

**AN ORDINANCE TO AMEND THE TOWN OF HUNTERSVILLE ZONING ORDINANCE AND  
SUBDIVISION ORDINANCE TO RE-DESIGNATE BOARD OF ADJUSTMENT DUTIES TO THE  
PLANNING BOARD**

**Section 1. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 2.100 of the Subdivision Ordinance, Definitions, is hereby amended by removing the definition of *Board of Adjustment*.

~~*Board of Adjustment*. The Zoning Board of Adjustment of the Town of Huntersville.~~

**Section 2. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 2.3(3) of the Zoning Ordinance, Expansion/Redevelopment Of Existing Structures And Projects, is hereby amended as follows:

3. Appeal of the Planning Director’s decision regarding expansion or redevelopment according to subsections 2.3.1 or 2.3.2, above shall be to the Huntersville Planning Board of Adjustment following the procedures of Section 11.3.2.

**Section 3. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 3.3.2-A(c)(6) of the Zoning Ordinance, Critical Areas (CA-1, CA-2, CA-3, CA4), is hereby amended as follows:

(6) A Density Averaging Certificate shall be obtained from the Watershed Review Board (Planning Board of Adjustment) to ensure that both parcels considered together meet the standards of the ordinance and that potential owners have record of how the watershed regulations were applied to the parcel pair. Only the owner(s) of both of the paired parcels may submit the application for the Density Averaging Certificate. A site plan for both of the parcels must be submitted and approved as part of the Density Averaging Certificate. If such a certificate is granted, no change in the development proposal authorized for either parcel shall be made unless the certificate is amended. Upon issuance of such certificate, one copy will be forwarded to the North Carolina Division of Water Quality (DWQ). Included with the Density Averaging Certificate will be a site plan, registered plats for both properties, a description of both properties, and documentation reflecting the development restrictions to the parcel pair that will remain undeveloped.

**Section 4. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 3.3.2-B(h)(5)(2) of the Zoning Ordinance, Protected Areas (PA-1, PA-2), is hereby amended as follows:

5. Additional Requirements.
  1. An Occupancy Permit shall not be issued for any building within the permitted development until the Town Engineering Department has approved the storm water control structure.

2. Appeals of any order, requirement, decision or determination shall be made to and decided by the ~~Zoning Board of Adjustment~~ Planning Board of the Town of Huntersville.

**Section 5. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 3.3.2-B(i)(6) of the Zoning Ordinance, Protected Areas (PA-1, PA-2), is hereby amended as follows:

(6) A Density Averaging Certificate shall be obtained from the Watershed Review Board (~~Planning Board of Adjustment~~) to ensure that both parcels considered together meet the standards of the ordinance and that potential owners have record of how the watershed regulations were applied to the parcel pair. Only the owner(s) of both of the paired parcels may submit the application for the Density Averaging Certificate. A site plan for both of the parcels must be submitted and approved as part of the Density Averaging Certificate. If such a certificate is granted, no change in the development proposal authorized for either parcel shall be made unless the certificate is amended. Upon issuance of such certificate, one copy will be forwarded to the North Carolina Division of Water Quality (DWQ). Included with the Density Averaging Certificate will be a site plan, registered plats for both properties, a description of both properties, and documentation reflecting the development restrictions to the parcel pair that will remain undeveloped.

**Section 6. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 3.3.2-C of the Zoning Ordinance, Appeals And Variances In MIL-O District, is hereby amended as follows:

### **3.3.2-C Appeals And Variances In MIL-O District**

1. The ~~Zoning Board of Adjustment~~ Planning Board is hereby designated the Watershed Review Board.
2. An appeal to reverse or modify the order, decision, determination, or interpretation of the Zoning Administrator (herein designated the Watershed Administrator), shall comply with the procedures and standards of Section 11.3 of these regulations.
3. A petition for variance to the standards of the Mountain Island Lake Watershed Overlay District shall comply with the procedures and standards of Section 11.3 of these regulations, with the following exceptions.
  - a. In addition to the notification requirements of Section 11.3, the Watershed Administrator shall also notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for 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 Watershed Administrator prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.

- b. Major and Minor Variances are differentiated by definition.

Minor variances shall include a variance from the minimum statewide watershed protection rules that results in the relaxation of up to 10 percent of any vegetated setback, density, or minimum lot size requirement applicable to low density development, or the relaxation of up to five percent of any vegetated setback, density, or minimum lot size requirement applicable to high density development. For variances to a vegetated setback requirement, the percent variation shall be calculated using the foot print of built-upon area proposed to encroach within the vegetated setback divided by the total area of vegetated setback within the project.

Major variances means a variance that is not a "minor variance" as that term is defined in 15A NCAC 02B .0621 of the North Carolina Administrative Code.

- c. Major and Minor Variances are differentiated as to procedures and standards.

Per 15A NCAC 02B.0623(5) of the North Carolina Administrative Code the Watershed Review Board shall make the below findings of fact for granting minor and major variance petitions: a) there are difficulties or hardships that prevent compliance with the ordinance; (b) the variance is in accordance with the general purpose and intent of the local watershed protection ordinance; and (c) granting the variance, the project will ensure equal or better protection of waters of the State than the requirements of Rules .0621-.0624 of 15A NCAC 02B.0623(5) of the North Carolina Administrative Code and that the stormwater controls will function in perpetuity.

