ARTICLE XIII
PROCEDURES FOR APPEALS, VARIANCES, AND CONDITIONAL USES
Last Amended 01.17.2017

Section 1300. Establishment of Zoning Board of Adjustment.

A Zoning Board of Adjustment (hereafter referred to as the board) is hereby established. The practice, procedure, and jurisdiction of this board shall be governed by the provisions of G.S. 160A-388 and as set out hereafter.

The appointment and residency of the Board of Adjustment shall conform to the proportional requirements of G. S. 160A-362. The Town Council shall appoint the Board of Adjustment members from the Town of Laurel Park. The Henderson County Board of Commissioners shall appoint the Board of Adjustment member(s) from the Town’s extraterritorial jurisdiction. The members appointed by the Town Council shall be residents of the Town of Laurel Park. The member(s) appointed by the Henderson County Board of Commissioners shall be residents of the area included in the Town of Laurel Park’s extraterritorial jurisdiction. If the Henderson County Board of Commissioners fails to make their appointment(s) within ninety (90) days after receiving a resolution from the Town Council requesting such appointment(s) be made, then the Town Council shall make the necessary appointment(s).

Said board shall consist of a total of seven (7) members, serving three (3) year terms. Terms shall be staggered to maintain continuity in the membership of the board. As terms expire, members may be re-appointed or new members appointed by the Town Council or Henderson County Board of Commissioners. Any mid-term vacancy in the membership shall be filled for the unexpired term. If change in population of the Town and/or the extraterritorial area requires that the proportional representation be altered to conform with G.S. 160A-362, this section shall be modified by the Town Council to reflect new total membership and quorum requirements as required. The Town Council and/or County Board of Commissioners shall make the requisite new appointments.

A quorum shall consist of five (5) members of the board. All members of the Board of Adjustment shall have equal rights, privileges, and duties regardless of whether the issues being considered and acted upon are in the corporate limits of the Town of Laurel Park or within its extraterritorial jurisdiction. Members shall serve without pay but may be reimbursed for any expenses authorized by the board and incurred while representing the board.
Section 1301. Jurisdiction and Decisions of the Zoning Board of Adjustment.

The Board of Adjustment shall hear and decide appeals and review any order, requirement, decision, or determination made by the Zoning Administrator. An appeal may be made by any person aggrieved or by an officer, department, board, or bureau of the Town. Appeals shall be made in accordance with this ordinance. The administrator to whom the appeal is made shall forthwith transmit to the board all the papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in furtherance of the action appealed, unless the administrator to whom the appeal is made certifies to the Board of Adjustment, after notice of appeal has been filed, that because of facts stated in the certificate a stay would, in the administrator’s opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by a restraining order that may be granted by the Board of Adjustment or by a court of record on application, on notice of the administrator from whom the appeal was made and on due cause shown. The Board of Adjustment shall fix a time for the hearing of the appeal, give due notice thereof to the parties, including adjoining property owners, and decide it within the prescribed time. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed, and shall make any order, requirement, decision, or determination that in its opinion ought to be made. To this end, the board shall have all the powers of the administrator from whom the appeal is taken.

The Board of Adjustment shall also be authorized to interpret the zoning map and pass on disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.

When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of the ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

A simple majority of the members of the board present shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of this ordinance or to decide in favor of the applicant in any matter upon which it is required to pass under any ordinance. The concurring vote of four-fifths of the members of the board present shall be necessary to grant a variance from the provisions of the ordinance. Every decision of the board shall be subject to review by the Superior Court by proceedings in the nature of certiorari.

The chairman of the board, any member temporarily acting as chairman, or the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the board.
Section 1302. Proceedings of the Zoning Board of Adjustment.
The Board of Adjustment shall elect a chairman, vice chairman, and secretary from its members who shall serve for one (1) year or until reelected or until their successors are elected. The board shall adopt rules and by-laws in accordance with the provisions of this ordinance and of Article 19, Chapter 160A, of the General Statutes of North Carolina. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine.

Section 1303. Powers and Duties of the Zoning Board of Adjustment.

The board shall have the following powers and duties:

1303.1 Administrative Review.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this ordinance and to employ counsel as required in the fulfillment of their duties and as outlined by the Town Council.

1303.2 Variances.

When unnecessary hardships would result from carrying out the strict letter of the zoning ordinance, the 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.

(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.
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.

