



Planning and Inspections Department

P. O. Box 70, 308 E Stadium Drive, Eden NC 27289-0070/Telephone 336-623-2110/Fax 336-623-4057

MEMO

To: Honorable Mayor and City Council
Thru: Brad Corcoran, City Manager
From: Kelly K. Stultz, AICP, Director
Subject: **Zoning Case Z-14-09**
Date: February 2, 2015

The City has received a zoning text amendment request from the Planning Board to amend Section 11.26 of the City of Eden Zoning Ordinance to reflect changes in the N.C. General Statutes pertaining to the Board of Adjustment. Staff recommended that the text amendment be approved.

The Planning Board considered this request at their regular meeting on November 25, 2014 and recommended that the amendment be approved.

**PLANNING AND INSPECTIONS DEPARTMENT
ZONING TEXT AMENDMENT REPORT
October 23, 2014**

CASE NUMBER: Z-14-09

REQUESTED ACTION: To amend Section 11.26 to reflect changes in the N.C. General Statutes pertaining to the Board of Adjustment.

APPLICANT: Planning Board

EXISTING/PROPOSED TEXT (additions/changes in RED)

Section 11.26(a) ESTABLISHMENT OF THE BOARD OF ADJUSTMENT

- (3) **Term of Appointment and Vacancies** - The members shall be appointed for terms of three (3) years, with the exception of the initial ten (10) members. Three (3) of the initial members shall be appointed for a term of one (1) year; three (3) for two (2) years; and four (4) for three (3) years. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term. If a city member moves outside the city, or if an extraterritorial member moves outside the planning jurisdiction, that shall constitute a resignation from the board, effective upon the date a replacement is appointed.

The council may appoint alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member. The ordinance may designate a planning board or governing board to perform any of the duties of a board of adjustment in addition to its other duties and may create and designate specialized boards to hear technical appeals.

- (5) **Rules of Conduct for Members**

(g) A member of the Board or any other body exercising the functions of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

- (11) ~~**Voting** – The concurring vote of four-fifths (4/5) of the regular board membership (excluding vacant seats) shall be necessary to reverse any order, requirement, decision, or determination of the administrator or to decide in favor of the applicant any matter upon which it is to pass under any ordinance, including the issuance of a special use permit or the grant of any variance. All other actions of the board shall be taken by majority vote, a quorum being present. 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 supermajority if there are no qualified alternates available to take the place of such members. (5/09)~~

- (11) **Voting** – 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. 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.

- (b) **FILING AND NOTICE OF AN APPEAL** - Appeals from the enforcement and interpretation of this Ordinance or variances may be taken to the Board of Adjustment by any person aggrieved or by any officer, department, or board of the City of Eden. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer certifies to the Board of Adjustment that by reason of facts stated in the certificate a stay would be in his opinion, cause imminent peril of life and property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application or notice to the officer from whom the appeal is taken and due cause shown.
- (1) **Hearing of the Appeal** – After receipt of notice of an appeal, the Board of Adjustment chairman shall schedule the time for a hearing, which shall be at a regular or special meeting within 36 days from the filing of such notice of appeal. **The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:**
- (a) Any person who has standing under G.S.160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.
 - (b) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
 - (c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
 - (d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.
 - (e) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
 - (f) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In

that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. 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.

- (g) Subject to the provisions of subdivision (6) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.
 - (h) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision
 - (i) When hearing an appeal pursuant to G.S.160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S.160A-393(k).
 - (j) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.
- (2) **Notice** - Notice of a Board of Adjustment public hearing shall be published in at least two (2) editions of the local newspaper within seven (7) days of the said hearing. ~~Notice may also be made by posting the property concerned or by mailing notices to the owners of surrounding property.~~ Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- (4) **Quasi-Judicial Decisions** - The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. 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 clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