Minor variances shall comply with the procedures and standards of Section 11.3 of these regulations. An annual report of minor variances granted shall be submitted by the Watershed Administrator for each calendar year to the Division of Water Quality on or before January 1st of the following year and provide a description of each project receiving a variance and the reasons for granting the variance.

Major variances shall comply with the procedures and standards of Section 11.3 except that:

A decision by the Watershed Review Board to deny a major variance shall be final. Appeal shall be to a court of competent jurisdiction as provided in Section 11.3.

A decision by the Watershed Review Board to approve a major variance shall be advisory only. The Watershed Administrator shall within 30 days forward a record of the Planning Board of Adjustment hearing, findings, and conclusions to the North Carolina Environmental Management Commission for final decision.

**Section 7. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 3.3.3-A(c)(5) of the Zoning Ordinance, Critical Area (CA), is hereby amended as follows:

5. Additional Requirements.

- a. An Occupancy Permit shall not be issued for any building within the permitted development until the Town Engineering Department has approved the storm water control structure.
- b. Appeals of any order, requirement, decision or determination shall be made to and decided by the Zoning Planning Board of Adjustment of the Town of Huntersville.

**Section 8. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 3.3.3-A(d)(6) of the Zoning Ordinance, Critical Area (CA), is hereby amended as follows:

(6) A Density Averaging Certificate shall be obtained from the Watershed Review Board (Planning Board of Adjustment) to ensure that both parcels considered together meet the standards of the ordinance and that potential owners have record of how the watershed regulations were applied to the parcel pair. Only the owner(s) of both of the paired parcels may submit the application for the Density Averaging Certificate. A site plan for both of the parcels must be submitted and approved as part of the Density Averaging Certificate. If such a certificate is granted, no change in the development proposal authorized for either parcel shall be made unless the certificate is amended. Upon issuance of such certificate, one copy will be forwarded to the North Carolina Division of Water Quality (DWQ). Included with the Density Averaging Certificate will be a site plan, registered plats for both properties, a description of both properties, and documentation reflecting the development restrictions to the parcel pair that will remain undeveloped.

**Section 9. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 3.3.3-B of the Zoning Ordinance, Appeals And Variances In LN-O District, is hereby amended as follows:

**3.3.3-B Appeals And Variances In MIL-O District**

1. The ~~Zoning Planning Board of Adjustment~~ is hereby designated the Watershed Review Board.
2. An appeal to reverse or modify the order, decision, determination, or interpretation of the Zoning Administrator (herein designated the Watershed Administrator), shall comply with the procedures and standards of Section 11.3 of these regulations.
3. A petition for variance to the standards of the Mountain Island Lake Watershed Overlay District shall comply with the procedures and standards of Section 11.3 of these regulations, with the following exceptions.
  1. In addition to the notification requirements of Section 11.3, the Watershed Administrator shall also notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for 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 Watershed Administrator prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.
  2. Major and Minor Variances are differentiated by definition.

Minor variances shall include a variance from the minimum statewide watershed protection rules that results in the relaxation of up to 10 percent of any vegetated setback, density, or minimum lot size requirement applicable to low density development, or the relaxation of up to five percent of any vegetated setback, density, or minimum lot size requirement applicable to high density development. For variances to a vegetated setback requirement, the percent variation shall be calculated using the foot print of built-upon area proposed to encroach within the vegetated setback divided by the total area of vegetated setback within the project.

Major variances means a variance that is not a "minor variance" as that term is defined in 15A NCAC 02B .0621 of the North Carolina Administrative Code.

3. Major and Minor Variances are differentiated as to procedures and standards.

Per 15A NCAC 02B.0623(5) of the North Carolina Administrative Code the

Watershed Review Board shall make the below findings of fact for granting minor and major variance petitions: a) there are difficulties or hardships that prevent compliance with the ordinance; (b) the variance is in accordance with the general purpose and intent of the local watershed protection ordinance; and (c) granting the variance, the project will ensure equal or better protection of waters of the State than the requirements of Rules .0621-.0624 of 15A NCAC 02B.0623(5) of the North Carolina Administrative Code and that the stormwater controls will function in perpetuity.

Minor variances shall comply with the procedures and standards of Section 11.3 of these regulations. An annual report of minor variances granted shall be submitted by the Watershed Administrator for each calendar year to the Division of Water Quality on or before January 1st of the following year and provide a description of each project receiving a variance and the reasons for granting the variance.

Major variances shall comply with the procedures and standards of Section 11.3 except that:

A decision by the Watershed Review Board to deny a major variance shall be final. Appeal shall be to a court of competent jurisdiction as provided in Section 11.3.

A decision by the Watershed Review Board to approve a major variance shall be advisory only. The Watershed Administrator shall within 30 days forward a record of the Planning Board of Adjustment hearing, findings, and conclusions to the North Carolina Environmental Management Commission for final decision.

