1. **Amend Section 7-3-3 Membership; terms; vacancies in its entirety** [Note: Section 7-3-3(b)(1) is the only change] **and replaced with the following**

Sec. 7-3-3. Board of adjustment.

(a) *Powers and duties.* The board of adjustment for the City of Asheville shall have the following powers and duties, to be carried out in accordance with the terms of this chapter:

(1) To hear and decide applications for approval of variances from the terms of this chapter, in accordance with the procedures and standards set forth in section 7-6-1 of this chapter, except where this chapter places responsibility for hearing or considering such a variance with another body.

(2) To hear and decide appeals from any order, requirement, permit, decision, or determination issued or made by an administrative officer of the city in enforcing any provision of this chapter, in accordance with the procedures and standards set forth in section 7-6-2 of this chapter. (However, see section 7-12-2(q), Soil Erosion and Sedimentation Control, for special review procedures pertinent to appealing administrative decisions on erosion control plans and section 7-12-5, Stormwater Management, for special review procedures pertinent to appealing administrative decisions on stormwater management plans.)

(3) To serve as the city's housing code appeals board in accordance with the procedures and standards set forth in chapter 4 of the Code of Ordinances for the City of Asheville, or its successor.

(4) To hear and decide applications for approval of reasonable accommodations under federal law for handicapped or disabled persons proposing to live in a family care or group home, in accordance with the procedures and standards set forth in section 7-6-3 of this chapter.

(5) Such additional powers and duties as may be set forth elsewhere in this chapter and in other laws and regulations.

(b) *Membership; terms; vacancies.*

(1) The board of adjustment for the City of Asheville shall consist of five regular members and three ~~seven~~ alternate members. Four regular members and two ~~five~~ alternate members who are residents of the City of Asheville shall be appointed by the Asheville City Council. ~~Two~~ One regular member and one ~~two~~ alternate member who resides within one mile of the municipal limits shall be appointed by the Buncombe County Board of Commissioners, pursuant to N.C. Session Law 2013-30.

(2) All members shall serve three-year terms. All members shall serve a maximum of two terms.

(3) Officers of the board of adjustment shall be elected in accordance with the rules of procedure for the board of adjustment of the City of Asheville.

(4) Vacancies shall be filled by the Asheville City Council or the Buncombe County Board of Commissioners, as applicable, as they occur.

(c) *Meetings and voting.*

(1) Meetings and hearings of the board of adjustment for the City of Asheville shall be held at such times as are set by the board of adjustment.

(2) The concurring vote of four-fifths 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 regarding the provisions of this chapter. 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.

(d) *Rules and records.* The board of adjustment for the City of Asheville shall formulate and adopt the rules of procedure under which it will operate. The board of adjustment shall keep minutes of its proceedings showing the vote of each member on each question. Final disposition of appeals shall be by recorded order indicating the reasons of the board therefore, all of which shall be a public record.

(e) *Administering oaths and issuing subpoenas.* Pursuant to N.C.G.S. § 160D-406(f) and (g), the chairperson of the board, the acting chairperson, and the clerk to the board are authorized to administer oaths to witnesses appearing before the board in any matter. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor. The board, through the chair, or in the chair's absence anyone acting as chair, may also issue subpoenas and compel the production of evidence

2. **Amend Section 7-5-20 Notices and public hearings in its entirety** [Note: Section 7-5-20(b)(1) *Published notice* is the only change and 7-5-20(3) *Mailed Notice for quasi-judicial hearings*.] **and replace it with the following:**

Sec. 7-5-20. Notices and public hearings.

(a) *General notice requirements.* Each notice for public, legislative or quasi-judicial hearings required by this chapter shall identify: (1) the date, time and place of the hearing and (2) the nature and character of the proposed action. Where the action being taken concerns a particular property or properties, the notice shall also identify the location of the subject property. At any time the procedures set out in this chapter conflict with North Carolina General Statutes, the North Carolina General Statute procedures will control.

