



# **TOWN OF WAYNESVILLE**

## **Zoning Board of Adjustment**

9 South Main Street  
Waynesville, NC 28786  
Phone (828) 456-8647 • Fax (828) 452-1492  
[www.waynesvillenc.gov](http://www.waynesvillenc.gov)

Henry Kidder, Chair  
David Felmet, Vice-Chair  
Stephanie Strickland  
Joshua Morgan  
George Escaravage  
Edward Moore  
Alternates:  
Margaret Chandler  
John Baus  
Robert Herrmann

**Development Services**  
**Director**  
Elizabeth Teague

### **TOWN OF WAYNESVILLE**

### **ZONING BOARD OF ADJUSTMENT**

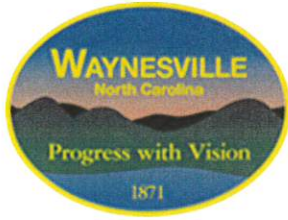
### **REGULAR MEETING**

**Town Hall – 9 South Main Street, Waynesville, NC 28786**  
**Tuesday, August 3, 2021, 5:30 PM**

#### **A. CALL TO ORDER/BUSINESS ITEMS:**

1. Welcome/Announcements
2. Election of Chair and Vice-Chair for FY 21-22.
3. Adoption of Minutes (as presented or amended) from April 6, 2021
4. Public hearing to consider an appeal of an administrative decision and a request for a variance at 62 Overbrook Drive, PIN 8615-79-2340 (Zoning District North Main-Neighborhood Center).

#### **B. ADJOURN**



# **TOWN OF WAYNESVILLE**

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### **REGULAR MEETING**

**Town Hall – 9 South Main Street, Waynesville, NC 28786**  
**Tuesday, April 6<sup>th</sup>, 2021, 5:30 PM**

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**THE WAYNESVILLE ZONING BOARD OF ADJUSTMENT** held a regular meeting on April 6<sup>th</sup>, 2021, 5:30 p.m. in the board room of the Town Hall, 9 South Main Street, Waynesville, NC.

Vice Chairman Stephanie Strickland called the meeting to order at 5:33pm

The following members were present:

Joshua Morgan  
Stephanie Strickland (Vice Chair)  
George Escaravage  
John Baus-Alternate  
Margaret Chandler Alternate  
Robert Herrmann-Alternate

The following members were absent:

Henry Kidder (Chairman)  
Edward Moore

The following Attorneys were present:

Anna Stearns, Attorney

The following staff members were present:

Elizabeth Teague, Director

Byron Hickox, Land Use Administrator

Esther Coulter, Administrative Assistant

Vice Chairman Stephanie Strickland welcomed everyone.

***A motion was made by board member George Escaravage and seconded by Robert Herrmann to approve the minutes from the August 4<sup>th</sup>, 2020 board meeting. The motion passed unanimously.***

Director Elizabeth Teague gave an update on the change of North Carolina General Statutes “160-D.” which was initiated by the State Bar Associated. Their goal is to bring all Municipalities to a similar set of definitions and to improve local ordinances. The recommendations in 160D were developed through work by the School of Government, professional planners and the NC State Bar Association. The State Bar wants to make sure that we update our regulations with the legal language based on past court cases and experiences.

One area that impacts all Boards and Commissions such as the Board of Adjustment are changes to what makes for a “conflict of interest.” Ms. Teague provided a copy of the conflict of interest rules that the Town will adopt pursuant to 160D. She also provided a copy of excerpts from Chapter 2 of the Land development Standards including the zoning district dimensional standards and the Table of Permitted Uses for Board reference in future decisions.

***With no further business, A motion was made by board member George Escaravage and seconded by board member Joshua Morgan to adjourn the meeting at 5:41pm. The motion passed unanimously.***

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Stephanie Strickland, Vice Chairman

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Esther Coulter, Administrative Assistant

## **Zoning Board of Adjustment Staff Report**

Subject: Appeal of Administrative Decision  
 Applicant: Tim Bowers  
 Meeting Date: August 3, 2021

### **Summary Information:**

Location: 62 Overbrook Drive – PIN 8615-79-2340  
 Property Owner: All About You From Head To Toe, Inc.  
 Acreage of site: 0.81 acres  
 Zoning District: North Main Street Neighborhood Center (NM-NC)  
 Existing Development: Multi-Tenant Commercial Building

### **Background:**

On July 6, 2021, the Development Services Department received a telephone inquiry from a realtor regarding the possibility of establishing a brewery at 62 Overbrook Drive. A Development Services staff member replied via telephone and was contacted later by another realtor requesting that the response be sent via email. The email (please see attachments) was sent the same day.

The email response stated that the property at 62 Overbrook Drive could not be used as a brewery.

A brewery falls under the definition of Light Manufacturing (LDS Section 17.3 – Use Type Definitions). The property in question is located within the North Main Street Neighborhood Center (NM-NC) District. Light Manufacturing is not a permitted use within this zoning district as indicated on the Table of Permitted Uses (LDS Section 2.5.3).

On July 8, 2021, Tim Bowers, a representative of the owner of the property in question, replied via email and questioned the staff decision. In his email, Mr. Bowers referenced a January 7, 2021 email from Development Services Director Elizabeth Teague addressing another inquiry about the property in question and the possibility of converting a portion of the building to residential use.

Ms. Teague responded to Mr. Bowers via email on July 8, 2021 and reiterated the original staff interpretation concerning the establishment of a brewery at 62 Overbrook Drive. Ms. Teague also indicated that Mr. Bowers could make formal application to appeal the staff interpretation to the Zoning Board of Adjustment and she attached the required application materials.

On July 16, 2021, the Development Services Department received an application from Mr. Bowers for an Appeal of an Administrative Decision to take this matter before the Zoning Board of Adjustment.

On the application form, Mr. Bowers indicated that he was requesting a Variance as well as an Appeal of an Administrative Decision. In staff's opinion, this particular situation does not meet the standards under which the Board could grant a variance.

The Zoning Board of Adjustment therefore has two questions to address as posed by the applicant: 1) is staff's interpretation of the ordinance (as provided in their written email response) a correct reading of the Town's regulations; and 2) is this project eligible for a variance.



**Items Entered as Evidence:**

1. Staff Report
2. Aerial Photograph of Subject Property
3. Zoning Map of Subject Property
4. Emails between town staff, realtors, and Mr. Bowers
5. Application for Appeal
6. Photographs of Property Posting Sign
7. Adjacent Landowner Notice
8. Adjacent Landowner Mailing List
9. Town of Waynesville Land Development Standards by reference.
10. Specific Definition of Light Manufacturing and Bars/Tavern– LDS Section 17.3
- \* 11. Specific Table of Permitted Uses – LDS Section 2.5.3      // x17
12. Supplemental Standards for Bars/Taverns
13. Specific criteria for appeals and variances.