**Section 10. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 7.2(8) of the Zoning Ordinance, General Regulations, is hereby amended as follows:

8. The Zoning Administrator may approve revisions to a landscaping plan approved by the Town Board or Planning Board of Adjustment in order to accommodate seasonal planting problems or a lack of plant availability as long as:

1. There is no reduction in the quantity of plant material.
2. There is no significant change in the size or location of plant materials.

3. The new plants are of the same general category and have the same general design characteristics as the materials being replaced.

**Section 11. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 8.15(5) of the Zoning Ordinance, Special Requirements For Lots Along Thoroughfares, is hereby amended as follows:

**5. Right To Appeal.** An affected property owner shall have the right to appeal transitional yard or setback requirements to the Planning Board of Adjustment for a variance or modification as they apply to a particular piece of property. The Planning Board of Adjustment may approve a variance of ~~vary or modify~~ these requirements upon a showing that:

- a. The peculiar nature of the property results in practical difficulties or unnecessary hardships that impede carrying out the strict letter of the requirements, and
- b. The property will not yield a reasonable return or cannot be put to reasonable use unless relief is granted, and
- c. Balancing the public interest in enforcing the setback requirements and the interest of the owner, the grant of relief is required by considerations of justice and equity.
- d. In granting relief, the Planning Board of Adjustment may impose reasonable and appropriate conditions and safeguards to protect the interests of neighboring properties. The Planning Board's of Adjustment's decision shall be subject to review by the superior court by proceedings in the nature of certiorari in accordance with N.C.G.S. 160D-1402 ~~160A-388 (e)~~.

**Section 12. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 8.25(11)(b) of the Zoning Ordinance, (Surface Water Improvement And Management) Stream Buffers, is hereby amended as follows:

**11. Appeals and Variances.**

- a. An appeal to reverse or modify the order, decision, determination, or interpretation of the Zoning Administrator shall comply with the procedures and standards of Section 11.3 of these ordinances.
- b. **Special Variance Provisions/Mitigation Techniques.**
  - When “unnecessary hardships”, as defined in Section 11.3.2 e, would result from strict adherence to the buffer width requirements and/or buffer treatment standards, a petition for variance may be filed with the Huntersville Planning Board of Adjustment in compliance with the procedures and standards of Section 11.3.

- Site specific mitigation plans using the mitigation techniques set out below and approved by the designated agency shall be construed by the Planning Board of Adjustment to be evidence responsive to Section 11.3.2 e),– 4 consistency with adopted plans and protection of public safety and welfare. Specifications for these mitigation techniques are provided in the Charlotte-Mecklenburg Buffer Implementation Guidelines (for Structural BMPs). The techniques below are not construed to offset the requirement of Section 8.25.6 for diffuse flow.

**Section 13. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 11.2(2) of the Zoning Ordinance, Enforcement, is hereby amended as follows:

**2. Right to Appeal Administrative Decisions.** Any person who has standing or the local government (used interchangeably with the “Town”) may appeal an administrative decision to the Huntersville Planning Board of Adjustment (the “Planning Board of Adjustment”) as provided in Section 11.3.2. Appeals of administrative decisions made to the Planning Board of Adjustment must be filed within 30 days from receipt of the written notice of the determination. In the absence of evidence to the contrary, written notice of the determination sent by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

**Section 14. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 11.2(3)(g) of the Zoning Ordinance, Enforcement, is hereby amended as follows:

**g. Civil Penalty.** In addition to the other remedies cited in this ordinance for the enforcement of its provisions, and pursuant to NC General Statute 160A-175, the regulations and standards of this ordinance may be enforced through the issuance of civil penalties by the Zoning Administrator.

Subsequent citations for the same violation may be issued by the Zoning Administrator if the offender does not pay the citation (except as otherwise provided in a warning citation) after it has been issued unless the offender has sought an appeal to the decision of the Zoning Administrator through the Planning Board of Adjustment. Once the ten-day warning period has expired, each day which the violation continues shall subject the violator to additional citations to be issued by the Zoning Administrator.

**Section 15. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 11.3 of the Zoning Ordinance, Appeals And Variances, is hereby amended as follows:

