

ARTICLE 11
BOARD OF ADJUSTMENT

(rev. 06/19/2001 unless otherwise noted)

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11.01 BOARD OF ADJUSTMENT

The Code of Alabama, §11 52 80, as amended, provides for the creation of the Board of Adjustment, its composition, qualifications, appointment, terms of office and removal of members, vacancies, adoption of rules of procedure, meetings, record of proceedings, procedure for appeals to Board from decisions of administrative officials, and the power of the Board as to appeals.

The Board of Adjustment consists of five (5) members and two (2) supernumerary members appointed by the Municipal Council. Each member is appointed for a term of three (3) years. Members of the Board of Adjustment may be removed for cause by majority vote of the Municipal Council upon written charges and after a Public Hearing.

Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Members of the Board of Adjustment must be permanent residents and property owners within the Municipality of Orange Beach. All members of the board, including supernumeraries, shall be bona fide residents and qualified electors of Orange Beach.

11.02 PROCEDURE

11.0201 Rules

The Board of Adjustment shall elect a Chairman and Vice Chairman from among its members. The Chairman shall be the presiding officer of the Board and the Vice Chairman shall be the Presiding Officer in the Chairman's absence or disqualification. The terms of all officers shall be for one year, with eligibility for reelection. The Board may establish its own procedures of operation.

11.0202 Minutes and Records

The Board of Adjustment shall keep minutes of its proceeding, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and of other official actions, all of which shall immediately be filed in the office of the Board and shall be a public record.

11.0203 Meetings Open to Public

All meetings of the Board of Adjustment shall be open to the public.

11.03 POWERS AND DUTIES

11.0301 Appeals

It is the duty of the Board of Adjustment to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this Ordinance.

11.0302 Variances

It is the duty of the Board of Adjustment to authorize upon appeal in specific cases such variances from the terms of this Ordinance as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship and so that the spirit of this Ordinance shall be observed and substantial justice done.

11.04 DECISION

The concurring vote of four (4) of the five (5) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Building Official or to decide in favor of the appellant in respect to any matter upon which the Board of Adjustment can legally act.

11.05 APPEALS

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer in the enforcement of this Ordinance. Such appeal shall be made within thirty (30) days after rendition of the order, requirement, decision or determination appealed from in writing to the Board of Adjustment and file same, and ten (10) copies of supporting facts and data with the Zoning Official. This does not, however, restrict the filing of a request for a variance by any person at any time as provided for elsewhere in this Article. (rev. 06/19/2001)

11.0501 Procedure

Upon receipt of said appeal, the Zoning Official may forthwith examine such appeal or request application and endorse his recommendation thereon together with all documents, plans, papers or other material constituting the record to the Municipal Attorney for his review and opinion. The Municipal Attorney shall present his opinion to the Board of Adjustment as to whether or not the subject of the appeal falls within the jurisdiction of the Board of Adjustment. (rev. 06/19/2001)

11.0502 Stay of Proceedings

An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate of stay would in his opinion cause imminent peril to life or property. Such proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

11.0503 Hearing on Appeal

Before rendering a decision upon an appeal, the Board of Adjustment shall hold a Public Hearing for which a reasonable time shall be set. Public notice of the hearing shall be given as well as due notice to the parties in interest. Upon the hearing any party may appear in person or by agent or by attorney. The Board of Adjustment may require the person appealing to send certified mail receipted notice to the property owners within a reasonable area not to exceed a distance of one thousand (1,000) feet from the property involved. The guide for the mailing requirement to owners may be the most current town or county assessment role. At the hearing, any party may appear in person or by agent or attorney. With respect to condominiums or cooperatives, notices required by this section may be sent to each, the secretary and the president of the condominium or cooperative association, unless such offices are not filled, in which event notice to the agent designated for the service of process will be sufficient compliance with the notice requirements of this section.

11.06 VARIANCES

A variance is a deviation from the literal provisions of the Zoning Ordinance which is granted by the Board of Adjustment when strict conformity to the Zoning Ordinance would cause an unnecessary hardship owing to circumstances unique to the property on which the variance is granted. In order to authorize any variance from the terms of this Ordinance, the Board of Adjustment must and shall find:

- A.** That the granting of the variance will not be contrary to the public interest;
- B.** That the literal enforcement of the Ordinance will result in unnecessary hardship by reason of exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional physical condition unique to the specific piece of property in question; unnecessary hardship shall mean physical hardship relating to the property itself as distinguished from a hardship relating to convenience, financial considerations or caprice, and the hardship must not result from the applicant or property owner's action;
- C.** That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

- D. That the literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance;
- E. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;
- F. That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare;

The burden of proving to the Board of Adjustment that the foregoing conditions have been met is upon the applicant.

In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance. No nonconforming use of neighboring lands, structures, or buildings in other zone districts shall be considered grounds for the authorization of a variance.

11.07 JUDICIAL REMEDY BY CIRCUIT COURT

Any party aggrieved by any final judgment or decision of the Board of Adjustment, or by a decision of the Municipal Attorney that the Board of Adjustments has no jurisdiction, may apply to the Circuit Court for judicial relief within the time period as provided by the Code of Alabama §11 52 81, as amended.

11.08 COMPLIANCE WITH THE CODE OF ALABAMA

The Board of Adjustment shall conform to the requirements of the applicable sections and paragraphs of the Code of Alabama, and in any conflict between this Ordinance and the Code, the Code of Alabama shall prevail.