
Article VI Appeals, Variance, Conditional Use, Temporary Use Process**Section 6.1 Board of Adjustment Powers and Procedures**

The Board of Adjustment shall:

- (a) hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the Zoning Enforcement Officer or appointed agent;
- (b) hear and decide application for decisions on temporary and conditional use permits;
- (c) authorize upon appeal in specific cases such variance 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 undue hardship and so that the spirit of this Ordinance will be observed, and substantial justice done.

The concurring vote of five-sixths (5/6) of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Enforcement Officer (or agent) or to decide in favor the applicant on any matter upon which it is required to pass under the Ordinance or to affect any variance authorized.

Section 6.2 Notice of Hearing

The Board shall not grant a variance, issue a conditional use or temporary use permit until a public hearing is held. Notice of hearings conducted, pursuant to this section, shall be mailed via First Class mail 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 person entitled to receive notice as provided by the Zoning Ordinance. In the absence of evidence to the contrary, the Town may rely on the Gaston County tax listing to determine owners of property entitled to mail notice. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (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 and in the local newspaper.

Section 6.3 Variance

In considering all proposed variances to this Ordinance, the Board shall, before making any finding in a specified case, first determine that the proposed variances will not constitute any change in the district boundaries shown on the Zoning Map and will not impair the adequate supply of light and air to adjacent property, substantially diminish or impair established property values within the surrounding area, or in any other respect impair the public health,

safety, morals, and general welfare. In granting a variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed structure or use as it deems advisable in furtherance of the purposes of this Ordinance.

The Board shall not grant a variance until a public hearing is held. Before variance is granted, it shall be known that:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;
- (b) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located;
- (c) A literal interpretation of the provisions of the Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located;
- (d) The requested variance will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare;
- (e) The special circumstances are not the result of the actions of the applicant;
- (f) The variance requested is the minimum variance that will make possible the legal use of the land, building or structure; and,
- (g) The variance is not a request to permit a use of land, building or structure which is not permitted by right or by condition in the district involved.

Section 6.4 Conditional Use

The Board of Adjustment has the power and duty to grant, in particular cases and subject to appropriated conditions and safeguards, permits for conditional uses as authorized by this Ordinance and set forth as conditional uses under the various use districts.

The Board shall not grant a conditional use permit until a public hearing is held. The Board shall not grant a conditional use permit unless and until:

- (a) A written application for a conditional use permit is submitted;
- (b) Notice of the public hearing is posted on the property for which the conditional use permit is sought and there appears in a local newspaper, a notice for two (2) consecutive weeks describing the request, the first notice to be published not less than ten (10) nor more than twenty-five (25) days prior to the public hearing;
- (c) The use of development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;
- (d) The use of development complies with all conditions and specifications of this Ordinance;

- (e) The use or development will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
- (f) The location and character of the use, if developed according to the plan submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Stanley and its environs.

Section 6.5 Temporary Use

Provisions of this section are intended to provide relief in cases of hardship on a short-term basis only. A Class A (only permitted on a temporary basis) or B manufactured home (excluding the requirement for a permanent masonry foundation) may be permitted in residential districts in a rear yard as an accessory use on a temporary basis, following the Zoning Enforcement Officer's (or agent's) finding, after review and recommendation of the Board of Adjustment, that a personal hardship exists.

Reasons justifying separate quarters shall be limited to:

- (a) terminal illness of an immediate family member;
- (b) destruction or partial destruction of an existing structure;
- (c) a contagious disease of an immediate family member;
- (d) aging parents not financially or physically sound; or,
- (e) construction of a built house has been undertaken by the owner of the lot.

Temporary use permits may be issued by the Zoning Enforcement Officer (or agent) in the aforementioned cases for a period of twelve (12) months and may be renewed for one (1) additional twelve-month period provided that the hardship continues to exist. Application for renewal of a temporary use permit shall be made thirty (30) days prior to the expiration date of said permit. All applications shall be made to the Zoning Enforcement Officer or his/her appointed agent. All manufactured homes that contain restrooms or sinks shall be connected to water and sewer systems approved by the Town of Stanley or the Gaston County Health Department.

Additionally, temporary use permits can be issued by the Zoning Enforcement Officer (or agent) for manufactured homes in non-residential districts, excluding floodplain districts, where they will be used for temporary office purposes during the construction of any permanent building or for temporary classrooms for public schools. Manufactured home structures used as classrooms or temporary offices which do not contain restrooms or sinks and are not used as housing are not required to have water and sewer. The two (2) year restriction does not apply to manufactured homes used as classrooms within a school system. Any manufactured home permitted as an accessory use on a temporary basis shall be removed by 12:00 a.m. on the day of the expiration of the temporary use permit.

Section 6.6 Appeals

Any person, taxpayer, officer, department, board or bureau of the Town may within thirty (30) days from the filing of the decision of the Board, but not thereafter present to a court of competent jurisdiction a petition for a writ of certiorari, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality. Thereupon such decision of the Board shall be subject to review as provided by law.

An appeal from a decision of the Zoning Enforcement Officer (or agent) may be taken to the Board of Adjustment by any person aggrieved by such decision. Such appeal shall be made in writing to the Board, the Zoning Enforcement Officer, and any agent appointed by the Zoning Enforcement Officer involved in the appeal specifying the grounds thereof. The Zoning Enforcement Officer (or involved agent) shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed, unless the office from whom the appeal is taken, certifies to the Board that a stay would cause a restraining order which may be granted by the Board or by a court of record on application of notice of the Zoning Enforcement Officer (or agent) from whom the appeal is taken and upon due cause shown.

The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney. The Board of Adjustment shall hold public hearings at which specific appeals shall be heard, notice of said hearings being made public in at least two (2) of the following ways:

- (a) Publishing a public notice in a newspaper of general circulation or two consecutive weeks, the first not less than ten (10) nor more than twenty-five (25) days prior to the public hearing;
- (b) Posting signs concerning the hearing in the neighborhood which is affected; or
- (c) Sending written notices to all the adjoining property owners.

With any of the three (3) methods of notice, the wording should contain the time, date, place, general nature of the question involved, and the property which will be affected.