(b) *Notice procedure.* The following standards detail the notification procedure to be followed for public hearings required by this chapter unless otherwise set forth in this chapter. Failure to follow procedures set forth in this section may affect the validity of any action taken at a public hearing or public meeting.

(1) *Published notice.* Notice for hearings required by this chapter shall be published in a newspaper of general circulation once a week for two successive calendar weeks, with the first notice being published no later than ten days, nor more than 25 days, prior to the date on which the application is to be considered at a scheduled public hearing. Hearings held by the downtown commission shall be exempt from this notice requirement. Published notice shall not be required for quasi-judicial hearings, with the exception of hearings for special use permits.

(2) *Mailed notice for legislative hearings.* First class mailed notice for legislative hearings required by this chapter shall be provided to the person or entity whose 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 and owners of all properties located within 200

feet of the subject property as said owners are shown on the county tax listings. Such notice shall be mailed no later than ten days before the scheduled date of the hearing.

(3) *Mailed Notice for quasi-judicial hearings*. First class mailed notice for quasi-judicial hearings required by this chapter shall be provided to the person or entity whose 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, owners of all properties and parcels abutting the subject property as said owners are shown on the county tax listings and to the neighborhood association,if any, for the neighborhood in which the property is located. Such notice shall be mailed no later than ten days before the scheduled date of the hearing. For the purpose of this section properties are "abutting" even if separated by a street, railroad, or other transportation corridor.

(4) *Posted notice.* A sign (or signs) providing information concerning a legislative or quasi-judicial hearing required by this chapter will be posted on property which is the subject of said hearing no later than ten days before the date on which the hearing is to occur. The sign(s) shall be prominently placed on the subject parcel or on an adjacent public street or highway right-of-way. When multiple parcels are involved, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons.

(c) *Special notice requirements for telecommunications towers/structures.* For any public hearing for special use applications for telecommunication towers and concealed telecommunication support structures, as required by section 7-16-2 hereinafter, additional notice and public hearing requirements shall be provided as set forth in section 7-16-2 of this chapter.

3. **Amend Section 7-6-1 Variances in its entirety** [Note: Amendments to Sections 7-6-1 (c) Applications (3) and (5)-related to submission to Planning Director or designee instead of City Clerk are the only revisions] **and and replace with the following:**

Sec. 7-6-1. Variances.

(a) *Purpose.* The variance process administered by the board of adjustment is a quasi-judicial process intended to provide limited relief from the requirements of this chapter in those cases where strict application of a particular requirement will create an unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this chapter. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of

this chapter may impose on property owners in general or to increase the profitability of a proposed development. Rather, it is intended to provide relief where the requirements of this chapter render the land difficult to use because of some unique physical attribute of the property itself or some other factor unique to the property for which the variance is requested.

(b) *Provisions which may not be varied by the board of adjustment:*

(1) Other than those exceptions explicitly noted, in no event shall the board of adjustment grant a variance to any special requirement set out in article XVI for a use by right subject to special requirements, or grant a variance with respect to any special use permit or conditional zoning district ordinance adopted pursuant to this chapter.

(2) In no event shall the board of adjustment grant a variance which would modify, alter, change, or suspend the special requirements set forth in article XVI of this chapter, for a use by right, subject to special requirements, or a special use.

(3) In no event shall the board of adjustment grant a variance to the flood protection provisions within the designated floodway district which would result in any increase in the flood levels during the regulatory flood discharge.

(4) In no event shall the board of adjustment grant a variance which would permit the creation of a non- conforming lot except that the board may grant a variance permitting a reduction in lot area and dimensional standards, for an individual lot located in residential districts, provided that the variance does not permit a reduction of greater than ten percent in the required lot area and dimensional standards. Provided further, applications for such variance for additional lot(s) under common ownership or located within the same development shall not be submitted within three years of submittal of the previous application, regardless of the decision of the board on the previous application.

(5) In no event shall the board of adjustment grant a variance from the design guidelines established for local historic districts and historic landmarks.

