

ARTICLE 18 – ADMINISTRATION

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18.1 AUTHORITY

The agencies designated in this Article are established pursuant to the authority delegated to cities and counties in South Carolina under the Code of Laws, Title 6, Chapter 29.

18.2 PLANNING COMMISSION

18.2.1 Statutory Authority

A Planning Commission is hereby established pursuant to S.C. Code, §6-29-320.

18.2.2 Members and Appointment

The Planning Commission shall consist of seven (7) members appointed by the City Council upon recommendation by the Mayor, and shall serve four (4) year terms, or until successors are appointed, whichever is later. Upon a vacancy created by a resignation of any member, the vacancy should be filled for the unexpired term in the manner as are original appointments.

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18.2.3 Jurisdiction

The jurisdiction of the Planning Commission is established pursuant to S.C. Code §6-29-1110, wherein, approval of major subdivisions by the Planning Commission is hereby required as a condition for the filing of final plats approved pursuant to such major subdivisions with the Office of the Registrar of Mesne Conveyance (RMC) of Aiken County or the Office of the Clerk of Court of Edgefield County, except as provided in S.C. Code §6-29-1110 (2) and Article 5, Approval Procedures.

18.2.4 Board of Zoning Appeals Decision

The decision of the Board of Zoning Appeals shall substitute for that of Planning Commission whenever the Board of Zoning Appeals has jurisdiction over a subdivision or site plan pursuant to S.C. Code §6-29-800(A)(1).

18.3 PLANNING COMMISSION RULES OF PROCEDURE

18.3.1 Authority

These rules of procedure are adopted pursuant to S.C. Code §6-29-360.

18.3.2 Officers

The officers of the Planning Commission shall be a chairman and a vice-chairman elected for one (1) year terms at the last meeting of the Planning Commission in each calendar year prior to the term. The officers of the Planning Commission may serve consecutive terms. The Director shall serve as secretary to the Planning Commission.

18.3.2.1 Chairman – The chairman shall be a voting member of the Planning Commission and shall:

- a. Call meetings of the Planning Commission;
- b. Preside at meetings and hearings;
- c. Act as spokesperson for the Planning Commission;
- d. Transmit reports and recommendations to the Mayor and City Council; and
- e. Perform other duties approved by the Planning Commission.

18.3.2.2 Vice Chairman – The vice chairman shall exercise the duties of the chairman in the absence, disability, or disqualification of the chairman. In the absence of the chairman and vice chairman, an acting chairman shall be elected by a majority of the members present at any regular meeting.

18.3.2.3 Secretary to the Planning Commission – The secretary shall:

- a. Provide notice of meetings;
- b. Assist the chairman in preparation of agendas;
- c. Cause minutes of meetings and hearings to be kept;
- d. Sign documents for the Planning Commission;
- e. Maintain Planning Commission records as public records;
- f. Attend to Planning Commission correspondence; and
- g. Perform other duties normally carried out by a secretary.

18.3.3 Meetings

18.3.3.1 Time and Place – An annual schedule of regular meetings shall be adopted, published and posted at the municipal building prior to January 1 of each year. Special meetings may be called by the chairman upon twenty-four (24) hours notice,

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posted and delivered to all Planning Commission members and local news media. The agenda of a special meeting shall be limited to the items specified in the call for the special meeting. Meetings shall be held at the place stated in the notices, and shall be open to the public.

18.3.3.2 Agenda – A written agenda shall be furnished by the secretary to each member of the Planning Commission and the news media, and shall be posted at least five (5) days prior to each regular meeting and at least twenty-four (24) hours prior to a special meeting. Items may be added to the agenda at a regular meeting by majority vote.

18.3.3.3 Quorum – A majority of the members of the Planning Commission shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting.

18.3.3.4 Voting – A member must be present to vote. Each member shall vote on every question unless disqualified by law. The question of disqualification shall be decided by the members affected, who shall announce the reason for disqualification, have a signed recusal form placed in the minutes, and refrain from deliberating or voting on the question.