[illegible]

ALL ABOUT YOU FROM HEAD TO TOE INC  
PO BOX 1332  
WAYNESVILLE, NC 28786-1332

**PIN:** 8615-79-2340

**Legal Ref:** 952/2363

Add Ref: CAB C/2855

CAB C/1386

## Site Information

NORTH MAIN COMMONS  
SHOPPING CENTER  
Commercial Use  
62 OVERBROOK DR

Heated Area: 6960

**Year Built:** 2018

**Total Acreage:** 0.81

**Township:** Town of Waynesville

## Site Value Information

**Land Value:** \$203,300

**Building Value:** \$600,000

**Building value.** \$600,000

**Market Value:** \$803,900

**Deferred Value:** \$0

**Assessed Value:** \$803,900

**Sale Price:** \$0

Scale 1, 1100: 00  
Scale Date: 01/01/2019

**Sale Date:** 6/5/2018

1 inch = 100 feet

July 28, 2021

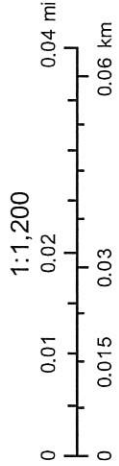
**Disclaimer:** The maps on this site are not surveys. They are prepared from the inventory of real property found within this jurisdiction and are compiled from recorded deeds, plats and other public records and data. Users of this site are hereby notified that the aforementioned public primary information sources should be consulted for verification of any information contained on these maps. Haywood county and the website provider assume no legal responsibility for the information contained on these maps.



Haywood County



July 28, 2021







## Report For

ALL ABOUT YOU FROM HEAD TO TOE INC  
PO BOX 1332  
WAYNESVILLE, NC 28786-1332

**Account Information**  
PIN: 8615-79-2340  
Legal Ref: 952/2363

**Add Ref:** CAB C/2855  
CAB C/1386

**Site Information**  
NORTH MAIN COMMONS  
SHOPPING CENTER  
Commercial Use  
62 OVERBROOK DR

**Heated Area:** 6960  
**Year Built:** 2018  
**Total Acreage:** 0.81  
**Township:** Town of Waynesville

### Site Value Information

**Land Value:**  
**Building Value:**  
**Market Value:**  
**Deferred Value:**  
**Assessed Value:**  
**Sale Price:**  
**Sale Date:** 6/5/2018



1 inch = 100 feet  
July 28, 2021

Disclaimer: The maps on this site are not surveys. They are prepared from the inventory of real property found within this jurisdiction and are compiled from recorded deeds, plats and other public records and data. Users of this site are hereby notified that the aforementioned public primary information sources should be consulted for verification of any information contained on these maps. Haywood county and the website provider assume no legal responsibility for the information contained on these maps.



**Byron Hickox**

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**From:** 'Tim Bowers' <timbowers@comcast.net>  
**Sent:** Friday, July 16, 2021 8:35 AM  
**To:** Elizabeth Teague; Billy Case  
**Cc:** Olga Grooman; Byron Hickox  
**Subject:** RE: 62 Overbrook St., Waynesville  
**Attachments:** Overbrook.Falls.Beeks.Brooks.variance.request.071321.pdf

Good morning Elizabeth,

Please find the attached "Quasi-Judicial Proceeding" form and support documentation.

Let me know if the "Zoning Board of Adjustments" needs additional information in advance of the August hearing.

Our perspective tenant has requested the opportunity has requested the opportunity to attend this hearing via "Zoom Meeting" as they are based in Florida. Please let me know if that can be arranged.

Thank you,  
Tim Bowers  
(865) 454-0111

On 07/08/2021 3:06 PM Elizabeth Teague <eteague@waynesvillenc.gov> wrote:

Hi Tim,

Please consider this email my written zoning interpretation regarding your inquiry. I'm providing it because you seem confused by Planner Olga Grooman's correct analysis.

Attached is the zoning for the property at 62 Overbrook. The Zoning District for this property is North Main Neighborhood Center (NM-NC). The property across the street is East Waynesville-Urban Residential (EW-UR).

Both Districts are considered residential districts with specified types of commercial. The term mixed-use means that they accommodate both residential and commercial uses. Please refer to the Land Development Standards Chapter 2 for a complete description of the intent of each zoning designation and use categories. This will help you understand the degree and intensity to which each district is "mixed-use" and the specific types of residential and commercial uses are allowed within each.

Our interpretation of the NM-NC district allowances is (See Land Development Standards Section 2.5.3 – the Permitted Uses Table, and LDS Section 3.5.3 Supplemental Standards, and LDS Chapter 17 Definitions):

\*A restaurant such as Los Amigos is permitted.

\*A stand-alone brewery which produces beer as a commodity is light manufacturing and is not permitted in this district.

\*A Bar/Tavern is permitted with the supplemental standards requiring a 300' distance between the facility and a residential district.

\*Because of your facility's proximity to the EW-UR District and nearby residences, a bar at this location does not meet the above supplemental standard and so would not be allowed.

The NM-NC District is not the same as "Business District" or "Regional Center Mixed Use" under LDS zoning. The 3 Town business districts are the Central Business District (CBD), Hazelwood Business District (HBD) and South Main Business District (SMBD). The Regional Mixed-Use District or Regional Center Districts are the Russ Avenue Regional Center (RA-RC), Hyatt Creek Regional Center (HC-RC) and the Dellwood-Junaluska Regional Center (DJ-RC).

If the potential users of this space want to integrate a brewing and serving component as a subsidiary activity to a full scale restaurant, that could be allowed under the Land development standards IF approved by the State ABC, and IF it can comply with all other Town standards – including building codes and parking. Be aware that the Land Development Standards require 1 parking space for 8 seats in the restaurant. We would therefore require a restaurant floor plan and an up-to-date site plan that shows compliance for salon, and the existing and the proposed restaurant.

My previous email that you sent to Olga does confirm that you can have a mix of uses within this building. It does not in any way infer or communicate that uses within the building are exempt from the Permitted Uses Table of allowable uses within designated zoning districts. Rather, that specific email is in response to your question regarding the ability of converting that unit to residential units which is allowed by the permitted uses table.

