

**ZONING ORDINANCE
TEXT AMENDMENT APPLICATION**

CITY OF CHARLOTTE

Revised 3-6-00

Petition #:	<u>2000-49</u>
Date Filed:	<u>12-8-99</u>
Received By:	<u>MS</u>

Section #: 2.103, 4.107, 5.103, and 5.111 (Title)

Purpose of Change:

The Board of Adjustment has had a case overload. Council instructed that amendments be proposed that would delegate administrative authority to the zoning administrator to approve deviations from the Zoning Ordinance. In addition, the Smart Growth report recommend: "There is a need for more administrative-level review for minor issues that are now sent to the City Board of Adjustment..."

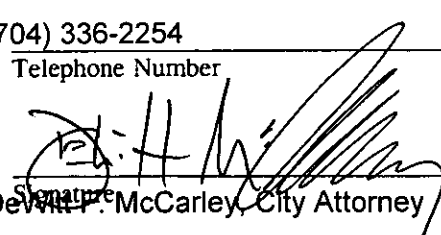
The amendments address various issues that seek to reduce variance applications to the Board. The primary amendment pertains to the delegation of authority to the zoning administrator.

The zoning administrator shall have the authority to approve deviations of not more than 5% from quantifiable standards in prescribed situations (e.g., contours of land creating an inadvertent error, existing physical layout preventing ordinance compliance, etc.). Deviation from yard requirements not to exceed two feet and permitting encroachments like chimneys, air conditioning units, etc., not to exceed five feet might be approved in prescribed circumstances.

Before approval, the zoning administrator shall notify abutting property owners effected by the request. If such a person objects, then the applicant must file a variance application.

Zoning, Planning, and the City Attorney's Office participated in the development of these proposed amendments. The proposed amendments were transmitted to Zoning and Planning for any comments before filing on December 8.

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Revised
3/6/2000

ORDINANCE NO. _____ AMENDING APPENDIX A-ZONING

AN ORDINANCE AMENDING APPENDIX A-ZONING OF THE CITY CODE OF THE CITY OF CHARLOTTE.

BE IT ORDAINED by the City Council of the City of Charlotte, NC, that:

Section 1. Appendix A-Zoning of the City Code of the City of Charlotte

shall be amended as follows:

1. Amend §2.103, "Fractional requirements", by deleting that section in

its entirety and substituting in lieu thereof the following:

"Whenever any requirement of this Ordinance results in a fraction of a unit, a fraction of a half or more will be rounded up to the next whole unit and a fraction of less than a half will be disregarded. When any requirement of these regulations results in a fraction of a dwelling unit, that fraction will be disregarded and the nearest lower whole number shall apply. Whenever a density calculation for a lot of record existing prior to January 1, 1992, results in less than one dwelling unit being permitted, the fractional requirement will be disregarded and one dwelling unit will be permitted subject to §7.105."

2. Amend Chapter 4, "Development approval", by adding a new

§4.107 entitled, "Delegated authority for development approval based upon existing conditions", and shall read as follows:

"(1) Delegated authority for quantifiable ordinance standards: The zoning administrator has the authority to grant an administrative approval of deviations from measurable and quantifiable standards of this ordinance, except for density requirements and signs, if the deviations are in accordance with the conditions listed below. The approval cannot be for a deviation of more than 5% of the ordinance requirements. The administrative approval must be in accordance with any one of the following four conditions:

- (a) The physical contours of the street, the land, or some other topographical or geographical feature is the basis for a surveying or other inadvertent error.

- (b) The physical layout of the land and the structures upon the land are such that the ordinance requirement cannot be met.
- (c) Because of the nature of the abutting property or intervening topographical or geographical features, the application of the ordinance requirement would not serve a useful purpose.
- (d) The applicant has agreed to measures that would ameliorate the deviation from complete compliance with the ordinance requirement.

(2) Yard, Buffers, and Appurtenant Encroachments: The zoning administrator shall also have the administrative authority to approve deviations from yard and buffer requirements. To approve a deviation, the zoning administrator must determine that there has been a surveying error, a misunderstanding about a property line, an action of the Building Standards Department, or other similar basis that demonstrates an inadvertent error. Any approval for a reduction shall not exceed two feet, except an approval for air conditioning units, which shall not exceed three feet. The zoning administrator shall have the authority to apply subsection (1) or (2) but not both sections. The zoning administrator shall have the authority to attach any condition for a fence, screening, or a similar requirement, if deemed necessary.

(3) Handicapped ramps: The zoning administrator shall have the authority to approve a handicapped ramp or other encroachment into a yard, if the encroachment is required by law and there is no other reasonable location.

(4) Procedure:

- (a) Before granting any administrative approval, the zoning administrator shall take reasonable steps to inform the owners of the property abutting on that side of the location of the requested approval or on all sides, if all sides would be affected. The zoning administrator shall inform the relevant abutting owner(s) that the owner is entitled to object. The abutting owner shall have three working days to make comments to the zoning administrator. The zoning administrator shall take into consideration any comments received.
- (b) If the zoning administrator determines that there is not a basis for administrative approval, then the applicant must seek a variance.

- (c) If any person who is deemed to have the status of an aggrieved person objects to the administrative approval with a stated reason before the zoning administrator's written decision, then the zoning administrator shall deny the request for an administrative approval and the applicant must file for a variance. "

Section 3. Amend §5.103, "Filing of notice of appeal", by deleting subsection (1) in its entirety and substituting in lieu thereof the following:

"(1) A notice of appeal, in the form prescribed by the Board of Adjustment, shall be properly filed by a person aggrieved with the zoning administrator's decision within thirty (30) days of the decision. Pursuant to N.C.G.S. §160A-388(d), when passing upon appeals, the Board shall have jurisdiction to grant variances for any violations but shall have that jurisdiction for variances only at that time. If an applicant fails to request variances at that time, then the applicant shall forfeit the right to seek variances for the stated violations. The Board shall not have jurisdiction to grant variances. The notice filed with the zoning administrator shall be accompanied by a non-refundable filing fee as established by City Council. Failure to timely and properly file such notice and the fee shall constitute a waiver of any rights to appeal under this chapter and the Board of Adjustment shall no jurisdiction to hear the appeal.

Section 4. Amend §5.106, "Staff review", shall be deleted in its entirety and substituted in lieu thereof shall be a new section to read as follows:

"Within three days after the proper filing of a completed variance petition or notice of appeal application, the zoning administrator shall transmit the variance petition and notice of appeal application to the Planning staff. As soon as reasonably practical upon receiving the variance petition and appeal application, the Planning staff shall make comments, if any, to the zoning administrator about the filed applications. The zoning administrator's shall take into consideration any such comments from the Planning staff whether a variance appears to be necessary or whether an appeal application appears to be necessary.

Section 5. Amend §5.111, "Effect of grant of variance or reversal of modification of administrative decision", by deleting, in the first paragraph, the second sentence which begins with the words "Unless otherwise..." and ends with

the words "its decision" in its entirety and replacing that sentence with the following sentence:

"Unless otherwise specified by the Board, a decision of the Board granting a variance shall automatically expire if a building permit is required, pertaining to the need for the variance, and is not obtained within two years from the date of the meeting of the Board at which the Board rendered its decision. In addition, if two years have expired, the zoning administrator shall have the authority to issue the permit if the zoning administrator determines that, based upon the Board's decision, the circumstances for the granting of the variance have not changed and would allow the issuance of the permit. In exercising that authority, the zoning administrator shall comply with the procedures of §4.107(4), 'Procedure'."

Section 6. This ordinance shall become effective upon adoption.

Approved as to form:



Senior Assistant City Attorney