18.3.3.5 Conduct – Except for public hearings, no person shall speak at a Planning Commission meeting unless invited to do so by the chairman.

18.3.4 Public Hearings

18.3.4.1 Notice – The secretary to the Planning Commission shall give the notice required by §5.1.3 of this Chapter for all public hearings conducted by the Planning Commission.

18.3.4.2 Procedure – In matters brought before the Planning Commission the procedures specified in §5.1.4 of this Chapter shall be followed.

18.3.5 Records

18.3.5.1 Minutes – The secretary of the Planning Commission shall record all meetings and hearings of the Planning Commission on tape which shall be preserved until the written minutes have been approved by the Planning Commission. The secretary shall prepare minutes of each meeting for approval by the Planning Commission at the next regular meeting. Minutes shall be maintained as public records.

18.3.5.2 Reports – The secretary shall assist in the preparation and forwarding of all reports and recommendations of the Planning Commission in appropriate form. Copies of all notices, correspondence, reports and forms shall be maintained as public records.

18.3.5.3 Attendance – The minutes shall show the members in attendance at each meeting and the reason for absence submitted by any member. The Planning Commission may recommend to the Mayor and City Council the removal for cause of any member who is absent from three (3) consecutive meetings without adequate reason.

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18.3.6 Review Procedures

18.3.6.1 Zoning Amendments – Proposed zoning text and map amendments (rezonings) shall be considered and recommendations shall be forwarded to the City Council in accordance with the procedures and time limits specified in Article 5, Approval Procedures. The Planning Commission shall conduct any required public hearing prior to making a recommendation.

18.3.6.2 Plats – All major subdivisions (preliminary plats) shall be approved by the Planning Commission with the exception of those identified in Article 5, Approval Procedures, that may be approved administratively by the Director or his designee.

18.3.6.3 Comprehensive Plan – All zoning and land development regulation proposals and amendments and all applications for development approval shall be reviewed for conformity with the Comprehensive Plan prior to approval. Conflicts with the Comprehensive Plan are grounds for denial and shall be noted in all decisions.

18.3.6.4 Reconsideration – The Planning Commission may reconsider any review and approval upon a majority vote of the Planning Commission, when so requested by an applicant or by the Mayor and City Council when permitted by law.

18.3.7 Additional Reviews

18.3.7.1 Street Naming – The Planning Commission shall approve the names of all new streets established in the city in conjunction with the approval of a major subdivision application and shall approve all applications for renaming of existing streets in accordance with SC Code §6-29-1200. Street naming and renaming shall be consistent with the Aiken County E-911 street naming and addressing standards and procedures.

18.3.7.2 Street Abandonment – All applications for the abandonment of a street or other public right of way shall be considered by the Planning Commission for conformity and consistency with the Comprehensive Plan and recommendations regarding the requested abandonment shall be forwarded to the City Council in accordance with the procedures specified in Article 5, Approval Procedures.

18.3.7.3 Annexation – All proposed annexations, where the requested zoning is inconsistent with the Land Use Element of the Comprehensive Plan or differs from zoning on adjacent property, shall be reviewed by the Planning Commission for conformity and consistency with the Comprehensive Plan and recommendations regarding the zoning to be applied to the property to be annexed shall be forwarded to the City Council in accordance with the Planning Commission recommendation procedures specified in Article 5, Approval Procedures.

18.4 BOARD OF ZONING APPEALS

18.4.1 Statutory Authority

A Board of Zoning Appeals is hereby established pursuant to S.C. Code, §Title 6, Chapter 29.

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18.4.2 Members and Appointment

The Board of Zoning Appeals shall consist of five (5) members appointed by the City Council upon recommendation by the Mayor, shall serve four (4) year terms, or until successors are appointed, whichever is later. Upon a vacancy created by a resignation of any member, the vacancy should be filled for the unexpired term in the manner as are original appointments.