If you would like to appeal this decisions of planning and zoning staff, your next step is to request an appeal of an administrative decision to the Zoning Board of Adjustment in writing. The Board of Adjustment meets the first Tuesday of every month and requests for appeals must be submitted in writing, at which time we schedule the hearing with consideration for public notification requirements.

I have attached the cover sheet to use in your written description of what you are specifically appealing in our decision and interpretation of the Land Development Standards. Please use this email for

reference as to the administrative decision you have been provided and those sections of the ordinance you wish to appeal.

ET



**Elizabeth Teague, AICP, CTP, CFM** | Development Services Director

Town of Waynesville, NC

9 S. Main Street | PO Box 100 | Waynesville, NC 28786

(o) 828.456.2004 | (f) 828.452.1492

[eteague@waynesvillenc.gov](mailto:eteague@waynesvillenc.gov) | [www.waynesvillenc.gov](http://www.waynesvillenc.gov)



Pursuant to North Carolina General Statutes Chapter 132 (Public Records), all electronic correspondence to and from this address may be considered public record, and as such, subject to request and review by third parties at any time.

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**From:** Tim Bowers <[timbowers@comcast.net](mailto:timbowers@comcast.net)>  
**Sent:** Thursday, July 8, 2021 8:55 AM  
**To:** Olga Grooman <[ogrooman@waynesvillenc.gov](mailto:ogrooman@waynesvillenc.gov)>  
**Subject:** Fwd: 62 Overbrook St., Waynesville

Olga,

I don't believe we have met. My wife and I own the commerical property located at 62-Overbrook Dr which is the subject of your email below sent to the realtors representing the brewery interested in leasing part of our property.



Before I take my objection to your ruling to the "Board of Alderman", I request your respond to the following question:

The ordinance clearly states that the 300' property line requirement "does not" apply to properties located in areas zoned "Business District" or "Mixed Use".

I have an email I will forward to you that I received back in January of this year from Elizabeth Teague confirming our building was in a "Mixed Use" zoning location. In addition, I was personally present during a "Board of Alderman" meeting that reclassified the housing row across from our building on "Broadview" from residential to "Business" to accommodate "Elements Hair Salon" that converted a house into a place of business.

Thank you in advance for a quick response to this question.

Thank you,

Tim Bowers

(865) 454-0111

----- Original Message -----

From: Billy Case <[billycase@beverly-hanks.com](mailto:billycase@beverly-hanks.com)>

To: Tim Bowers <[timbowers@comcast.net](mailto:timbowers@comcast.net)>

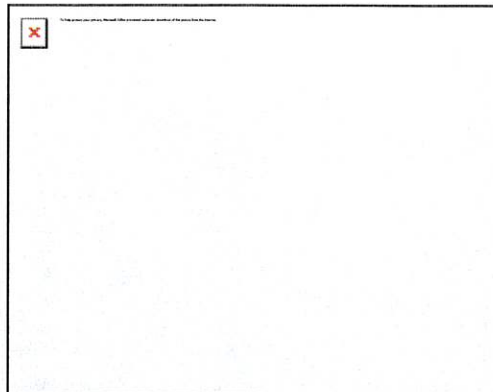
Date: 07/08/2021 8:27 AM

Subject: Fwd: 62 Overbrook St., Waynesville

FYI

**BILLY CASE, CCIM**

RESIDENTIAL AND COMMERCIAL BROKER ASSOCIATE

**BEVERLY-HANKS & ASSOCIATES REALTORS®**  
**WAYNESVILLE****EMAIL: [BILLYCASE@BEVERLY-HANKS.COM](mailto:BILLYCASE@BEVERLY-HANKS.COM)****CELL: (828) 508-4527 OFFICE: (828) 452-5809****[VIEW MY LISTINGS](#) [VIEW MY PROFILE](#)****Agency Disclosure**

In North Carolina, IT IS THE LAW! EVERY real estate licensee must provide Agency before providing property information. These are consumer protection laws that require us to provide you with a Working with Real Estate Agents brochure, review it with you, and determine how you would like to be represented by your agent in your real estate transaction. You may also click on the following link: <http://www.beverly-hanks.com/our-services/buyer-services/working-with-agent> - Ask me more!

----- Forwarded message -----

From: **Sara Sherman** <[sarashermanncrealtor@gmail.com](mailto:sarashermanncrealtor@gmail.com)>

Date: Thu, Jul 8, 2021 at 8:24 AM

Subject: Fwd: 62 Overbrook St., Waynesville

To: Billy Case <[billycase@beverly-hanks.com](mailto:billycase@beverly-hanks.com)>

----- Forwarded message -----

From: **Olga Grooman** <[ogrooman@waynesvillenc.gov](mailto:ogrooman@waynesvillenc.gov)>

Date: Tue, Jul 6, 2021 at 10:36 AM

Subject: 62 Overbrook St., Waynesville

To: [sarashermanncrealtor@gmail.com](mailto:sarashermanncrealtor@gmail.com) <[sarashermanncrealtor@gmail.com](mailto:sarashermanncrealtor@gmail.com)>CC: Byron Hickox <[bhickox@waynesvillenc.gov](mailto:bhickox@waynesvillenc.gov)>, Elizabeth Teague <[eteague@waynesvillenc.gov](mailto:eteague@waynesvillenc.gov)>

Good morning, Sara,

[62 Overbrook Street](#) is located in our North Main Street Neighborhood Center Commercial District (NM-NC).

The “brewery” that makes its own brews would fall under Manufacturing, Light, per our ordinance. For definitions, please refer to Section 17.3 of our Land Development Standards:

[https://library.municode.com/nc/waynesville/codes/code\\_of\\_ordinances?nodeId=PTIIC OOR APXALADEST CH17DE 17.3DEUSTY](https://library.municode.com/nc/waynesville/codes/code_of_ordinances?nodeId=PTIIC OOR APXALADEST CH17DE 17.3DEUSTY)

This use is not allowed in your district per our Table of Permitted Uses. Please refer to section 2.5.3 of our Land Development Standards:

[https://library.municode.com/nc/waynesville/codes/code\\_of\\_ordinances?nodeId=PTIIC OOR APXALADEST CH2DIPR 2.5USCAINUS](https://library.municode.com/nc/waynesville/codes/code_of_ordinances?nodeId=PTIIC OOR APXALADEST CH2DIPR 2.5USCAINUS)

If the brewery does not make its own brews on site, then it would be classified as a Bar/Tavern. That use would be subject to additional standards of Chapter 3 for your district, as stated in our Table of Permitted Uses.