(6) In no event shall the board of adjustment grant a variance which would conflict with the North Carolina State Building Code, the Asheville Fire Prevention Code, or any other state code unless otherwise authorized by laws and regulations.

(7) Reserved.

(8) In no event shall the board of adjustment grant a variance from the landscape and buffering standards set forth in section 7-11-1 of this chapter.

(c) *Applications.*

(1) An application for a variance may be filed only by the owner of the land affected by the variance or an agent specifically authorized in writing by the owner to file such application.

(2) Before filing the application, the applicant is strongly encouraged to meet with the planning and development director or the engineering director if proceeding under sections 7-5-12, 7-12-1 or 7-12-2 of this chapter to discuss the proposed variance and to become more familiar with the applicable requirements and approval procedures of the city.

(3) An application for a variance shall be filed with the online permit system, or the Planning Director or their designee ~~city clerk~~, if proceeding under Section 7-5-12, 7-12-1, or 7-12-2, on a form prescribed by the director, and containing such information and plans as required on the application form. The notice of appeal shall state the grounds for the appeal.

(4) The application shall be accompanied by a fee as set forth in the City of Asheville's Fees and Charges Manual.

(5) Once an application has been accepted as complete by the online permit system, or the Planning Director or their designee ~~city clerk~~, the planning and development director or the engineering director, if proceeding under Section 7-5-12, 7-12-1 or 7-12-2, the application will be scheduled for consideration at a public hearing by the board of adjustment; provided, however, all appeals and requests for variances

under Sections 7-5-12 and 7-12-1 of this chapter shall initially be heard by the specifications review committee.

(d) *Action by the board of adjustment.*

(1) Upon receiving the application materials, the board of adjustment shall hold a quasi-judicial hearing on a proposed variance. Notice of the hearing shall be provided in accordance with the provisions of section 7-5-20 of this chapter. The hearing shall be conducted in accordance with the rules of procedure of the board of adjustment and in accordance with the North Carolina General Statutes.

(2) In considering the application, the board of adjustment shall review the application materials, the staff recommendation, the general purpose and standards set forth in this article for the granting of variances, and all testimony and evidence received by the board of adjustment at the public hearing.

(3) After conducting the quasi-judicial hearing, the board of adjustment may:

a. Deny the application;

b. Conduct an additional hearing on the application; or

c. Grant the application. The concurring vote of four-fifths of the board of adjustment shall be necessary to grant a variance.

Any approval or denial of the request shall be accompanied by written findings that the variance meets or does not meet each of the standards set forth in subsection 7-6-1(e) below: except the standards for flood protection regulation variances are set forth in subsection 7-6-1(f). 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 secretary to the board.

(4) Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board of adjustment.

(e) *Standard of review.* When unnecessary hardships would result from carrying out the strict letter of this ordinance, the board of adjustment shall grant a variance upon a showing of all 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 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 the variance. Appropriate conditions may be imposed on any variance provided that the conditions are reasonably related to the variance.

(f) *Standard of review—flood regulations variances.* A variance from the standards set forth in section 7-12-1 of this chapter for flood protection may be granted permitting the erection of a structure with a lowest floor elevation, including basement, lower than the regulatory flood datum if all of the following are met:

(1) The property on which the structure is to be erected is an isolated lot of one-half acre or less, contiguous to and surrounded by existing structures constructed below such required first floor elevation;

(2) Good and sufficient cause exists for the granting of the variance;

(3) Failure to grant the variance would result in exceptional hardship to the applicant;

(4) The issuance of the variance would not result in increased flood heights, additional threats to public safety, or extraordinary public expense;

(5) The variance is the minimum necessary to afford relief; and

(6) The variance would not have the effect of nullifying the intent and purposes of this chapter.

(g) *Standard of review—sign variances.* See section 7-13-9 of this chapter.

(h) *Effect of approval or denial.*

(1) After the board of adjustment approves a variance, the applicant shall follow all appropriate procedures set forth in article V of this chapter for the receipt of permits, certificates, and other approvals necessary in order to proceed with development.