### **11.3 Appeals And Variances**

~~1. **Board of Adjustment-Reserved.**~~

- a. ~~**Establishment.** The Board of Adjustment of the Town of Huntersville (the “Board of Adjustment”) shall consist of seven regular members and three alternate members. The regular membership shall consist of six members who reside within the corporate limits, appointed by the Town Board, plus one extraterritorial member. The number of regular members appointed who reside in the extraterritorial zoning jurisdiction shall at a minimum meet the requirements of N.C.G.S. 160D-307 for proportional representation, but shall in no instance be less than one. The alternate membership shall consist of at least two members who reside within the corporate limits, with the remaining alternate member residing in either the corporate limits or the extraterritorial jurisdiction of Huntersville.~~
- b. ~~**Members from Within the Town Limits.** Each member and alternate shall be appointed by the Town Board for a term of three years. The terms of membership shall be staggered; therefore, in appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the Town Board may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The expiration date for each term shall be the 30th day of June of the year in which said term is to expire and the term of office of the succeeding member shall begin on the 1st day of July. If the original members are appointed such that their terms of office begin prior to a July 1 date, such terms of original members shall be extended by the period of time between their appointment and June 30th of the year of their appointment, it being the intent of this proviso that original members shall serve terms of one, two, or three years plus a period of time between their initial appointments and June 30th of the year of their initial appointments. For purposes of this section, original appointments refer to members and alternates appointed upon first establishment of the Board of Adjustment, and to members and alternates appointed to newly created seats upon any expansion of the Board of Adjustment.~~
- c. ~~**Extraterritorial Members.** In addition to the members and alternates herein above provided for, members of the Board of Adjustment shall be appointed from the area within the extraterritorial jurisdiction of the Town of Huntersville, pursuant to the appointment process prescribed in N.C.G.S. 160D-307. Members so appointed shall have all of the obligations and duties of the other members of the Board of Adjustment, including rights to vote on all matters coming before the Board. Each extraterritorial member shall be appointed for a period of three years. Expiration dates for each term, initially and thereafter, shall be the 30th day of June of the year in which said term is to expire and the term of office of the succeeding member shall begin on the 1st day of July; provided further that if the original members are appointed such that their terms of office begin prior~~

~~to a July 1 date, such terms of original members shall be extended by the period of time between their appointment and June 30 of the year of their appointment. Eligibility for reappointment shall be determined by the procedures and policies established by the appointing body.~~

~~d. **Term Limits and Service Limits.** Members and alternates shall be limited to serving two (2) consecutive terms; however, a member or alternate may be reappointed to the Board of Adjustment after remaining off of the Board for at least one (1) year. Time spent as an alternate member shall not count in determining whether an alternate is eligible for appointment as a regular member. Additionally, appointment to a vacant position as an alternate or regular member to fill an unexpired term shall not be counted in determining eligibility for appointment or reappointment. No person shall be eligible for appointment as a regular or alternate member if such person is serving on any other board or commission appointed by the Board of Commissioners, unless such other service is in an ex officio capacity. These terms limits and service limits shall apply to both members and alternates residing in the corporate limits and within the extraterritorial jurisdiction of the Town of Huntersville. Notwithstanding the foregoing, the Board of Commissioners shall have the discretion to waive these term limits and service limits for a particular position on the Board of Adjustment when there are no other members of the public willing to serve in the position, or in other appropriate circumstances as determined by the Board of Commissioners.~~

~~e. **Proceedings.**~~

~~1. **Meetings.** All meetings of the Board of Adjustment shall be held at a regular place and shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact. Final disposition of appeals or variances shall be recorded in the minutes, indicating the reasons of the Board therefore, all of which shall become a part of the public record.~~

~~2. **Quorum Required.** No final action shall be taken on any matter unless a quorum is present. A quorum is the majority of the members of the Board or, for variance actions (which require the concurring vote of 4/5ths of the Board), 4/5ths of the membership.~~

~~f. **Powers and Duties.** The Board of Adjustment shall have the following powers and duties:~~

~~1. **Administrative Review.** To hear and decide appeals according to the procedures of this section, where it is alleged there is an error in any~~

~~order, decision, determination, or interpretation made by the Zoning Administrator or designated administrative official in the enforcement of this ordinance.~~

~~2. Variances. To hear and decide applications for variances from the terms of this ordinance according to the standards and procedures herein so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed by the Board.~~

~~3. Density Averaging Certificates. To hear and decide applications for density averaging certificates for paired parcel averaged density development, acting as the Watershed Review Board, to ensure both parcels considered together meet the standards of the ordinance and that potential owners have notice of how the watershed regulations were applied to the parcel pair.~~

## 2. Appeals and Variances.

### a. Petition to Planning Board of Adjustment for Appeal or Variance.

1. An appeal of an administrative decision may be initiated by any person with standing or by the local government.
2. A petition for variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.

b. **Appeals.** The Planning Board of Adjustment shall hear and decide appeals of administrative decisions of administrative officials charged with enforcement of the zoning and subdivision ordinances and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

1. Any person who has standing under G.S. 160D-1402(c), or the Town may appeal a decision to the Planning Board of Adjustment. An appeal is taken by filing a Notice of Appeal with the Clerk to the Planning Board of Adjustment. The Notice of Appeal shall state the grounds for the appeal.
2. The official who made the decision shall give written notice of the determination 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 of the determination 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. The official who made the decision shall transmit to the Planning Board of Adjustment all documents and exhibits constituting the record upon which the decision 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. The record may be provided in written or electronic form.
5. Timely appeals of a notice of violation or other administrative decision shall stay enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the Planning Board of Adjustment and any subsequent appeal in accordance with N.C.G.S. § 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom. After notice of the appeal has been filed, if the official who made the decision certifies to the Planning Board of Adjustment 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, the enforcement proceedings shall not be stayed except by a restraining order 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 Planning 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 development approval or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for development approvals to use the property; in these situations, the appellant or local government may request and the Planning Board of Adjustment may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.
6. Subject to the provisions of subdivision (6) of this subsection, the Planning Board of Adjustment shall hear and decide the appeal within a reasonable time.
7. The applicant, the local government, and any person with standing to appeal shall have the right to participate as a party at the evidentiary

hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the Planning Board of Adjustment. 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 Planning Board of Adjustment shall continue the hearing.

