

I have received, read and fully understand Chapter 18, Article 2, Division 13, Section 18-334, Zoning Board of Adjustment as it pertains to my application. I have also read and understand the application to the Board of Adjustment. The items I did not understand, if any, have been explained to my satisfaction by an employee of the Town of Oak Island Development Services Department.

I understand that the Board of Adjustment, being quasi-judicial in nature will receive only competent evidence concerning my application. I understand that I have the right to cross examine witnesses presented and that I may be cross examined on matters pertaining to the evidence and testimony that I present.

I further understand that the decisions of the Board of Adjustment are subject to review in superior court by proceedings in the nature of certiorari and that I have only thirty days from the date of the filing of the Board’s decision in the office of the clerk to the Board of Adjustment or the date that the decision is served upon me or any other person whose has requested a copy of such decision, which ever is later to file for such review.

\_\_\_\_\_  
Signature of Applicant(s)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Applicant (if jointly applying)

Appointment of Authorized Agent

I, \_\_\_\_\_, the owner of the property subject to the Application to the Town of Oak Island Board of Adjustment, do hereby appoint \_\_\_\_\_, as my authorized agent regarding this application, to provide testimony and evidence and respond to testimony and evidence on my behalf and to represent me regarding this application.

\_\_\_\_\_  
Property Owner Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Agent Signature

\_\_\_\_\_  
Date