(2) An application for a rehearing may be made in accordance with the board of adjustment's rules of procedure.

(i) *Appeals.* Any appeal from the decision of the board of adjustment may be made by an aggrieved party and shall be made to the Superior Court of Buncombe County in the nature of certiorari. Any such petition to the Superior Court shall be filed no later than 30 days, as provided in N.C.G.S. §160D-1405, after a written copy of the decision of the board of adjustment is provided to the applicant.

4. **Amend Section 7-6-2 in its entirety** [Section 7-6-2 (d) (Filing of an Appeal) (1) and (3), filing with Planning Director of designee instead of City Clerk, are the only revisions] **and replace it with the following:**

Sec. 7-6-2. Appeals of administrative decisions.

(a) *Purpose.* Appeals to the board of adjustment from the decisions of the administrative staff of the city are permitted as provided for in this chapter.

(b) *Decisions which may be appealed.* Any order, requirement, decision, or determination made by an administrative officer or other boards or commissions charged with enforcing the provisions of this chapter may be appealed to the board of adjustment as set forth herein.

(c) *Persons who may file and appeal.* Any person who has standing under N.C.G.S. §160D-1402(c) or the city may appeal a decision to the board of adjustment. The notice of appeal shall state the grounds for appeal.

(d) *Filing of an appeal.*

(1) An application for appeal shall be filed with the online permit system, or the Planning Director or their designee city ~~clerk~~ who will then forward to the planning and development director on a form prescribed by the director and contain such information as required on the application form.

(2) The application shall be accompanied by a fee as set forth in the City of Asheville's Fees and Charges Manual.

(3) Any appeal of an administrative decision must be filed no later than 30 days from receipt of written notice of the decision. For purposes of this section, “filed” means received by the online permit system, or the Planning Director or their designee ~~city clerk.~~

(4) Once an application is accepted as complete by the planning and development director, the application will be scheduled for consideration at a public hearing by the board of adjustment.

(5) The filing of an appeal of a notice of violation or other enforcement order shall stay all proceedings in furtherance of the contested action unless the planning and development director, chief building inspector, or the official who made the decision, certifies to the board of adjustment that, in his/her opinion, by reason of facts stated in the certification, such a stay would cause imminent peril to life and property, or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In such case, proceedings shall not be stayed except by restraining order which may be granted by the Superior Court of Buncombe County on notice to the administrative official from whom the appeal is taken, with due cause shown. If enforcement proceedings are not stayed, the appellant may file with the official a

request for an expedited hearing of the appeal, and the 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 permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property. In these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(e) *Action by the board of adjustment.*

(1) Upon receiving the application materials, the board of adjustment shall hold a quasi-judicial hearing on the appeal. Notice of the hearing shall be provided in accordance with the provisions of section 7-5-20 of this chapter. The hearing shall be conducted in accordance with the rules of procedure of the board of adjustment and in accordance with the North Carolina General Statutes.

(2) Either at the hearing or a subsequent meeting, the board of adjustment shall adopt an order reversing, affirming, or modifying the contested action.

(3) The board of adjustment shall not reverse or modify the contested action unless it finds that the administrative officer erred in the application or interpretation of the terms of this chapter.

(4) The board of adjustment shall not reverse or modify the contested action unless there is a concurring majority vote of the board members.

(5) Nothing herein shall prevent the planning and development director or his/her designee from pursuing an informal resolution of the matter appealed from. In such cases, the planning and development director or his/her designee shall report such resolution to the board of adjustment.

(f) *Effect of reversal or modification.* In the event that the board of adjustment reverses or modifies the contested action, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance

with the reversal or modification granted by the board of adjustment unless an appeal is taken on the board's decision.

(g) *Appeal from board of adjustment.* Any such petition to the superior court shall be filed no later than 30 days after a written copy of the decision is provided to the applicant, as provided in N.C.G.S. §160D-1405(d).