

## Chapter 18

### Article IV

#### Division 2

#### Sec. 18-105. Construction board of adjustment and appeals.

- (a) There is hereby established a board to be called the construction board of adjustment and appeals, which shall consist of five members and two alternates. The governing body shall appoint the board. The board will be able to hear appeals and requests for variances for Section 18, 44, 46, 62, and 78.
- (b) *Membership and terms.*
- (1) *Membership.* The construction board of adjustment and appeals should consist of five members. Such board members should be composed of individuals with knowledge and experience in the technical codes, such as design professionals, contractors or building industry representatives and at least one member of the general public who is also a citizen of Union County. In addition to the regular members, there should be two alternate members, one member at large from the building industry and one member at large from the general public. A board member shall not act in a case in which he has a personal or financial interest.
  - (2) *Terms.* The terms of office of the board member shall be staggered so no more than 1/2 of the board is appointed or replaced in any 12-month period. The two alternates, if appointed, shall serve one-year terms. Vacancies shall be filled for an unexpired term in the manner in which original appointments are required to be made. Continued absence of any member from required meetings of the board shall, at the discretion of the applicable governing body, render any such member subject to immediate removal from office.
  - (3) *Quorum and voting.* A simple majority of the board shall constitute a quorum. In varying any provision of this code, the affirmative votes of the majority present shall be required. In modifying a decision of the building official, not less than two affirmative votes shall be required. In the event that regular members are unable to attend a meeting, the alternate members, if appointed, shall vote.
  - (4) *Secretary of board.* An employee from the building inspection and development office of the county will fill the secretary position at each meeting. The Secretary shall make a detailed record of all its proceedings, which shall set forth the reasons for its decision, the vote of each member, the absence of a member and any failure of a member to vote.
- (c) *Powers.* The construction board of adjustments and appeals shall have the power, as further defined in subsection 18-105(d), to hear the appeals of decisions and interpretations of the building official and consider variances of the technical codes.
- (d) *Appeals.*
- (1) *Decision of the building official.* The owner of a building, structure or service system, or his duly authorized agent, may appeal a decision of the building official to the construction board of adjustment and appeals whenever any one of the following conditions are claimed to exist:
    - a. The building official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system.
    - b. The provisions of this code do not apply to this specific case.
    - c. That an equally good or more desirable form of installation can be employed in any specific case.

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- d. The true intent and meaning of this code or any of the regulations thereunder have been misconstrued or incorrectly interpreted.
  - e. All cell phone tower variances
- (2) *Variances.* All variance requests shall be filed in the Union County Commissioners office. After filing of the variance request the Commissioner's office will determine if a public hearing is needed prior to sending the variance request to the construction board of adjustments and appeals within 10 business days. If determined that a public hearing is necessary regarding the proposed variance permit the commissioner shall cause the following notice requirements to be instituted.
- a. A sign shall be erected two full weeks prior to the date of the public hearing by Union County in a conspicuous location on or adjacent to the property under consideration. The sign shall state the date, time, place, location and purpose of the public hearing.
  - b. Any objection to the erection of the sign by the person or entity applying for the variance shall cause the variance request to be cancelled.
  - c. The person or entity applying for the variance shall cause a letter to be sent by regular mail to all property owners of record of abutting parcels, giving notice of the public hearing. Owners of record shall be as indicated by the county tax commissioner's records. The letter shall at least state the date, time, place, location and purpose of the public hearing.
  - d. A copy of the letters sent to each property owner of record shall be submitted to the Union County Commissioner's Office either by mail or in person to 65 Courthouse Street, Box 1, Blairsville, GA 30512.
  - e. The construction board of adjustments and appeals, when so appealed to and after a hearing, may vary the application of any provision of this code to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this or this technical codes or public interest, and also finds all of the following:
    - f. That special conditions and circumstances exist which are peculiar to the building, structure or service system involved and which are not applicable to others.
    - g. That the special conditions and circumstances do not result from the action or inaction of the applicant.
    - h. That granting the variance requested will not confer on the applicant any special privilege that is denied by this code to other buildings, structures or service system.
    - i. That the variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system.
    - j. That the grant of the variance will be in harmony with the general intent and purpose of this code and will not be detrimental to the public health, safety and general welfare.
      - 1. *Condition of variances.* In granting the variance, the board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both. In addition, the board may prescribe appropriate conditions and safeguards in conformity with this code. Violation of the conditions of a variance shall be deemed a violation of this code.
- (3) *Notice of appeal.* Notice of appeal shall be in writing and filed within 15 calendar days after the building official renders the decision. Appeals shall be in a form acceptable to the building official.

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- (4) *Unsafe or dangerous buildings or service systems.* In the case of a building, structure, or service system, which, in the opinion of the building officials, is unsafe, unsanitary or dangerous, the building official may, in his order, limit the time for such notice of appeals to a shorter period.
- (e) *Rules and regulations.* The board shall establish rules and regulations for its own procedure not inconsistent with the provisions of these procedures. The board shall meet on call of the chairman. The board shall meet within 15 calendar days after notice of appeal has been received **unless the nature of the variance requested should be explored in a public hearing where the citizens of Union County have a right to be heard and express their opinions before the construction board of adjustment and appeals hears the appeal. The public hearing, if needed, shall be set in a reasonable time complying with the open meetings act of Georgia.**
- (1) *Decisions.* The construction board of adjustment and appeals shall, in every case, reach a decision without unreasonable or unnecessary delay. Each decision of the board shall also include the reasons for the decision. If a decision of the board reverses or modifies a refusal, order, or disallowance of the building official or varies the application of any provision of this code, the building official shall immediately take action in accordance with such decision. **Every decision shall be promptly filed in writing in the office of the building official and shall be open to public inspection.** A certified copy of the decision shall be sent by mail or otherwise to the appellant. **and a copy shall be kept publicly posted in the office of the building official for two weeks after filing.** Every decision of the **board Commissioner** shall be final, subject however to such remedy as any aggrieved party might have at law or in equity.

(Ord. No. O-2005-003, Att. A, § 5, 6-23-2005; Ord. of 04-20-2023(1))