

H.B. 276, AN ACT TO CLARIFY AND MODERNIZE STATUTES REGARDING ZONING AND BOARDS OF ADJUSTMENT

	Current	Changes
Alternative Dispute Resolution	No alternative dispute resolution.	“The parties to an appeal under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution” (N.C.G.S. 153A-345 (b1) (10)).
Unnecessary Hardship Defined to Grant a Variance	See PG 2	See PG 2
Voting 2.4.1 C (6)	4/5 necessary to reverse any order, requirement, decision or determination	4/5 necessary for variance All other quasi-judicial simple majority required (includes appeals)
Oaths	Ordinance does not specify oaths	The chair of the board or any member acting as chair and the clerk to the board are authorized administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.
Subpoenas 2.4.1. C	11) The Board of Adjustment shall have the authority to subpoena witness and compel the production of evidence as specified in N.C.G.S. 153A-345 (g).	11) The Board of Adjustment through the chair, or in the chair’s absence anyone acting as the chair shall have the authority to subpoena witness and compel the production of evidence as specified in N.C.G.S. 153A-345 (g).
Notice of Public Hearing 3.14.5	“Once the application has been determined complete, the Administrator shall schedule a public hearing and give notice to adjoining/abutting property owners and aggrieved parties in the form of applicant supplied #10 envelopes with paid first class postage”	“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 period, the [County] 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.”

Defining Unnecessary Hardship

Ordinance

- 1) That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Building Official before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later;
- 2) That the strict enforcement of this Ordinance would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Ordinance;
- 3) That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Ordinance denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief;
- 4) That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance;
- 5) That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties; and
- 6) That the variance will not result in the expansion of a nonconforming use.
- 7) In the case of expansions to nonconforming structures, the variance granted shall be the smallest that is reasonably necessary

Legislative Changes

- 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, 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.
- 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 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.