Section 1304. Appeals and Applications.

1304.1 Types of Appeals and Applications.

(1) Appeals. The board shall hear and decide all appeals from any order, requirement, decision, or determination made by the Zoning Administrator. In deciding appeals, it may hear both appeals based upon an allegedly improper or erroneous interpretation of the ordinance and appeals of boundary interpretations.

(2) Applications. All applications for variances shall be submitted to the Zoning Administrator who shall refer the application to the board as prescribed in this ordinance.

(3) Standing. Required in accordance with G. S. 160A-393 (d).

1304.2 Procedure for Filing Appeals and Applications.

No appeal shall be heard by the board unless notice thereof is filed within thirty (30) days after the interested party or parties receive the decision or determination by the Zoning Administrator. Both appeals and applications shall be filed with the Zoning Administrator who shall act as clerk for the board. All appeals and applications shall be made upon the form specified for that purpose, and all information required on the form shall be complete before an appeal or application shall be considered as having been filed. Once appeals and applications have been filed with the Zoning Administrator, the Zoning Administrator shall immediately notify the chairman of the board that such appeals or applications have been received.

1304.3 Hearings.

(1) Time. After receipt of a notice of an appeal or an application, the board chairman shall schedule a time for a hearing that shall be within thirty-six (36) days from the filing of such notice of appeal or application.

(2) Notice of Hearing. 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
ownes 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 unified development 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.

(3) Conduct of Hearing. Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows:

(a) The chairman, or such person as he shall direct, shall give a preliminary statement of the case;

(b) The applicant shall present the argument in support of his appeal or application;

(c) Persons opposed to granting the appeal or application shall present the argument against the application;

(d) Both sides will be permitted to present rebuttals to opposing testimony;

(e) The chairman shall summarize the evidence which has been presented, giving the parties opportunity to make objections or corrections.

Witnesses may be called and factual evidence may be submitted. In addition, the Board of Adjustment shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board of Adjustment may view the premises before arriving at a decision. All witnesses before the Board of Adjustment shall be placed under oath and the opposing party may cross-examine them.

(4) Rehearing. An application for a rehearing shall be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board of Adjustment to determine whether there has been a substantial change in the facts, evidence or conditions in the case. The application for rehearing shall be denied by the Board of Adjustment if from the record it finds that there has been no substantial change in facts, evidence, or conditions. If the Board of Adjustment finds that there has been a change, it shall thereupon treat the request in the same manner as any other appeal or application.
1304.4 Decisions.

(1) Time. A decision by the Board of Adjustment shall be made at the hearing or within thirty (30) days from the time of hearing.

(2) Form. Written notice of the decision of the Board of Adjustment shall be delivered by personal service delivery, electronic mail, or by first class mail. The decision in a case shall be given to the applicant or appellant as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property and to other persons who have made written request for such notice. The final decision of the Board of Adjustment shall be shown in the record of the case as entered in the minutes of the Board of Adjustment and signed by the secretary and chairman upon approval of the minutes by the Board of Adjustment. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board of Adjustment. The decision on an appeal may reverse or affirm, wholly or partly, or modify the decision or determination of the Zoning Administrator. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the application for the variance is based and which the Board of Adjustment finds to exist. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board of Adjustment in connection with the granting of a variance.

(3) Expiration of Permits. Unless otherwise specified, any order or decision of the Board of Adjustment in granting a variance shall expire if a building permit for such use is not obtained by the applicant within six (6) months from the date of the decision.

(4) Voting. The concurring vote of four-fifths of the board shall be necessary to grant a variance. A simple 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 the 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.

A member of any board exercising quasi-judicial functions pursuant to this Article 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. 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.

(5) Public Record of Decisions. The decisions of the Board of Adjustment, as filed in its minutes, shall be a public record in accordance with G. S 160A-388, and available for inspection at all reasonable times. Any party desiring a written copy of the Board of Adjustment's decision shall submit a written request for such written decision with the chairman or secretary of the Board of Adjustment at the time of the hearing. In addition, and at the applicant’s expense, approved variances shall be filed with the Henderson County Register of Deeds by the Clerk to the Board of Adjustment within one month from the date of approval.

(6) Penalties. If conditions and/or safeguards as imposed by the Board of Adjustment or the variance granted are violated in any manner, the Town of Laurel Park shall enforce penalties for the violation in accordance with Section 1207.