18.4.3 Order of Interpretation

It is the intention of this Chapter that all questions arising in connection with the enforcement of this Chapter shall be presented first to the Director and that such question shall be presented to the Board of Zoning Appeals only on appeal from the Director.

18.4.4 Purpose

The purpose of this section is to protect the rights of applicants, landowners and affected persons by providing procedures for appeals from decisions of administrative officials and variances from the provisions contained in Articles 3, 4, 5, 7, 9, 13, 18 and 19 of this Chapter. Appeals from the provisions of all other articles contained in this Chapter shall be considered by the Planning Commission in accordance with §5.9. This section implements the provisions of S.C. Code §6-29-800 and applies to the following appeals:

- a. Appeals from and review of any order, requirement, decision or determination made by an administrative official charged with enforcing this Chapter;
- b. An application for a variance from a requirement of Article 3, Zoning Districts; or
- c. An application for a special exception use as listed in the Table 3-2, Use Matrix.

18.4.5 Appeals to the Board of Zoning Appeals

18.4.5.1 Initiation –

- a. A notice of appeal of an administrative decision relating to an application for development approval shall be submitted to the Director within thirty (30) days from receipt of the decision. An appeal from an administrative decision which is withdrawn for any reason may not be re-filed after the thirty (30) day time for appeals has expired.
- b. Any application request for a variance or a special exception shall be filed with the Director.
- c. An application filed by an agent shall be accompanied by written designation of the agent signed by the applicant or party in interest.
- d. Applications shall be filed on forms provided by the Director. The Director or the Board of Zoning Appeals may require additional information deemed necessary to make an informed decision. The failure to submit adequate information may be grounds for dismissal by the Board of Zoning Appeals.

18.4.5.2 Completeness Review – Within fifteen (15) working days after receipt of the application, the Director shall review the application and shall determine if the application is complete pursuant to this section. The Director shall inform the applicant of the status of the completeness of the application. If the application is complete and conforms to this Chapter, the Director shall initiate the application review process. If the application is incomplete or does not conform with the provisions of this Chapter, the Director shall return it to the applicant with a statement of the reasons why the application is incomplete or otherwise does not conform to the provisions of this Chapter. The Director's statement will provide the information necessary for the applicant to

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revise and resubmit the application. Any communication purporting to be an application for an appeal shall be regarded as mere notice to seek relief until it is made in the form required.

18.4.5.3 Decision – The application shall be scheduled for consideration by the Board of Zoning Appeals at the next regularly scheduled monthly meeting following receipt of a complete application, provided that the complete application is submitted at least thirty (30) calendar days prior to said meeting. Otherwise, the application shall be considered at the following monthly meeting.

The Board of Zoning Appeals shall render its decision within thirty (30) days after the initial hearing date unless extended by the applicant or by majority vote of the Board of Zoning Appeals for good cause shown. If no decision has been made within the thirty (30) days, the request shall automatically be considered approved by the Board of Zoning Appeals and the Board shall direct that the necessary permits be issued. The Board of Zoning Appeals shall conduct a hearing on the appeal pursuant to the procedures established in S.C. Code §6-29-800 and §5.1.4 of this Chapter.

18.4.5.4 Approval Criteria –

18.4.5.4.1 Appeal from Administrative Decision or Interpretation –

- a. The Board of Zoning Appeals shall hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an administrative official of the city in the enforcement of this Chapter.
- b. In an appeal regarding an administrative decision or interpretation, the Board of Zoning Appeals' scope of review shall be limited to determining whether the decision or interpretation by the Director was in accordance with the intent and requirements of this Chapter, and accordingly, the Board will affirm, modify or reverse the decision.
- c. In exercising its powers, the Board of Zoning Appeals, in conformity with this Chapter, may reverse or affirm, wholly or partly, or may modify the order, requirement or decision of the Director or other administrative official and to that end shall have all powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