8. The Planning 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 N.C.G.S. § 160D-947(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 N.C.G.S. § 160D-1402(j).

**c. Standards for Granting an Appeal.**

1. The Planning Board of Adjustment shall reverse or modify the order, decision, determination, or interpretation under appeal only upon finding an error in the application of these regulations on the part of the officer rendering the order, decision, determination, or interpretation.
2. In modifying the order, decision, determination, or interpretation, the Planning Board of Adjustment shall have all the powers of the official from whom the appeal is taken.

**d. Filing a Variance Petition.** A petition for variance, in the form prescribed by the Planning Board of Adjustment, shall be filed with the Clerk to the Planning Board of Adjustment or designated administrator, accompanied by a non-refundable filing fee as established by the Town Board and a list of adjoining properties including tax parcel numbers and the name and address of each owner.

**e. Standards for Granting a Variance.** When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Planning 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
  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.
- f. **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.
- g. **Notice and Hearing.**
1. The Planning Board of Adjustment shall, in accordance with rules adopted by it for such purpose, hold public hearings on any appeal or variance petition which comes before it.
  2. Notice of Hearing. – Notice of Hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or subdivision ordinance. In the absence of evidence to the contrary, the Town may rely on the 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. 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. The Planning Board of Adjustment may continue an evidentiary hearing that has been convened without further advertisement.

**h. Action by the Planning Board of Adjustment.**

1. The concurring vote of four-fifths (4/5ths) 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 subsection, 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.
2. A member of the Board 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. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. 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.
3. 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. 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. 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.
4. 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 Planning Board of Adjustment determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

5. Subpoenas. The Planning 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 the issuance of a subpoena, the applicant, local government, and any person with standing under G.S. 160D-1402(c) 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 Planning Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Planning 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.
- i. **Effect of Grant of Variance or Reversal or Modification of Administrative Decision.** After the Planning Board of Adjustment approves a variance, or reverses or modifies an order, decision, determination, or interpretation of an administrative official, the appellant or petitioner shall be responsible for obtaining a building permit and/or certificate of occupancy, as applicable, in order to proceed with the development of the subject property. All orders, decisions, determinations, and interpretations made by administrative officials under those procedures shall be consistent with the variance, reversal, or modification granted to the appellant or petitioner by the Planning Board of Adjustment.
- j. **Rehearing.** The Planning Board of Adjustment shall refuse to hear an appeal or variance petition which has been previously denied unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.
- k. **Appeal from Planning Board of Adjustment.** Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the Clerk of Superior Court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subsection

11.3.2(h)(3). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

### **3. Standards for Granting an Administrative Waiver.**

- a. **Purpose and Intent.** Unless otherwise provided in the Zoning Ordinance, the Zoning Administrator (which term shall include an administrative official designated by the Town Manager to perform these functions) is authorized to grant an administrative waiver of minor deviations from measurable and quantifiable standards of this ordinance subject to the following limitations:
1. The standard for which the waiver can be granted must be a quantifiable and/or measurable standard set forth in the ordinance. Such standards may include, but are not necessarily limited to, height requirements and limitation, yard requirements, parking requirements, screening or buffer requirements, planting requirements, ratio requirements, density requirements, spacing requirements, signage requirements and other similar measurable and quantifiable standards.
  2. The Zoning Administrator shall grant such waiver only after the requesting party has demonstrated that such minor deviation was a result of an unintended error or unique conditions of the property, does not and will not violated the spirit and harmony of the ordinance, and does not and will not adversely affect the rights of other property owners in any material manner.
  3. The minor administrative waiver may not deviate by more than three percent (3%) any of the standards for which the waiver is given.
- b. **Construction.** The authority given to the Zoning Administrator to grant such waivers shall be construed to be permissive and not mandatory and the Zoning Administrator may decline to make such waiver, and instead, require that the applicant seek a variance from the Planning Board of Adjustment. The Zoning Administrator may not grant any waiver affecting the use or zoning classification; however, this shall not be construed as limiting the zoning Administrator's duties and rights under the ordinance, and whose decisions are appealable to the Planning Board of Adjustment.

**Section 16. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 11.4(2) of the Zoning Ordinance, Amendment Process, is hereby amended as follows:

**Planning Board.**

a. **Establishment.** The Planning Board of the Town of Huntersville shall consist of nine (9) members of whom at least seven (7) members shall reside within the corporate limits, appointed by the Town Board, plus extraterritorial members determined as follows: the number of members appointed who reside in the extraterritorial zoning jurisdiction shall at a minimum meet the requirements of N.C.G.S. § 160D-307 for proportional representation, but shall in no instance be less than one (1).