These standards are: **3.5.3 Bar/Tavern/Night Club**. No such facility shall be located within 300 feet of the property line of any lot containing a church or school or any residential district. These standards shall not apply for such uses located in Business Districts (BD) or Regional Mixed-Use Districts (RMX).

Your proposed property is right across East Waynesville Urban Residential District, with fewer than 40 ft distance, and therefore, it would not meet the requirement.

Let me know if you have any questions.

Thank you.

**Olga Grooman | Planner, MPA**

**Town of Waynesville, NC**

**[9 S. Main Street, Suite 110 | Waynesville, NC 28786](#)**

**[Office: \(828\) 356-1172 | Fax: \(828\) 452-1492](#)**

**[ogrooman@waynesvillenc.gov](mailto:ogrooman@waynesvillenc.gov) | [www.waynesvillenc.gov](http://www.waynesvillenc.gov)**



**TOWN OF WAYNESVILLE**  
**Development Services Department**

PO Box 100  
 9 South Main Street, Suite 110  
 Waynesville, NC 28786  
 Phone (828) 456-8647 • Fax (828) 452-1492

**Application Cover Sheet For Quasi-Judicial Proceedings**

*This form must be accompanied by all information required pursuant to the Land Development Standards Chapter 15. All drawings and site plans to be considered shall be to scale and sealed by a qualified design professional. Hearing will not be scheduled until application materials are deemed complete by the Administrator.*

**Project Name:** "Beeks & Brooks Brewing Company"

**Property Location:** 62 Overbrook St **PIN:** 8615-79-2340

**Property Owner(s):** Tim & Jackie Bowers

**Owner Mailing Address:** 350 Inverness Dr, Waynesville, NC 28785 **Telephone:** (865) 454-0111

**Name of Applicant (if different from Owner)** \_\_\_\_\_  
*If applicant is different from owner, than authorization form must accompany this application.*

**Applicant Address:** 350 Inverness Dr, Waynesville, NC 28785

**Email:** timbowers@comcast.net **Telephone:** (865) 454-0111

**Type of Permit/Process Type:**

\_\_\_\_\_ **Site Plan/Design Review (Major)** *Planning Board*

\_\_\_\_\_ **Special Use Permit** *Planning Board*

\_\_\_\_\_ **Certificate of Appropriateness (Major)** *HPC*

**X** **Appeal of an Administrative Decision** *ZBA*

**X** **Variance** *ZBA*

**Office Use Only:**

**Date Application Received:** \_\_\_\_\_

**Date of Scheduled Hearing:** \_\_\_\_\_

**Fee:** \_\_\_\_\_



# APPEAL OF ADMINISTRATIVE DECISION

(Reference attached email dated 7/8/21 from “Development Service Director”, Elizabeth Teague) – (Attachment A)

**Bases for appeal:** Incorrect designation by the “TOW Development Service Department” of a micro-brewery as a “light manufacturing” business in lieu of a commercial / retail business.

“Town of Waynesville” (TOW) ordinance and NC State Law supporting the classification of “micro-breweries” as a commercial / retail business in lieu of “light manufacturing” business:

- 1) Micro-brewers are specifically addressed in TOW ordinance Section 2.5.3 “Table of Permitted Uses” under “**COMMERCIAL**” (not “**light manufacturing**”), “Bar/Tavern/Nightclub. (NOTE: Section 17.3 under “Definitions” specifically includes a “microbrewery” under the classification of “Bar/Tavern/Nightclub”
- 2) State Law, Senate Bill 290 specifically recognizes a microbrewery as a “retail” business. Summary of Senate Bill 290 by attorney Christian Staples of Shumaker Firm, Charlotte NC:

## "Summary of Recent Changes to the North Carolina Alcoholic Beverage Laws"

Thus far 2019 has brought about truly monumental changes to many of our state’s alcoholic beverages laws, most notably those pertaining to breweries and distilleries. This article summarizes those changes.

I authored a recent Client Alert regarding the *Craft Freedom* lawsuit and the subsequent legislative effort to increase the brewery self-distribution cap. Since that publication, the law formally known as the *Craft Beer Distribution & Modernization Act* passed, allowing North Carolina breweries to self-distribute up to 50,000 barrels so long as their total annual production does not exceed 100,000 barrels. In essence, this law creates a new classification of mid-sized independent breweries (along with small breweries producing less than 25,000 barrels and large breweries producing more than 100,000 barrels) to accommodate the growing production of independently owned craft breweries. It is important to note, however, that these barrelage limits are cumulative across all of a brewery’s production facilities and also include affiliated production facilities operating under a different name. Despite the aforementioned changes, the new law retains the provision of the Beer Franchise Law enabling a brewery producing less than 25,000 barrels per year (i.e., a small brewery) to terminate a distribution

agreement without good cause. The new law does not extend this termination right to mid-size or large breweries and retains the traditional requirement of good cause for terminating a distribution agreement for all breweries producing 25,000 barrels or more. Breweries must therefore closely monitor their annual production and clearly understand the laws that apply at varying levels of production.

On June 26, 2019, the General Assembly passed Session Law 2019-52 (House Bill 389) which authorizes public colleges and universities to obtain ABC permits authorizing the sale of beer and wine (but not mixed beverages) at stadiums, athletic facilities, and arenas located on school property, upon the affirmative vote of the Board of Trustees and approval by the ABC Commission. Some private colleges and universities (such as Wake Forest University, among others) had already been doing this, so the new law levels the playing field for public colleges and universities. However, the new law does not extend to community colleges. This is a welcome change for fans of collegiate athletics.

Even more recently, on July 29, 2019, Governor Cooper signed Senate Bill 290, now known as Session Law 2019-182, which greatly advances the laws for distilleries (and to a lesser extent, breweries) in North Carolina.

**First, the new law enables distilleries to obtain ABC “retail” permits authorizing the on-premise sale of beer, wine, and mixed beverages,** thereby enabling distilleries to operate affiliated retail premises like our state’s breweries and wineries have traditionally done. The new law also eliminates the restriction under prior law that limited consumers to purchasing five (5) bottles of spirituous liquor from a distillery within a twelve (12) month period. Now, a consumer who tours a distillery may purchase directly from the distillery up to eight liters (270 ounces) of spirituous liquor without a permit. Additionally, distilleries will now be permitted to offer tastings of spirituous liquor at ABC Stores, trade shows, conventions, festivals, fundraisers, and similar events. However, these tastings are limited to no more than .25 ounces per sample and cumulatively shall not exceed one ounce, per day (.5 ounces in ABC Stores), per consumer. The new law also authorizes malt beverage tastings at Farmer’s Markets, which was not authorized under prior law.