18.4.5.4.2 Variance –

- a. A variance is not a right. It may be granted to an applicant only if the applicant establishes compliance with the hardship criteria established in S.C. Code §6-29-800.
- b. The Board of Zoning Appeals shall hear and decide appeals for variances from the requirements of Article 3, Zoning Districts, and Article 13, Signs, when strict application of the regulations would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board of Zoning Appeals makes and explains in writing, all of the following:
 1. An unnecessary hardship exists;
 2. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
 3. The conditions do not generally apply to other property in the vicinity;
 4. Because of the conditions, the application of this Chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and

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5. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance. Harm to the character of the district may include structures that are significantly out of scale, and the creation or potential for the creation of excessive noise, light, traffic or incompatible late night activity. (Rev. 12-1-08; Ord. 2008-18)
- c. In the approval of an application for a variance from the provisions of Article 13, Signs, regulating the size, height, appearance, or location of a sign, the Board of Zoning Appeals shall also find that no alternative signage solution that complies with the provisions of Article 13 is available and would provide adequate visibility, recognition and understanding.
- d. The Board of Zoning Appeals may not grant a variance the effect of which would be:
 1. To allow the establishment of a use not otherwise permitted in a zoning district.
 2. To extend physically a nonconforming use of land.
 3. To change zoning district boundaries shown on the official zoning map.
- e. If the unnecessary hardship is self imposed by the applicant the variance should not be granted.
- f. The fact that property may be utilized more profitably, should a variance be granted, shall not be considered grounds for a variance.
- g. In granting a variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the Board may consider advisable to promote the public health, safety, or general welfare.

18.4.5.4.3 Special Exception –

- a. Special exceptions are subject to additional scrutiny to insure that the health, safety and general welfare of the community and the area where the special exception use is proposed will not be harmed.
- b. Permits for special exceptions shall be evaluated by the Board of Zoning Appeals on the basis of the following criteria:
 1. That the special exception complies with all applicable development standards contained elsewhere in this Chapter and with the policies contained in the Comprehensive Plan. (Rev. 12-1-08; Ord. 2008-18)
 2. That the special exception will be in substantial harmony with the area in which it is to be located.
 3. That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.
- c. In granting a special exception, the Board of Zoning Appeals may attach such additional stipulations, conditions, or safeguards that, in its judgment, will enhance the proposed special exception use and promote the public health, safety or general welfare.

18.4.5.5 Approval –

- a. The approval of an appeal from an administrative decision shall be effective immediately and the Director shall implement the decision of the Board of Zoning Appeals.
- b. The approval of a variance shall establish the conformity of an existing nonconforming use or structure. The approval of a variance associated with new construction shall authorize the applicant to apply for site plan approval pursuant to §5.6 of this Chapter. No building permit may be issued until the site plan is approved.

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The approval of a variance does not automatically authorize any development activity.

- c. Minor field alterations or minor revisions to approved variances or conditions associated with a variance may be approved by the Director if the project still meets the intent of the variance approval.
- d. Violations of any of the conditions applied to a conditional use permit shall be treated in the manner as set forth in §§5.1.6 and 5.11 of this Chapter.

18.4.5.6 Order and Recordation –

- a. The secretary shall draft the order of the Board of Zoning Appeals regarding the decision on an appeal and any conditions applied to the approval.
- b. The order shall be signed by the chairman and the secretary and shall include the legal description and accompanying map exhibit. The order shall be retained in the official records of the City Clerk and the Department.
- c. The secretary shall deliver a copy of an order to each party in interest by certified mail immediately upon execution of the order by the chairman.
- d. The secretary shall provide the applicant a copy of the order.
- e. A variance is perpetually binding on the property unless another appeal or variance request is brought and approved or the property is brought into compliance with this Chapter through renovation or redevelopment or amendment to this Chapter. (Rev. 2-21-11; Ord. 2011-01)

18.5 BOARD OF ZONING APPEALS RULES OF PROCEDURE

These rules of procedure are adopted pursuant to S.C. Code §6-29-790.