b. **Membership.**

1. Members from Within the Town Limits. Each member shall be appointed by the Town Board for a term of three years. The terms of membership shall be staggered; therefore, in appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the Town Board may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. ~~The expiration date for each term shall be the 30th day of June of the year in which said term is to expire and the term of office of the succeeding member shall begin on the 1st day of July. If the original members are appointed such that their terms of office begin prior to a July 1 date, such terms of original members shall be extended by the period of time between their appointment and June 30th of the year of their appointment, it being the intent of this proviso that original members shall serve terms of one, two, or three years plus a period of time between their initial appointments and June 30th of the year of their initial appointments. For purposes of this section, original appointments refer to members appointed upon first establishment of the Planning Board and also to members appointed to newly created seats upon any expansion of the Planning Board.~~

2. Extraterritorial Members. In addition to the members hereinabove provided for, members of the Planning Board shall be appointed from the area within the extraterritorial jurisdiction of the Town of Huntersville, pursuant to the appointment process prescribed in N.C.G.S. 160D-307. Members so appointed shall have all of the obligations and duties of the other members of the Planning Board, including rights to vote on all matters coming before the Board. Each extraterritorial member shall be appointed for a period of three years. ~~Expiration dates for each term, initially and thereafter, shall be the 30th day of June of the year in which said term is to expire and the term of office of the succeeding~~

~~member shall begin on the 1st day of July; provided further that if the original members are appointed such that their terms of office begin prior to a July 1 date, such terms of original members shall be extended by the period of time between their appointment and June 30th of the year of their appointment.~~ Eligibility for reappointment shall be determined by the procedures and policies established by the appointing body.

3. **Term Limits and Service Limits.** Members shall be limited to serving two (2) consecutive terms, however a member may be reappointed to the Planning Board after remaining off of the Board for at least one (1) year. Appointment to a vacant position to fill an unexpired term shall not be counted in determining eligibility for appointment or reappointment. No person shall be eligible for appointment as a member if such person is serving on any other board or commission appointed by the Board of Commissioners unless such other service is in an ex officio capacity. These terms limits and service limits shall apply to members residing in the corporate limits and to those residing within the extraterritorial jurisdiction of the Town of Huntersville. Notwithstanding the foregoing, the Board of Commissioners shall have the discretion to waive these term limits and service limits for a particular position on the Planning Board when there are no other members of the public willing to serve in the position, or in other appropriate circumstances as determined by the Board of Commissioners.
- c. **Meetings.** Meetings shall be held on a monthly basis unless otherwise determined by the Board. The Chairman of the Board, or in his absence the vice chairman, may call a special meeting of the Board at any time by giving each member 24 hours' notice. Special meetings shall also be scheduled upon request by a simple majority of board members. A quorum of the Board shall consist of a simple majority or, for variance actions (which require the concurring vote of 4/5ths of the Board), 4/5ths of the membership of the appointed members, and a quorum shall be in attendance before any action of an official nature can be taken.
  - d. **Powers and Duties.**
    1. The Planning Board shall serve as the advisory board on all requests for changes in the zoning regulations and ordinances of the Town of Huntersville (the "Town"). As such, and pursuant to any authorities set forth in the Zoning Ordinance, the Planning Board shall hear all requests for zoning changes or other zoning action and shall, upon such hearings, make a recommendation to the Town Board as to any requested changes or action regarding this ordinance. Hearings on zoning petitions may, by joint decision of the Town Board and the Planning Board, be held at joint meetings, or may be held separately. The Planning Board is hereby empowered to set procedures for the filing of zoning

petitions so long as said procedures do not conflict with or are not in derogation of the then existing regulations and ordinances of the Town.

2. The Planning Board is empowered to make recommendations to the Town Board or other governmental agencies consistent with the Planning Board's charged obligation to provide for proper planning for the future growth of the Town and its environs.
3. Administrative Review. To hear and decide appeals according to the procedures of section 11.3, where it is alleged there is an error in any order, decision, determination, or interpretation made by the Zoning Administrator or designated administrative official in the enforcement of this ordinance.
4. Variances. To hear and decide applications for variances from the terms of this ordinance according to the standards and procedures herein so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed by the Board.
5. Density Averaging Certificates. To hear and decide applications for density averaging certificates for paired-parcel averaged-density development, acting as the Watershed Review Board, to ensure both parcels considered together meet the standards of the ordinance and that potential owners have notice of how the watershed regulations were applied to the parcel pair.

**Section 17. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 12.2.1 of the Zoning Ordinance, General Definitions, is hereby amended by removing Board of Adjustment.

~~Board of Adjustment. The Zoning Board of Adjustment of the Town of Huntersville.~~

**Section 18. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 12.2.3 of the Zoning Ordinance, Watershed Definitions, is hereby amended by amending the definition of Density Averaging Certificate and Watershed Administrator as follows:

Density Averaging Certificate. Approval for density averaging granted by the Planning Board of Adjustment acting as the Watershed Review Board at a Planning Board of Adjustment meeting after it is proven by the applicant that the request meets all the requirements of Section 3.3.2-A: h) or 3.3.3-A: i) of the Huntersville Zoning Ordinance.

Watershed Administrator. The individual appointed and duly sworn by the Board of Commissioners of the Town of Huntersville to administer and enforce the provisions of this section as follows:

1. The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits according to the provisions of this section. A record of all permits issued shall be kept on file in the office of the Watershed Administrator.
2. The Watershed Administrator or designee shall serve as staff to the Planning Board of Adjustment when it is serving in its capacity as the Watershed Review Board.