Traditional retail establishments will also benefit under this new law through the ability to sell “private label” branded malt beverage products. Historically, wineries could sell private label branded products to retailers, but breweries



could not, so the new law levels the playing field in this respect. Under the new law, a retail permit holder can determine whether to exclusively sell the private brand products at its retail location or, to allow other retailers to purchase and sell the products as well. This is sure to be a valuable marketing opportunity for retail permittees like restaurants, grocery stores, and bottle shops looking to offer a private label brand to improve customer recognition and increase sales.

Session Law 2019-182 also creates a new “Common Area Entertainment Permit” for multitenant establishments where at least two (2) tenants hold ABC retail permits and are connected by a common area. This will allow consumers to exit the premises of an ABC permitted retailer with an “open container” and to consume the alcoholic beverage in a designated common area within the center or development, subject to certain conditions. Excluded from this new law, however, are traditional shopping malls where 50 percent or more of the common areas are enclosed and air conditioned. Nonetheless, this will be an added benefit to certain food halls, markets, and other similar developments which have been increasing in popularity.

**Next, of special interest to breweries operating taprooms and which do not prepare food on site, the new law exempts those establishments from certain health/sanitation code regulations which, in effect, authorize breweries to allow dogs in taprooms.** This is essentially a return to the common practice of most breweries several years ago, before the health regulations were strictly enforced. In addition, the new law authorizes the sale of alcohol at bingo games.

There are many other technical provisions embedded in Senate Bill 290 that will impact the state’s alcoholic beverage industry, such as the provisions authorizing the transfer of malt beverages up to four times per calendar year between retail permittees under common ownership or control located within the same territory. Wineries could do this under prior law, and now the protection is extended to malt beverages. In practice, this means that a retail or grocery store chain may transfer a specific brand of malt beverages from one location to another within the same distribution territory where the brand is selling more successfully. The new law also clarifies that patrons may purchase up to two (2) drinks (malt beverage or wine only) at one time to a single customer. However, this does not extend to mixed beverages or to any alcoholic beverages offered for sale at stadiums, athletic facilities, or arenas of public colleges or universities.



**"Beeks & Brooks Brewing Company" permit classification:**

"Beeks & Brooks Brewing Company" is classified as a "Nano Brewery" which means they will produce less than 1000-barrels of beer a year. Proposed facility will include a tasting and tap room in addition to the brewing area. They will not be producing large scale batches for distribution as a commodity.

Per their "Authorization of Brewery Permit", a permit classification of "commercial", not "manufacturing or industrial" will be issued. See "Attachment B"

## **Variance Request**

Request for variance from the 300' minimum property line ordinance: TOW ordinance Section 3.5.3

Now that we have established that both local ordinances and state law recognize "microbreweries" as a "commercial / retail" business in lieu of a "light manufacturing" business, we request a property line separation variance based on the following.

TOW ordinance states a 300' minimum property line "is not" required for "Regional Mixed Use" (RMX) districts. The "North Main Neighbor Center" (NM-NC) where our commercial building is located and the properties directly across the street (Broadview) zoned as "East Waynesville - Urban Residential" (EW-UR) are both zoned "Mixed Use" and contain numerous types of commercial / retail businesses as well as residential homes.

The TOW and the State ABC has already permitted a business to operate in "Suite A" of our building allowing the sale of bottled beer as well as hard liquor. This establishment does offer full restaurant services. However, under State ABC guidelines and NC Senate Bill 290, "microbreweries" are not required to offer "in-house prepared food" of any type.

### **"Regional Mixed Use" vs "Mixed Use"**

The term "Regional Mixed Use" (RMX) that is referenced in Section 3.5.3 of TOW ordinance which exempts microbreweries from a 300' property line separation requirement never actually appears in Section 2.3 of the ordinance which defines zones by "Purpose & Intent". In other words, (RMX) does not exist in Section 2.3.

What does exist in Section 2.3 is the allowance of "Mixed Use" commercial / retail businesses along with residential housing for the Regional Center, Russ Ave Center as well as the North Main Common Area.

It appears that the terminology of "Regional Mixed Use" and "Mixed Use" as reflected in TOW ordinances and its historical application across "all" zoning districts has little to no relative difference. It would seem reasonable in this case for the existing 300' exception allowed for "Regional Mixed Use" zoning districts be also applied to adjacent zoning districts that are already zoned "Mixed Use". The fact that a commercial / retail alcohol component has already been approved and exist with less than 300' separation within the "NM-NC" and "EW-ER" zoning districts adds to the validity of this variance request.

It is our position that this variance request is reasonable and in harmony with the existing commercial / retail businesses that currently exist in the "NM-NC" or "EW-ER" zoning districts.

Thank you for consideration of this zoning variance request.

Tim & Jackie Bowers

## "Attachment A"

----- Original Message -----

From: Elizabeth Teague <eteague@waynesvillenc.gov>

To: 'Billy Case' <billycase@beverly-hanks.com>, 'Tim Bowers' <timbowers@comcast.net>

Cc: Olga Grooman <ogrooman@waynesvillenc.gov>, Byron Hickox <bhickox@waynesvillenc.gov>

Date: 07/08/2021 3:06 PM

Subject: RE: 62 Overbrook St., Waynesville

Hi Tim,

Please consider this email my written zoning interpretation regarding your inquiry. I'm providing it because you seem confused by Planner Olga Grooman's correct analysis.

Attached is the zoning for the property at 62 Overbrook. The Zoning District for this property is North Main Neighborhood Center (NM-NC). The property across the street is East Waynesville-Urban Residential (EW-UR).

Both Districts are considered residential districts with specified types of commercial. The term mixed-use means that they accommodate both residential and commercial uses. Please refer to the Land Development Standards Chapter 2 for a complete description of the intent of each zoning designation and use categories. This will help you understand the degree and intensity to which each district is "mixed-use", and the specific types of residential and commercial uses are allowed within each.

Our interpretation of the NM-NC district allowances is (See Land Development Standards Section 2.5.3 – the Permitted Uses Table, and LDS Section 3.5.3 Supplemental Standards, and LDS Chapter 17 Definitions):

\*A restaurant such as Los Amigos is permitted.

\*A stand-alone brewery which produces beer as a commodity is **light manufacturing** and is not permitted in this district.

\*A Bar/Tavern is permitted with the supplemental standards requiring a 300' distance between the facility and a residential district.

\*Because of your facility's proximity to the EW-UR District and nearby residences, a bar at this location does not meet the above supplemental standard and so would not be allowed.