18.5.1 Officers

The officers of the Board of Zoning Appeals shall be a chairman and a vice-chairman elected for one (1) year terms at the last meeting of the Board in each calendar year prior to the term. The officers of the Board may serve consecutive terms. The Director shall serve as secretary to the Board.

18.5.1.1 Chairman – The chairman shall be a voting member of the Board of Zoning Appeals and shall:

- a. Call meetings of the Board;
- b. Preside at meetings and hearings and swear in witnesses;
- c. Act as spokesperson for the Board;
- d. Sign documents for the Board;
- e. Have orders of the Board served on parties and properly recorded; and
- f. Perform other duties approved by the Board.

18.5.1.2 Vice-Chairman – The vice-chairman shall exercise the duties of the chairman in the absence, disability, or disqualification of the chairman. In the absence of the chairman and vice-chairman, an acting chairman shall be elected by the members present.

18.5.1.3 Secretary – The secretary shall:

- a. Provide and publish notice of appeals and meetings;
- b. Assist the chairman in preparation of the agenda;
- c. See that property involved in appeals for variances and special exceptions is properly posted;

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- d. Keep recordings and minutes of meetings and hearings;
- e. Maintain Board records as public records;
- f. Sign and certify documents for the Board;
- g. Serve Board decisions on parties;
- h. Attend to Board correspondence;
- i. Record orders of the Board; and
- j. Perform other duties normally carried out by a secretary.

18.5.2 Appeals Process

18.5.2.1 Calendar – Applications shall be marked with the date of receipt and placed on the Board of Zoning Appeals agenda in the order in which received. Applications shall be heard in the order on the agenda unless otherwise set by the Board for good cause shown.

18.5.2.2 Withdrawal of Appeal – Any application may be withdrawn by written notice delivered to the secretary prior to action by the Board of Zoning Appeals. Withdrawn applications may be re-filed after twelve (12) months and shall be placed on the calendar according to the date re-filed.

18.5.2.3 Continuances – The hearing of an application may be continued one (1) time by the Board of Zoning Appeals for good cause shown.

18.5.2.4 Disposition – The Board of Zoning Appeals may deliberate and make a final disposition of a matter by majority vote of members present at the hearing and qualified to vote provided that not less than a quorum are qualified to vote. The vote may be taken at the same or a subsequent meeting. A member may not vote on a matter which the member has not heard. Deliberations shall be conducted and voting shall be in public.

18.5.2.5 Form of Order – An order shall be issued disposing of a matter by granting or denying relief with such conditions as may be deemed necessary; or affirming, modifying, or reversing an administrative decision. A matter may be dismissed for lack of jurisdiction. Findings of fact and conclusions of law shall be separately stated in an order.

18.5.2.6 Rehearing – The Board of Zoning Appeals, at its discretion, may grant a rehearing of an application which has been dismissed or denied. A written request for rehearing shall be filed with the secretary within fifteen (15) days after delivery of the order. Said request shall be accompanied by any new evidence which could not have been presented at the initial hearing, or evidence of a clerical error or mutual mistake of fact affecting the outcome.

18.5.2.7 Orders and Documents – The secretary shall prepare and serve all orders of the Board of Zoning Appeals in appropriate form. Copies of all notices, correspondence, documentary evidence, orders and forms shall be maintained as public records.

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18.5.3 Meetings

18.5.3.1 Time and Place – If regular meetings of the Board of Zoning Appeals are deemed necessary, an annual schedule shall be adopted, published, and posted at the municipal building prior to January 1 of each year. Special meetings may be called by the chairman upon twenty-four (24) hours notice. The agenda of a special meeting shall be limited to the items specified in the call for the special meeting. Meetings shall be held at the place stated in the notices, and shall be open to the public.

18.5.3.2 Agenda – A written agenda shall be furnished by the secretary to each member of the Board of Zoning Appeals and the news media, and shall be posted at least five (5) days prior to each regular meeting and at least twenty-four (24) hours prior to a special meeting. Items may be added to the agenda at a regular meeting by majority vote if public notice is not required. Items may be removed from the agenda or postponed at any meeting by majority vote.