**Section 19. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 14.7 of the Zoning Ordinance, Appeals And Variances, is hereby amended as follows:

#### **14.7 Appeals And Variances**

An applicant may seek a variance from the terms of this Article or appeal a determination by the Zoning Administrator or other administrative official, made pursuant to the terms of this Article, to the Planning Board of Adjustment, as provided in Article 11.3 of the Zoning Ordinance.

**Section 20. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 150.16(D)(1) of the Code of Ordinances, Administrative Procedure, is hereby amended as follows:

1. An appeal from any decision or order of the Inspector is a quasi-judicial matter and may be taken by any person aggrieved thereby. Any appeal from the Inspector shall be taken within ten days from the rendering of the decision or service of the order, and shall be taken by filing with the Inspector and with the town's Zoning Planning Board of Adjustment, hereinafter referred to as "Board", a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Inspector shall forthwith transmit to the Board all the paper constituting the record upon which the decision appealed from was made. When appeal is from a decision of the Inspector refusing to allow the person aggrieved thereby to do any act, his or her decision shall remain in force until modified or reversed. When any appeal is from a decision of the Inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board, unless the Inspector certifies to the Board, after the notice of appeal is filed with him or her, that by reason of the facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his or her requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining

order, which may be granted for due cause shown upon not less than one-days written notice to the Inspector, by the Board, or by a court of record upon petition made pursuant to G.S. § 160D-1208 and division (E) of this section.

**Section 21. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 150.24 of the Code of Ordinances, Zoning Board Of Adjustment, is hereby amended as follows:

**150.24 Zoning Planning Board Of Adjustment**

The town's ~~Zoning Planning Board of Adjustment~~ shall perform the duties prescribed by Section 150.16(D) and shall keep an accurate record of all its proceedings.

**Section 22. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 150.48(D) and (E) of the Code of Ordinances, Corrective Procedures, is hereby amended as follows:

- d. *Appeal.* Any owner or occupant who has received an order to take corrective action may appeal the order to the Huntersville ~~Zoning Planning Board of Adjustment~~ (hereinafter referred to as the "Planning Board of Adjustment" or "Board") as provided in Article IV, Section 151.60. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Planning Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm or revoke the order.
- e. *Failure to comply with order.* If the owner or occupant of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the Planning Board of Adjustment following an appeal, he/she shall be subject to civil enforcement as described in Article II, Section 151.34.

**Section 23. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 151.59 of the Code of Ordinances, Authority Of Board Of Adjustment, is hereby amended as follows:

**151.59 Authority Of Planning Board Of Adjustment**

- A. The Planning Board of Adjustment of Huntersville shall hear and decide appeals from any order, decision, determination or interpretation made by the Floodplain Administrator pursuant to or regarding these regulations.
- B. The Planning Board of Adjustment shall hear and decide petitions for Variances from the requirements of this ordinance.

**Section 24. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 151.60 of the Code of Ordinances, Initiation And Filing Of Appeal, is hereby amended as follows:

**151.60 Initiation And Filing Of Appeal**

- A. An appeal of an order, decision, determination or interpretation made by the Floodplain Administrator may be initiated by any person aggrieved by any officer, department, board or bureau of the town.
- B. A notice of appeal in the form prescribed by the Planning Board of Adjustment must be filed with the Board's Clerk, with a copy to the Floodplain Administrator, within 20 days of the order, decision, determination or interpretation and must be accompanied by a nonrefundable filing fee as established by the town council. Failure to timely file such notice and fee will constitute a waiver of any rights to appeal under this section and the Planning Board of Adjustment shall have no jurisdiction to hear the appeal.

**Section 25. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 151.61 of the Code of Ordinances, Standards And Hearing Procedure, is hereby amended as follows:

**151.61 Standards And Hearing Procedure**

- A. The Planning Board of Adjustment will conduct the hearing on an appeal of an order, decision, determination or interpretation of these regulations in accordance with its normal hearing procedures as set out in the Town of Huntersville Zoning Code.
- B. At the conclusion of the hearing, the Planning Board of Adjustment may reverse or modify the order, decision, determination or interpretation under appeal upon finding an error in the application of these regulations on the part of the Floodplain Administrator who rendered the decision, determination or interpretation. In modifying the decision, determination or interpretation, the Board will have all the powers of the officer from whom the appeal is taken.

**Section 26. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 151.62 of the Code of Ordinances, Initiation And Filing Of Variance Petition, is hereby amended as follows:

**151.62 Initiation And Filing Of Variance Petition**

- A. A petition for variance may be initiated only by the owner of the affected property, or an agent authorized in writing to act on the owner's behalf.

- B. A petition for a variance from these regulations in the form prescribed by the Planning Board of Adjustment must be filed with the Board's Clerk, with a copy to the Floodplain Administrator, and be accompanied by a nonrefundable filing fee as established by the town council.