The NM-NC District is not the same as "Business District" or "Regional Center Mixed Use" under LDS zoning. The 3 Town business districts are the Central Business District (CBD), Hazelwood Business District (HBD) and South Main Business District (SMBD). The Regional Mixed-Use District or Regional Center Districts are the Russ Avenue Regional Center (RA-RC), Hyatt Creek Regional Center (HC-RC) and the Dellwood-Junaluska Regional Center (DJ-RC).

If the potential users of this space want to integrate a brewing and serving component as a subsidiary activity to a full-scale restaurant, that could be allowed under the Land development standards IF approved by the State ABC, and IF it can comply with all other Town standards – including building codes and parking. Be aware that the Land Development Standards require 1 parking space for 8 seats in the restaurant. We would therefore require a restaurant floor plan and an up-to-date site plan that shows compliance for salon, and the existing and the proposed restaurant.

My previous email that you sent to Olga does confirm that you can have a mix of uses within this building. It does not in any way infer or communicate that uses within the building are exempt from the Permitted Uses Table of allowable uses within designated zoning districts. Rather, that specific email is in response to your question regarding the ability of converting that unit to residential units which is allowed by the permitted uses table.

If you would like to appeal this decisions of planning and zoning staff, your next step is to request an appeal of an administrative decision to the Zoning Board of Adjustment in writing. The Board of Adjustment meets the first Tuesday of every month and requests for appeals must be submitted in writing, at which time we schedule the hearing with consideration for public notification requirements.

I have attached the cover sheet to use in your written description of what you are specifically appealing in our decision and interpretation of the Land Development Standards. Please use this email for reference as to the administrative decision you have been provided and those sections of the ordinance you wish to appeal.

ET

**Elizabeth Teague, AICP, CTP, CFM** | Development Services Director

Town of Waynesville, NC

9 S. Main Street | PO Box 100 | Waynesville, NC 28786



**§ 18B-1104. Authorization of brewery permit.**

- (a) Authorized Acts. – **The holder of a brewery permit may:**
- (1) Manufacture malt beverages.
  - (2) Purchase malt, hops and other ingredients used in the manufacture of malt beverages.
  - (3) Sell, deliver and ship malt beverages in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that malt beverages may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State. However, nothing in this subdivision shall prohibit the holder of a brewery permit from selling malt beverages to a nonresident wholesaler, nonresident malt beverage vendor, bottler, or other similar party for resale in this State if the malt beverages are shipped from the brewery to wholesalers licensed under this Chapter.
  - (4) Receive malt beverages manufactured by the permittee in some other state for transshipment to (i) dealers in other states or (ii) wholesalers licensed under this Chapter as authorized by the ABC laws.
  - (5) Furnish or sell marketable malt beverage products, or packages which do not conform to the manufacturer's marketing standards, if State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State.
  - (6) Give its products to customers, visitors, and employees for consumption on its premises. Nothing in this subdivision shall be construed as excluding customers and visitors at the brewery as part of a paid or complimentary tour of the brewery.
  - (6a) Receive, in closed containers, and sell at the brewery, malt beverages produced inside or outside North Carolina under contract with a contract brewery. The contract brewery that manufactures the malt beverages shall be responsible for all aspects associated with manufacturing the product, subject to the rules of the Commission and the Department of Revenue. The brewery, not the contract brewery, shall be responsible for registering the contracted product with the Commission, submitting the appropriate reports regarding the malt beverages, and remitting the appropriate taxes if required by those rules. The contract malt beverages may be sold also at affiliated retail outlets of the brewery physically located on or adjacent to the brewery. Any malt beverages received from a contract brewery under this subdivision shall be made available for sale by the brewery to wholesalers for distribution to retailers, without discrimination, in the same manner as if the malt beverages were being imported by the brewery. Contract brewing is authorized between affiliated breweries, but shall not be used as a means to allocate production quantities between affiliated breweries to obtain a malt beverage wholesaler permit pursuant to subdivision (8) of this subsection where either brewery would not otherwise qualify for a permit, and the Commission shall have no authority to grant an exemption to this requirement pursuant to G.S. 18B-1116(b).
  - (7) In an area where the sale of any type of alcoholic beverage is authorized by law, and upon receiving the appropriate permit under G.S. 18B-1001, sell at the brewery, **and any additional retail location** authorized under subdivision (8) of this subsection, any or all of the following:
    - a. The brewery's malt beverages that have been approved by the Commission for sale in North Carolina.

- b. Malt beverages manufactured by the permittee in some other state that have been approved by the Commission for sale in North Carolina.
  - c. Any other alcoholic beverages approved by the Commission for sale in North Carolina, if sale of the alcoholic beverage is otherwise authorized in that area.
- (7a) Repealed by Session Laws 2019-182, s. 21(a), effective October 1, 2019.
- (7b) Regardless of the results of any local malt beverage election, sell the malt beverages owned by the brewery at the brewery for on- or off-premise consumption upon obtaining the appropriate permit under G.S. 18B-1001.**
- (8) Obtain a malt beverage wholesaler permit to sell, deliver, and ship at wholesale up to 50,000 barrels of malt beverages manufactured by the brewery per year to unaffiliated retail permittees. The authorization of this subdivision applies to a brewery that sells, to consumers at the brewery, to wholesalers, to retailers, and to exporters, fewer than 100,000 barrels of malt beverages produced by it per year. The barrelage limitations set forth in this subdivision apply regardless of the number or type of permits that may be issued to a brewery under this Chapter. A brewery not exceeding the sales quantity limitations in this subdivision may also sell the malt beverages manufactured by the brewery, and malt beverages produced under subdivision (6a) of this subsection, at not more than three other locations in the State, where the sale is legal, upon obtaining the appropriate permits under G.S. 18B-1001. A brewery operating any additional retail location pursuant to this subdivision under a different trade name than that used at the brewery shall also offer for sale at that location a reasonable selection of competitive malt beverage products. A sale at any additional retail location under this subdivision shall not be considered a wholesale sale for the purposes of Article 13 of this Chapter. Except as provided in G.S. 18B-1116(b), the Commission shall have no authority to grant an exemption to or otherwise allow a brewery permittee more than the three additional retail locations authorized by this subdivision. Malt beverages manufactured by a supplier permittee that owns five percent (5%) or more of a brewery permittee acting under the authority granted in this subdivision shall be included in determining whether the brewery permittee complies with the barrelage limitations set forth in this subdivision.