Section 1305. Appeals from the Zoning Board of Adjustment.

Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment, or any citizen, or any officer, official, department, or board of Laurel Park may, within thirty (30) days after the filing of the decision in the office of the Town Clerk, or after written copies of the decision are delivered to the aggrieved parties as stipulated above in Section 1304 and in G.S. 160A-388, but not thereafter, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the ground of illegality. Every decision of the board shall be subject to review by proceedings in the nature of certiorari.

Section 1306. Powers and Duties of the Town Council.

1306.1 Conditional Uses.

The Town Council has the responsibility to:

(1) Hear and decide upon only such conditional uses as the Town Council is specifically authorized to pass on under the terms of this ordinance and the provisions and procedures of Article XI and Sections 1306 and 1307.
(2) Decide such questions as are involved in determining whether a conditional use should be granted.

(3) Grant conditional uses with such conditions and safeguards as are appropriate under this ordinance.

(4) Deny conditional uses when not in harmony with the intent of this ordinance.

A conditional use may be granted by the Town Council only after making the following findings:

(1) That the Town Council is empowered under a specific section of this ordinance to grant the conditional use and that the granting of the conditional use will not adversely affect the public interest.

(2) That the Town Council has made written findings certifying compliance with all specific rules governing the individual conditional use.

(3) That the Town Council has made satisfactory provision and arrangements concerning the following wherever applicable:

   a) Ingress and egress to property and proposed structures with particular reference to automobile and pedestrian safety, convenience, traffic flow and control, and access in case of fire or catastrophe.

   b) Off-street parking and loading areas where required with particular attention to the items in (1) above, and to the economic, noise, glare, and odor effects of the conditional use on adjoining properties and generally in the district.

   c) Refuse and service areas, with particular reference to the items in 1 and 2 above.

   d) Utilities, with reference to location, availability, and compatibility.

   e) Screening and buffering, with reference to type, dimensions, and character.

   f) Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.

   g) Required yards and other open space.

   h) General compatibility with adjacent property and other property in the district.

(4) The Town Council shall request from the Laurel Park Planning Board a
review and recommendation of the conditional use relative to the following considerations:

a) Relation of the conditional use to applicable elements of the planning program.

b) Appearance of the conditional use relative to location, structure, and design.

Section 1307. Procedures for the Town Council to Hear and Decide Conditional Uses.

1307.1 Application.

A written application for a conditional use permit shall be submitted to the Zoning Administrator at least ten (10) days prior to the Planning Board’s scheduled meeting. The application shall indicate the section of the ordinance under which the conditional use is sought, and shall include all the required plans, maps, and documentation required by said section and the requirements of Section 1306. The Zoning Administrator shall determine whether all required documentation and information has been submitted.

1307.2 Planning Board Review.

Once the Zoning Administrator has determined that the application and all required information has been submitted, the conditional use shall be reviewed by the Planning Board for conformance with specific conditions given for the conditional use and the provisions of Section 1306. The Planning Board shall review and forward any recommendations to the Town Council as outlined in Article VII or Article XI.

1307.3 Public Notice and Hearing.

Before the Town Council takes any action on a conditional use, the Town Council shall hold a public hearing on the conditional use permit being considered. A notice of the public hearing shall be given once a week for two consecutive weeks in a local newspaper having general circulation in the area. The notice shall be published the first time not less than ten (10) days or more than twenty five (25) days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. The notice shall include the time, place, and date of the hearing and shall include a description of the property or the nature of the conditional use being sought. The applicant shall identify all adjacent property owners, whom the Zoning Administrator shall notify by mail of the conditional use application. The Town Council may establish and maintain a
fee schedule to recover costs of legal notices, posting the property, and notifying the adjacent property owners. The fee shall accompany the application for a conditional use permit.

1307.4 **Actions of the Town Council.**

If the Town Council shall find after the public hearing the use for which the conditional use permit is sought will not adversely affect the health and safety of the persons residing or working in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to the property or public improvements in the neighborhood, it shall issue a conditional use permit. In granting such a permit, the Town Council shall designate such conditions that shall assure the use will conform to the requirements of this ordinance.

If at any time after a conditional use permit has been issued for any conditional use the Town Council finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a conditional use permit, the permit shall be terminated immediately and the operation of such use discontinued.

If a conditional use permit is terminated for any reason, it may be reinstated upon application for a new permit.