**Section 27. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 151.63 of the Code of Ordinances, Factors For Consideration And Determination Of Completeness, is hereby amended as follows:

**151.63 Factors For Consideration And Determination Of Completeness**

- A. In passing upon variances, the Planning Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and the:
1. Danger that materials allowed to be placed in the floodway as a result of the variance may be swept onto other lands to the injury of others during a community base flood;
  2. Danger to life and property due to flooding or erosion damage from a community base flood;
  3. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage during the community base flood;
  4. Importance of the services provided by the proposed facility to the community;
  5. Necessity to the facility of a waterfront location, where applicable;
  6. Availability of alternative locations, not subject to flooding or erosion damage during a community base flood, for the proposed use;
  7. Compatibility of the proposed use with existing and anticipated development;
  8. Relationship of the proposed use to the Mecklenburg County Floodplain Management Guidance Document, Mecklenburg County Flood Hazard Mitigation Plans, the Mecklenburg County Greenway Plan, and any other adopted land use plans for that area;
  9. Safety of access to the property in times of a community base flood for ordinary and emergency vehicles.
  10. Expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters during a community base flood expected at the site; and

11. Costs of providing governmental services during and after flood events, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems and streets and bridges.
- B. A written report addressing each of the above factors shall be submitted with the application for a variance.
  - C. Upon consideration of the factors listed above and the purposes of this ordinance, the Planning Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
  - D. Variances may be issued for the repair or rehabilitation of Historic Structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
  - E. Functionally dependent facilities if determined to meet the definition as stated in Article I Section 151.06 of this ordinance, provided provisions of Article VI have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
  - F. Any other type of development, provided it meets the requirements of this section.

**Section 28. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 151.66 of the Code of Ordinances, Miscellaneous Conditions, is hereby amended as follows:

**151.66 Miscellaneous Conditions**

- A. In addition to consideration of the items in Section 151.63(A), if dryland access cannot be obtained, a variance to the requirement for dryland access may be granted by the Planning Board of Adjustment upon consideration of the following conditions:
  - 1. A determination that all possible alternatives have been investigated in an attempt to provide the safest access from a proposed habitable building to a dry public street.
  - 2. The existence of a site plan prepared by a licensed land surveyor or professional engineers indicating that the proposed access to habitable buildings on the property poses the least risk from flooding.
- B. In addition to consideration of the items in Section 151.63(a), a variance may be issued by the Planning Board of Adjustment for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following criteria are met:

1. The use serves a critical need in the community.
2. No feasible location exists for the use outside the special flood hazard areas.
3. The reference level of any structure is elevated above the flood protection elevation or is designed and sealed by a Professional engineer or a registered architect to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
4. There will be no storage of materials or tanks which could flood within the special flood hazard area unless they are contained in a structure as defined in (3) above.
5. The use complies with all other applicable laws and regulations.
6. The Town of Huntersville has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

**Section 29. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 151.68 of the Code of Ordinances, Appeal From Board Of Adjustment, is hereby amended as follows:

**151.68 Appeal From Planning Board Of Adjustment**

- A. Any person aggrieved by the final decision of the Planning Board of Adjustment to grant or deny a Floodplain Development Permit shall have 30 days to file an appeal to Mecklenburg County Superior Court, as provided in N.C.G.S. 143-215.57(c).
- B. Any party aggrieved by the decision of the Planning Board of Adjustment related to any other order, decision, determination or interpretation of these regulations, including the granting or denial of a variance, shall have 30 days from the receipt of the Board's decision to file a petition for review in the nature of certiorari in Mecklenburg County Superior Court.

**Section 30. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 151.80(A)(5) of the Code of Ordinances, Specific Standards, is hereby amended as follows:

5. *Dryland access.* Access to habitable buildings during a flood event is extremely hazardous. Dryland access must be provided to new or substantially improved habitable buildings according to the following criteria:

Dryland access is required if any portion of either the habitable building or vehicular access route, connecting the habitable building to a public street, is within the floodplain. If dryland access cannot be obtained, a variance to the requirement for dryland access may be granted by the Planning Board of Adjustment. Plans and details for the dryland access must be submitted by a registered professional engineer or surveyor and approved by the Floodplain Administrator.

**Section 31. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 151.81(A)(6) of the Code of Ordinances, Levees, is hereby amended as follows:

6. After the end of the 30-day comment period, but no more than 60 days from the end of the comment period, the Director shall approve or disapprove the application or request more information from the owner of the levee. If the Director determines that the additional information is sufficiently significant, the Director may offer an additional 30-day comment period to all parties involved. Consistent with Article VI, the Director's decision may be appealed to the Zoning Planning Board of Adjustment.

**Section 32. BE IT ORDAINED** by the Board of Commissioners of the Town of Huntersville, North Carolina, that Article 152.11 of the Code of Ordinances, Appeals, is hereby amended as follows:

**152.11 Appeals**

Appeals may be taken from any decision or order of the Inspector, or assigned agent, to the Planning Board of Adjustment. Any person aggrieved by a decision or order of the Inspector shall have the remedies provided in G.S. § 160D-1208.

**Section 33.** This ordinance shall become effective upon adoption.

**PLANNING BOARD: June 24, 2025**

**TOWN BOARD: July 15, 2025**