- (5) **Oaths** – The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any manner coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class I misdemeanor.
- (6) **Subpoenas** – The board of adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.
- (c) **POWERS AND DUTIES** – The zoning or unified development ordinance may provide that the board of adjustment hear and decide special and conditional use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The board of adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development. The Board of Adjustment shall have the following powers and duties:
- (2) ~~**Variances** – When practical difficulties or unnecessary hardships would result from carrying out the strict letter of the Zoning Ordinance, the Board of Adjustment shall have the power to vary or modify any of the regulations or provisions of the Ordinance so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance. 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. These regulations may provide that the Board of Adjustment may determine and vary their application in harmony with the general purpose and intent and in accordance with general or specific rules therein contained, provided no change in permitted uses may be authorized by variance. A variance from the terms of this Ordinance shall not be granted by the Board unless the following findings are made.~~
- ~~(a) — That special conditions and circumstances exists which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district;~~
- ~~(b) — That literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other parties in the same district under the terms of this Ordinance;~~
- ~~(c) — That the special conditions and circumstances do not result from the actions of the applicant;~~
- ~~(d) — That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other land, structures, or buildings in the same district.~~
- (2) **Variances** – When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(d) **APPEAL FROM THE BOARD OF ADJUSTMENT** - An appeal from the decision of the Board of Adjustment may be made to Rockingham County Superior Court, such petition shall be filed with the clerk of Superior Court within 30 days the decision of the board is filed with the Zoning Enforcement Officer, but not thereafter.

- (1) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. 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 clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.
- (2) Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

GENERAL INFORMATION

This request was submitted by the Planning Board.

STAFF ANALYSIS

This amendment was initiated by the Planning Board to comply with changes made to the N.C. General Statutes.

Based upon the foregoing information, staff recommends in favor of the text amendment.

STAFF RECOMMENDATION:

Approval of the text amendment.

AN ORDINANCE AMENDING THE ZONING
ORDINANCE OF THE CITY OF EDEN

BE IT ORDAINED BY THE CITY COUNCIL of the City of Eden, North Carolina, that, after having fully complied with all legal requirements, including publication of notice of a public hearing and the holding of a public hearing relative thereto, Section 11.26 Board of Adjustment of the Zoning Ordinance of the City of Eden is hereby amended as follows:

(a) ESTABLISHMENT OF THE BOARD OF ADJUSTMENT

(3) Term of Appointment and Vacancies shall read as follows:

The members shall be appointed for terms of three (3) years, with the exception of the initial ten (10) members. Three (3) of the initial members shall be appointed for a term of one (1) year; three (3) for two (2) years; and four (4) for three (3) years. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term. If a city member moves outside the city, or if an extraterritorial member moves outside the planning jurisdiction, that shall constitute a resignation from the board, effective upon the date a replacement is appointed.

The council may appoint alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member. The ordinance may designate a planning board or governing board to perform any of the duties of a board of adjustment in addition to its other duties and may create and designate specialized boards to hear technical appeals.

(5) Rules of Conduct for Members – paragraph (g) shall read as follows:

(g) A member of the Board or any other body exercising the functions of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(11) Voting shall read as follows:

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. 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.

(b) **FILING AND NOTICE OF AN APPEAL** - paragraphs (1) and (2) shall be amended to read as follows and paragraphs (4), (5) and (6) as follows will be added:

(1) **Hearing of the Appeal** – After receipt of notice of an appeal, the Board of Adjustment chairman shall schedule the time for a hearing, which shall be at a regular or special meeting within 36 days from the filing of such notice of appeal. The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- (a) Any person who has standing under G.S.160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.
- (b) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- (d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only

form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

- (e) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (f) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. 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.
- (g) Subject to the provisions of subdivision (6) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.
- (h) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision

- (i) When hearing an appeal pursuant to G.S.160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S.160A-393(k).
 - (j) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.
- (2) **Notice** - Notice of a Board of Adjustment public hearing shall be published in at least two (2) editions of the local newspaper within seven (7) days of the said hearing. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- (4) **Quasi-Judicial Decisions** - The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. 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 clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.
- (5) **Oaths** – The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any manner coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class I misdemeanor.

(6) **Subpoenas** – The board of adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(c) **POWER AND DUTIES** shall read as follows:

The zoning or unified development ordinance may provide that the board of adjustment hear and decide special and conditional use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The board of adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development. The Board of Adjustment shall have the following powers and duties:

(2) **Variances** shall read as follows:

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(a) 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.

(b) 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.

- (c) 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.
- (d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(d) **APPEAL FROM THE BOARD OF ADJUSTMENT** – shall read as follows:

An appeal from the decision of the Board of Adjustment may be made to Rockingham County Superior Court; such petition shall be filed with the Clerk of Superior Court within 30 days the decision of the board is filed with the Zoning Enforcement Officer, but not thereafter.

(1) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. 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 clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(2) Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

APPROVED, ADOPTED AND EFFECTIVE, this 17th day of February, 2015.

CITY OF EDEN

BY: _____
Wayne R. Tuggle, Sr., Mayor

ATTEST:

Sheralene Thompson, CMC
City Clerk