18.5.3.3 Quorum – A majority of the members of the Board of Zoning Appeals shall constitute a quorum. A quorum shall be present before any business is conducted other than the rescheduling of meetings.

18.5.3.4 Appearance – The applicant or any interested party may appear in person, or be represented by agent or attorney. The Board of Zoning Appeals may postpone or proceed to dispose of a matter in the absence of an appearance of the applicant or representative thereof.

18.5.3.5 Witnesses – Interested parties may present testimony under oath. Witnesses may be compelled to attend by subpoena which has been signed by the chairman and served at least ten (10) days prior to a hearing. The Board of Zoning Appeals may call its own witnesses when deemed appropriate.

18.5.3.6 Cross-Examination – No party shall have the right to cross-examine witnesses; however, the opportunity to examine opposing witnesses may be freely extended by the chairman when conducted in an orderly manner. Intimidation of witnesses shall not be allowed.

18.5.3.7 Evidence – Legible copies of relevant documents, photographs, maps, drawings, etc., will be received in the record without authentication. Relevant testimony, which is not cumulative or hearsay, will be received. The chairman will rule on all evidentiary matters. Evidence may be placed in the record with an objection noted.

18.5.3.8 Conduct of Hearing – In matters brought before the Board of Zoning Appeals, the procedures specified in §5.1.4 of this Chapter shall be followed. Matters in which additional time is granted may be moved to the end of the agenda.

18.5.3.9 Minutes – The secretary shall record all meetings and hearings of the Board of Zoning Appeals on tape which shall be preserved until final action is taken on all matters presented. The secretary shall prepare minutes of each meeting for approval by the Board at the next regular meeting. Minutes shall be maintained as public records.

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18.5.4 Stay of Proceedings

An appeal stays all legal proceedings in furtherance of the action from which the appeal has been taken, unless the Director certifies to the Board of Zoning Appeals, that by reason of facts stated in the certification, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed unless by a restraining order which may be granted by the Board or by a court of competent jurisdiction.

18.5.5 Public Notice

The secretary to the Board of Zoning Appeals shall give the notice required by §5.1.3 of this Chapter.

18.5.6 Expiration and Extension of Variance and Special Exception Approvals

The approval, or conditional approval, of a variance or a special exception, site specific development plans for the purposes of this section, by the Board of Zoning Appeals, and the associated site plan, if any, shall expire two (2) years from the date of approval unless a building permit has been issued and construction has commenced or, if no construction is required, the approved variance or special exception has been initiated. The applicant may apply for and the Board of Zoning Appeals may grant extensions on such approval for additional periods up to one (1) year each but not to exceed five (5) extensions. If an amendment to this Chapter is adopted by the City Council subsequent to the variance or associated site plan approval that would preclude the initial approval, a request for an extension may not be granted. (Rev. 8-16-10; Ord. 2010-12)

18.5.7 Appeals from Board of Zoning Appeals

Any person who may have a substantial interest in any decision of the Board of Zoning Appeals may appeal the decision pursuant to S.C. Code §6-29-820 to the circuit court in and for the counties of Aiken or Edgefield as applicable, filing with the clerk of such court a petition in writing setting forth plainly, fully, and distinctly wherein such decision is contrary to law. Such appeal shall be filed within thirty (30) days after the decision of the Board is rendered.

18.5.8 Subsequent Applications

In the event that an application for an appeal from an administrative decision, variance or special exception is denied, the Department shall refuse to accept another application for the same appeal of an administrative decision, variance or special exception on the same property or any portion of the same property within one (1) year of the original hearing. However, the Board of Zoning Appeals may consider such an application within that time period if it finds there is new and different evidence that was not reasonably available at the time of the original hearing. (Adopt. 2-21-11; Ord. 2011-01)