(b) Sales or Gifts. – A sale or gift under subdivision (5) or (6) of subsection (a) of this section shall not be considered a retail or wholesale sale under the ABC laws.

(c) Tax Compliance. – By October 1 of each year, the Commission shall confirm that the holder of a brewery permit is in compliance with G.S. 18B-900(a)(8). The provisions of G.S. 18B-900(f) apply to the confirmation required under this subsection, except that the Commission may suspend a person's brewery permit until the Commission receives notice from the Department of Revenue that the person is in compliance.

(d) Sales Report Upon Commission Request. – Within 60 days of a request by the Commission, a holder of a brewery permit who obtains a malt beverage wholesaler permit pursuant to subdivision (8) of subsection (a) of this section shall provide a sales report to the Commission. The report shall list separately all of the following for the 12-month period preceding the date of the request:

- (1) The number of barrels of malt beverages sold by the permit holder that were produced by the permit holder.
- (2) The quantity and dollar amount of malt beverages sold by the permit holder under subdivision (7) of subsection (a) of this section.



- (3) The quantity and dollar amount of malt beverages sold on-premises under subdivision (8) of subsection (a) of this section.
- (4) The quantity and dollar amount of malt beverages sold off-premises under subdivision (8) of subsection (a) of this section.
- (5) The quantity and dollar amount of malt beverages sold under G.S. 18B-1114.5.
- (6) The quantity and dollar amount of malt beverages destroyed, spoiled, or otherwise rendered unsalable.

The Commission shall not request more than one sales report from a brewery within a 12-month period. The Commission shall keep all information provided pursuant to this subsection confidential except as required by law or requested by the Department of Revenue. The information shall not be a public record under Chapter 132 of the General Statutes.

(e) Definition. – For purposes of this section, the term "barrels" is as defined in G.S. 81A-9. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1985, c. 596, s. 2; 1989, c. 800, s. 4; 1991 (Reg. Sess., 1992), c. 920, s. 9; 1993, c. 415, s. 20; 2003-430, s. 1; 2004-203, s. 29; 2011-107, s. 2; 2011-419, s. 1; 2015-98, s. 7; 2017-87, ss. 8, 12-16(a); 2019-18, s. 2; 2019-182, ss. 8(a), 21(a).)













# TOWN OF WAYNESVILLE

Development Services Department

PO Box 100

9 South Main Street

Waynesville, NC 28786

Phone (828) 456-8647 • Fax (828) 452-1492

[www.waynesvillenc.gov](http://www.waynesvillenc.gov)

July 16, 2021

## Notice of Public Hearing for an Appeal of an Administrative Decision and request for a Variance

### Town of Waynesville Zoning Board of Adjustment

The Town of Waynesville Zoning Board of Adjustment will hold a **public hearing on August 3, 2021, at 5:30 pm**, in the Town Hall Board Room, located at 9 South Main Street, Waynesville, NC, to consider an appeal of an administrative decision and a request for a variance. The applicant is requesting a permit to open a brewery at 62 Overbrook Drive, PIN 8615-79-2340 (Zoning District North Main-Neighborhood Center).

#### *Area of Proposed Appeal*



For more information contact the Development Services Department at: (828) 456-8647, email: [eteague@waynesvillenc.gov](mailto:eteague@waynesvillenc.gov), mail: 9 South Main Street, Suite 110, Waynesville, NC 28786.

Elizabeth Teague, AICP, CTP  
Development Services Director

FID	ALPHA	Owner_1	Owner_2
2196	8615-79-2068	DIXSON, DENNIS W	DIXSON, MILDRED L
3541	8615-79-0231	MCDONALD, LEISA H	MCDONALD, JAMES W
4178	8615-79-3494	MASSIE, WALLACE B	
6082	8615-79-2340	ALL ABOUT YOU FROM HEAD TO TOE INC	
6200	8615-79-3281	GRESHAM, WARREN W	
6756	8615-79-0585	MEDFORD, MICHAEL	
10580	8615-79-1121	SMITH, THOMAS LEE	SMITH, SHIRLEY C
14807	8615-79-3583	G & G WNC LLC A NC LLC	
18880	8615-79-3394	SATTERFIELD, FRANCES	
21390	8615-78-3902	KREITZBURG, KAREN L	
25495	8615-79-1306	SMITH, SUE	
43011	8615-79-2546	MEDFORD, MICHAEL	

E8

## Town of Waynesville Land Development Excerpts

### 17 Definitions

#### 17.2 Rules of Construction

The words and phrases in this chapter shall have their customary meanings or shall be as defined in a standards dictionary, except for the specific words and phrases defined in this chapter.

- Tense. Words used in the present tense include the future tense.
- Number. The singular number includes the plural number and the plural number includes the singular number.
- Person. The word "person" includes a firm, association, partnership, trust, company, corporation or any other entity usually defined in legal usage as a person.
- Shall and May. The words "shall," "must," and "will" are mandatory in nature. The word "may" is permissive in nature.
- Used or occupied. The words "used" and "occupied" include the words "intended, designed, or arranged to be used or occupied."
- Lot. The word "lot" includes the words "plot" and/or "parcel."
- Structure. The word "structure" includes the word "building."
- On the Premises Of. The phrase "on the premises of," as applied to accessory uses or structures, shall be interpreted to mean "on the same lot."
- LBCS – American Planning Association Land-based Classification Standards
- NAICS – North American Industrial Classification System

#### 17.3 Definitions, Use Type

**Bar/Tavern/Night Club** A business where alcoholic beverages are sold for on-site consumption, which are not part of a larger restaurant. Includes bars, taverns, pubs, and similar establishments where any food service is subordinate to the sale of alcoholic beverages. May also include beer brewing as part of a microbrewery and other beverage tasting facilities. Entertainment including live music, and/or dancing, comedy, etc. may also be included.

**Manufacturing, Light** A non-residential use that involves the manufacturing, assembling, finishing, cleaning or developing any product or commodity. Facilities are typically designed to look and generate impacts like a typical office building, but rely on special power, water, or waste disposal systems for operation. Noise, odor, dust, and glare of each operation are completely confined within an enclosed building, insofar as practical. (LBCS S2613)

### 3. Supplemental Use Standards

E 12

#### 3.1 Applicability

There are certain uses that exist which may be constructed, continued, and/or expanded provided they meet certain mitigating conditions specific to their design and/or operation. Such conditions ensure compatibility so that different uses may be located in proximity to one another without adverse affects to either. When uses are listed in the Use Matrices in Chapter 2 as Uses Permitted with Additional Standards (PS) or uses requiring Special Use Permits (SUP) they shall comply with the additional criteria set forth in this chapter for that use in addition to other applicable criteria contained in this ordinance.

**3.1.2 Uses Permitted with Additional Standards (PS)**

- A. Permitted uses with special requirements are uses permitted by right, provided that the specific standards set forth in this article are met.
- B. The specified standards are intended to insure that these uses fit the vision of the land development districts in which they are permitted, and that these uses are compatible with other development permitted within the districts.

**B. 3.5.3 Bar/Tavern/Night Club**

- C. No such facility shall be located within 300 feet of the property line of any lot containing a church or school or any residential district. These standards shall not apply for such uses located in Business Districts (BD) or Regional Mixed-Use Districts (RMX).



**Excerpt: Town of Waynesville Land Development Standards**

**15.12 Appeals of Administrative Decisions**

**15.12.1 Applicability**

This process is hereby established to provide an appeal process for parties aggrieved by any order, requirement, decision or determination, made by an administrative officer charged with enforcing the provisions of this ordinance.

**15.12.2 Filing Procedures**

- A. Process Types:** Quasi-Judicial (See also 15.4)
- B. Filing Procedure:** An appeal of an administrative decision may be taken by any person aggrieved (or by their authorized agent) or may be taken by any officer, department, board or bureau of the town. Such an appeal shall be made to the town within thirty (30) days of the receipt of the written notice of decision from the town.
- C. Stay of Proceedings:** The filing of an appeal shall stay all proceedings in furtherance of the contested action unless the Administrator certifies that, in his/her opinion, by reason of facts stated in the certification, such a stay would cause imminent peril to life and property. In such a case, proceedings shall not be stayed except by restraining order granted by the Superior Court of Haywood County on notice to the administrative official from whom the appeal is taken with due cause shown.
- D. Required Application Information:** All information relevant to describing the applicant's appeal to the Board of Adjustment. The Administrator shall similarly prepare a report detailing the regulations and interpretation behind the matter being appealed and their reason for their decision.
- E. Public Notification:** Level 1 & 2

**15.12.3 Formal Review**

- A.** Upon receiving the application, the Board shall conduct a public hearing on the appeal. Any party may appear in person or be represented by an agent at the hearing.
- B.** After conducting the public hearing, the Board shall adopt an order reversing or affirming, wholly or in part, or modifying the order requirements, decision or determination in question. It shall take a 4/5ths vote of the Board to reverse or modify the contested action.
- C.** The Board, in making its ruling, shall have all the powers of the Administrator from whom the appeal is taken, and may issue or direct the issuance of a permit.
- D.** The decision of the Board must be in writing and permanently filed in the minutes of that reviewing body as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board, which must be delivered to parties of interest by certified mail.

**15.12.4 Appeals**

- A.** Any appeal from a decision of the Board of Adjustment may be made by an aggrieved part and shall be made to the Superior Court of Haywood County in the nature of certiorari. Any such petition shall be filed no later than thirty (30) days after the applicant receives a written copy of the decision of the Board of Adjustment.
- B.** Any appeal from a decision relating to sedimentation and erosion control shall be made to the North Carolina Sedimentation Control Commission. Any such appeal shall be filed no later than fifteen (15) days after the applicant receives a written copy of the decision of the Board of Adjustment.



## 15.13 Variances

### 15.13.1 Purpose/Limitations

- A. **Purpose:** The variance process administered by the Board of Adjustment is intended to provide limited relief from the requirements of this ordinance in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of the land in a manner otherwise allowed under this ordinance.
- B. **Financial Hardship Not Sufficient Ground for Variance:** It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this ordinance may impose on property owners in general or to increase the profitability of a proposed development.
- C. **Use Variances Not Permitted:** In no event shall the Board of Adjustment grant a variance which would allow the establishment of a use which is not otherwise allowed in a land development district or which would change the land development district classification or the district boundary of the property in question.
- D. **Authority Limited to this Ordinance/Conflicts with other Laws Prohibited:** In no event shall the Board of Adjustment grant a variance which would conflict with the North Carolina State Building Code or any other state code unless otherwise authorized by laws and regulations.

### 15.13.2 Filing Procedures

- A. **Process Types:** Quasi-Judicial (See also 15.4)
- B. **Pre-Application Procedure:** Every applicant for a variance is strongly encouraged to meet with the planning department in a pre-application conference prior to the submittal of a request for a variance. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application.
- C. **Filing Procedure:** An application for a variance may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application.
- D. **Required Application Information:** All information relevant to describing the applicant's request to the Board of Adjustment.
- E. **Public Notification:** Level 1, 2 & 4
- F. **Determination of Completeness:** Staff shall review an application for a variance to determine if it is complete. If an application is complete, the Administrator shall schedule the matter for consideration at a meeting of the board of adjustment. The Administrator shall prepare a staff report regarding the submitted variance application.

### 15.13.3 Formal Review

- A. **Action by the Board of Adjustment**
  - 1. Upon receipt of the request for a variance from the Administrator, the board of adjustment shall hold a quasi-judicial hearing on the request.
  - 2. After conducting the hearing, the Board of Adjustment may: deny the application; conduct an additional public hearing on the application; or grant the application.
  - 3. A decision by the Board of Adjustment shall be made within thirty-two (32) days of the date of the hearing.
  - 4. 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 Section 15.13.3.B.1 below. Standards for floodplain development regulation variances are set forth in Section 15.13.3.B.2.

5. Any applicant to whom a variance from the floodplain development regulations is granted shall be given written notice. This notice shall specify the difference between the base flood elevation and the elevation to which the structure is to be built and contain a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions. Variances records shall be provided to the Federal Emergency Management Agency upon request.

#### **B. Standard of Review**

1. **General Variance Requests:** The Board of Adjustment shall not grant a variance unless and until it makes all of the following findings:
  - a. That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter.
  - b. That if the applicant complies with the provisions of the chapter, the property owner seeking the variance can secure no reasonable return from, or make no reasonable use of his property.
  - c. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings located in the same land development district.
  - d. That the special conditions and circumstances do not result from the actions of the applicant.
  - e. That the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit.
  - f. That the variance is the minimum necessary to afford relief.
  - g. That the public safety and welfare have been assured and substantial justice has been done.

...

#### **3. Additional Conditions**

- a. In granting any variance, the Board of Adjustment may attach such conditions to the approval as it deems necessary and appropriate to satisfy the purposes and objectives of this ordinance. The board may also attach conditions in order to reduce or minimize any injurious effect of such variance upon other property in the neighborhood and to ensure compliance with other terms of this chapter.